

**First Regular Session
Seventy-second General Assembly
STATE OF COLORADO**

REENGROSSED

*This Version Includes All Amendments
Adopted in the House of Introduction*

LLS NO. 19-0047.01 Michael Dohr x4347

SENATE BILL 19-014

SENATE SPONSORSHIP

Coram, Cooke, Gardner, Scott, Smallwood, Tate

HOUSE SPONSORSHIP

Carver,

Senate Committees

Business, Labor, & Technology

House Committees

A BILL FOR AN ACT

101 **CONCERNING MEASURES TO REDUCE INCIDENTS OF THEFT FROM**
102 **RETAIL ESTABLISHMENTS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates the crime of retail theft with special circumstances if a person commits theft from a store with one of the following special circumstances:

- ! The person is, at the time of the theft, in possession of an item, article, implement, or device used or designed to overcome security systems, including but not limited to

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

SENATE
3rd Reading Unamended
February 14, 2019

SENATE
Amended 2nd Reading
February 13, 2019

lined bags or tag removers, under circumstances indicating an intent to use or employ the item, article, implement, or device for such purposes; or

! To facilitate the theft, the person utilizes an organized effort of multiple persons to remove items from the store with the intent to resell the items.

Retail theft with special circumstances is a class 5 felony.

The bill requires secondhand dealers who purchase gift cards to keep a record of those purchases. Failure to record the purchases in an electronic database is a class 2 misdemeanor for a first offense and a class 6 felony for a second or subsequent offense.

The bill adds a gift card to the definition of a "valuable article", which triggers certain record-keeping requirements.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2

3 SECTION 1. In Colorado Revised Statutes, add 18-4-421 as
4 follows:

5 18-4-421. Organized retail theft. (1) A PERSON COMMITS
6 ORGANIZED RETAIL THEFT IF HE OR SHE:

7 (a) ACTS IN CONCERT WITH ONE OR MORE PERSONS TO STEAL
8 MERCHANDISE FROM ONE OR MORE MERCHANTS' PREMISES OR ONLINE
9 MARKETPLACES WITH THE PURPOSE OF RESELLING OR OTHERWISE
10 RE-ENTERING THE MERCHANDISE IN COMMERCE, INCLUDING CONVEYING
11 THE MERCHANDISE TO A MERCHANT IN EXCHANGE FOR ANYTHING OF
12 VALUE;

13 (b) ACTS IN CONCERT WITH TWO OR MORE PERSONS TO RECEIVE,
14 PURCHASE, OR POSSESS MERCHANDISE DESCRIBED IN SUBSECTION (1)(a)
15 OF THIS SECTION, KNOWING OR BELIEVING IT TO HAVE BEEN STOLEN;

16 (c) ACTS AS AN AGENT OF ANOTHER INDIVIDUAL OR GROUP OF
17 INDIVIDUALS TO STEAL MERCHANDISE FROM ONE OR MORE MERCHANTS'
18 PREMISES OR ONLINE MARKETPLACES AS PART OF AN ORGANIZED PLAN TO

1 COMMIT THEFT; OR
2 (d) RECRUITS, COORDINATES, ORGANIZES, SUPERVISES, DIRECTS,
3 MANAGES, OR FINANCES ANOTHER TO UNDERTAKE ANY OF THE ACTS
4 DESCRIBED IN SUBSECTION (1)(a) OR (1)(b) OF THIS SECTION OR ANY
5 OTHER STATUTE DEFINING THEFT.

6 (2) FOR THE PURPOSE OF DETERMINING WHETHER THE DEFENDANT
7 ACTED IN CONCERT WITH ANOTHER PERSON OR PERSONS IN ANY
8 PROCEEDING, THE TRIER OF FACT MAY CONSIDER ANY COMPETENT
9 EVIDENCE, INCLUDING, BUT NOT LIMITED TO, ALL OF THE FOLLOWING:

