

HOUSE OF REPRESENTATIVES STAFF ANALYSIS

BILL #: HB 735

Retail Theft

SPONSOR(S): Frishe

TIED BILLS:

IDEN./SIM. BILLS: SB 1644

REFERENCE	ACTION	ANALYST	STAFF DIRECTOR
1) <u>Committee on Homeland Security & Public Safety</u>	<u>7 Y, 0 N</u>	<u>Cunningham</u>	<u>Kramer</u>
2) <u>Safety & Security Council</u>	<u>14 Y, 0 N</u>	<u>Cunningham</u>	<u>Havlicak</u>
3) <u>Policy & Budget Council</u>	<u>(W/D)</u>	<u></u>	<u></u>
4) <u></u>	<u></u>	<u></u>	<u></u>
5) <u></u>	<u></u>	<u></u>	<u></u>

SUMMARY ANALYSIS

“Retail theft” is defined as “the taking possession of or carrying away of merchandise, property, money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value.”

HB 735 expands the retail theft statute to provide enhanced penalties for people who individually, or in concert with one or more other persons, coordinate the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000. The bill makes this offense a second-degree felony and ranks it in level 6 of the Criminal Punishment Code offense severity ranking chart.

This bill does not appear to have a significant fiscal impact.

FULL ANALYSIS

I. SUBSTANTIVE ANALYSIS

A. HOUSE PRINCIPLES ANALYSIS:

Promote Personal Responsibility – This bill provides enhanced penalties for persons who individually, or in concert with others, coordinate the activities of one or more persons in committing retail theft where the value of the stolen property exceeds a certain amount.

B. EFFECT OF PROPOSED CHANGES:

Current Situation

“Retail theft” is defined as “the taking possession of or carrying away of merchandise¹, property², money, or negotiable documents; altering or removing a label, universal product code, or price tag; transferring merchandise from one container to another; or removing a shopping cart, with intent to deprive the merchant³ of possession, use, benefit, or full retail value.”⁴ Currently, subsection (8) of the retail theft statute⁵ provides that a person who commits retail theft commits a third-degree felony⁶ if the property stolen is valued at \$300 or more, and the person:

- Individually, or in concert with one or more other persons, coordinates the activities of one or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Commits theft from more than one location within a 48-hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;
- Acts in concert with one or more other individuals within one or more establishments to distract the merchant, merchant's employee, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or
- Commits the offense through the purchase of merchandise in a package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in the package or box.⁷

The penalty is raised to a second-degree felony⁸ if a person violates subsection (8) and has previously been convicted of a violation of subsection (8).⁹

Effect of the Bill

HB 735 expands the retail theft statute to provide enhanced penalties for people who individually, or in concert with one or more other persons, coordinate the activities of one or more persons in committing the offense of retail theft where the stolen property has a value in excess of \$3,000. The bill makes this offense a second-degree felony and ranks it in level 6 of the Criminal Punishment Code offense severity ranking chart.

¹ “Merchandise” is defined as “any personal property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant.” s. 812.015(1)(b), F.S.

² “Property” is defined as “anything of value” and includes “real property, including things growing on, affixed to, and found in land; tangible or intangible personal property, including rights, privileges, interests, and claims; and services.” s. 812.012(4), F.S.

³ “Merchant” is defined as “an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise.” s. 812.015(1)(b), F.S.

⁴ s. 812.015(1)(d), F.S.

⁵ s. 812.015, F.S.

⁶ A third degree felony is punishable by up to five years imprisonment and a \$5,000 fine. ss. 775.082, 775.083, and s. 775.084, F.S.

⁷ Persons who commit retail theft where the property stolen is valued at less than \$300 would likely be charged with petit theft of the first or second degree. s. 812.014(2)(e) and (3)(a), F.S.

⁸ A second-degree felony is punishable by up to 15 years imprisonment and a \$10,000 fine. ss. 775.082, 775.083, and 775.084, F.S.

⁹ s. 812.015(9), F.S.

C. SECTION DIRECTORY:

Section 1. Amends s. 812.015, F.S., relating to retail theft.

Section 2. Amends s. 921.0022, F.S., conforming the Criminal Punishment Code offense severity ranking chart.

Section 3. This bill takes effect October 1, 2007.

II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

A. FISCAL IMPACT ON STATE GOVERNMENT:

1. Revenues:

None.

2. Expenditures:

On March 6, 2007, the Criminal Justice Impact Conference determined that the prison bed impact of this bill was insignificant.

B. FISCAL IMPACT ON LOCAL GOVERNMENTS:

1. Revenues:

None.

2. Expenditures:

None.

C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:

None.

D. FISCAL COMMENTS:

None.

III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

This bill appears to be exempt from the requirements of Article VII, Section 18 of the Florida Constitution because it is a criminal law.

2. Other:

None.

B. RULE-MAKING AUTHORITY:

None.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

D. STATEMENT OF THE SPONSOR

The bill sponsor submitted the following statement:

“This bill gives law enforcement the ability to deal with gang-related retail theft activity.”

IV. AMENDMENTS/COUNCIL SUBSTITUTE CHANGES