10 (a) THAT THE DEFENDANT HAS PREVIOUSLY ACTED IN CONCERT
11 WITH ANOTHER PERSON OR PERSONS IN COMMITTING ACTS CONSTITUTING
12 THEFT, OR ANY RELATED OFFENSE, INCLUDING ANY CONDUCT THAT
13 OCCURRED IN COUNTIES OTHER THAN THE COUNTY OF THE CURRENT
14 OFFENSE, IF RELEVANT TO DEMONSTRATE A FACT OTHER THAN THE
15 DEFENDANT'S DISPOSITION TO COMMIT THE ACT;

16 (b) THAT THE DEFENDANT USED OR POSSESSED AN ARTIFICE,
17 INSTRUMENT, CONTAINER, DEVICE, OR OTHER ARTICLE CAPABLE OF
18 FACILITATING THE REMOVAL OF MERCHANDISE FROM A RETAIL
19 ESTABLISHMENT WITHOUT PAYING THE PURCHASE PRICE, AND USE OF THE
20 ARTIFICE, INSTRUMENT, CONTAINER, OR DEVICE OR OTHER ARTICLE IS
21 PART OF AN ORGANIZED PLAN TO COMMIT THEFT; OR

22 (c) THAT THE PROPERTY INVOLVED IN THE OFFENSE IS OF A TYPE
23 OR QUANTITY THAT WOULD NOT NORMALLY BE PURCHASED FOR PERSONAL
24 USE OR CONSUMPTION AND THE PROPERTY IS INTENDED FOR RESALE.

25 (3) (a) EXCEPT AS PROVIDED IN SUBSECTION (3)(b) OF THIS
26 SECTION, ORGANIZED RETAIL THEFT IS A CLASS 1 MISDEMEANOR;

27 (b) IF A PERSON WHO HAS PREVIOUSLY BEEN CONVICTED OF A

1 VIOLATION OF THIS SECTION HAS SUBSEQUENTLY VIOLATED SUBSECTION
2 (1) OF THIS SECTION ON THREE OR MORE SEPARATE OCCASIONS WITHIN A
3 SIX-MONTH PERIOD AND THE AGGREGATED, FULL VALUE OF MERCHANDISE
4 STOLEN, RECEIVED, PURCHASED, OR POSSESSED WITHIN THAT SIX-MONTH
5 PERIOD MERCHANDISE IS:

6 (I) TWO THOUSAND DOLLARS OR MORE BUT LESS THAN FIVE
7 THOUSAND DOLLARS, ORGANIZED RETAIL THEFT IS A CLASS 6 FELONY;

8 (II) FIVE THOUSAND DOLLARS OR MORE BUT LESS THAN TWENTY
9 THOUSAND DOLLARS, ORGANIZED RETAIL THEFT IS A CLASS 5 FELONY;

10 (III) TWENTY THOUSAND DOLLARS OR MORE BUT LESS THAN ONE
11 HUNDRED THOUSAND DOLLARS, ORGANIZED RETAIL THEFT IS A CLASS 4
12 FELONY;

13 (IV) ONE HUNDRED THOUSAND DOLLARS OR MORE BUT LESS THAN
14 ONE MILLION DOLLARS, ORGANIZED RETAIL THEFT IS A CLASS 3 FELONY;

15 AND

16 (V) ONE MILLION DOLLARS OR MORE, ORGANIZED RETAIL THEFT IS
17 A CLASS 2 FELONY.

18 (4) UPON A CONVICTION PURSUANT TO THIS SECTION, THE COURT
19 SHALL CONSIDER ORDERING, AS A CONDITION OF PROBATION IF ORDERED,
20 THAT THE DEFENDANT STAY AWAY FROM RETAIL ESTABLISHMENTS WITH
21 A REASONABLE NEXUS TO THE CRIME COMMITTED.

22 (5) IN A PROSECUTION UNDER THIS SECTION, THE PROSECUTOR IS
23 NOT REQUIRED TO CHARGE ANY OTHER CO-PARTICIPANT OF THE
24 ORGANIZED RETAIL THEFT.

25 (6) NOTHING IN THIS SECTION PRECLUDES PUNISHMENT PURSUANT
26 TO ANY OTHER SECTION OF LAW.

27 **SECTION 2.** In Colorado Revised Statutes, **amend** 18-13-117 as

1 follows:

2 **18-13-117. Record of sales.** (1) (a) Every secondhand dealer or
3 any person who is a dealer of new goods who is a retailer and sells such
4 goods at a flea market or similar facility or any nonpermanent location
5 shall keep and preserve suitable records of sales made by him OR HER and
6 such other books or accounts as may be necessary to determine the
7 amount of tax for the collection of which he OR SHE is liable under part
8 1 of article 26 of title 39. ~~C.R.S.~~ It is the duty of every such person to
9 keep and preserve for a period of three years all invoices of goods and
10 merchandise purchased for resale, INCLUDING A STORE CREDIT, GIFT CARD,
11 OR MERCHANDISE CARD, and all such books, invoices, and other records
12 shall be open for examination at any time by the executive director of the
13 department of revenue, his OR HER duly authorized agent, or any peace
14 officer.

15 (b) EVERY SECONDHAND DEALER OR ANY PERSON WHO IS A
16 DEALER OF NEW GOODS WHO IS A RETAILER AND SELLS SUCH GOODS AT A
17 FLEA MARKET OR SIMILAR FACILITY OR ANY NONPERMANENT LOCATION
18 SHALL RECORD THE PURCHASE OF A STORE CREDIT, GIFT CARD, OR
19 MERCHANDISE CARD FOR RESALE IN A REGISTER, AS DESCRIBED IN SECTION
20 18-16-105, THAT IS ACCESSIBLE TO LAW ENFORCEMENT.

21 (2) (a) Any person who violates any of the provisions of
22 ~~subsection (1)~~ SUBSECTION (1)(a) of this section commits a class 3
23 misdemeanor.

24 (b) ANY PERSON WHO VIOLATES THE PROVISIONS OF SUBSECTION
25 (1)(b) OF THIS SECTION COMMITS A CLASS 3 MISDEMEANOR; EXCEPT THAT
26 A SECOND OR SUBSEQUENT VIOLATION IS A CLASS 2 MISDEMEANOR.

27 **SECTION 3.** In Colorado Revised Statutes, 18-16-102, **amend**

1 the introductory portion; and **add** (7)(c) as follows:

2 **18-16-102. Definitions.** As used in this ~~article~~ ARTICLE 16, unless
3 the context otherwise requires:

4 (7) (c) "VALUABLE ARTICLE" ALSO INCLUDES A STORE CREDIT,
5 GIFT CARD, OR MERCHANDISE CARD OF ANY VALUE NOT ISSUED BY THE
6 PERSON.

7 **SECTION 4.** In Colorado Revised Statutes, 29-11.9-103, **amend**
8 (1), (2), (3), and (4) as follows:

9 **29-11.9-103. Required acts of pawnbrokers.** (1) A pawnbroker
10 shall ~~keep a numerical register or other tangible or electronic record in~~
11 ~~which the pawnbroker shall~~ record the following information IN A
12 REGISTER, AS DESCRIBED IN SECTION 18-16-105: The name, address, and
13 date of birth of the customer and the driver's license number or other
14 identification number from any other form of identification that is
15 allowed for the sale of valuable articles pursuant to section 18-16-103 or
16 for the sale of secondhand property pursuant to section 18-13-114; the
17 date, time, and place of the contract for purchase or purchase transaction;
18 ~~and~~ an accurate and detailed account and description of each item of
19 tangible personal property, including but not limited to any trademark,
20 identification number, serial number, model number, brand name, or other
21 identifying marks on such property; AND, FOR A STORE CREDIT, GIFT CARD,
22 OR MERCHANDISE CARD, THE IDENTIFICATION NUMBER, NAME OF THE
23 RETAILER, AND THE VALUE OF CREDIT OR CARD. The pawnbroker shall
24 also obtain a written declaration of the customer's ownership, which shall
25 state that the tangible personal property is totally owned by the customer,
26 or shall have attached to the declaration a power of sale from the partial
27 owner to the customer, how long the customer has owned the property,

1 whether the customer or someone else found the property, and, if the
2 property was found, the details of the finding.

3 (2) The customer shall sign the ~~register or other tangible or~~
4 electronic record and the declaration of ownership and shall receive a
5 copy of the contract for purchase or a receipt of the purchase transaction.

6 (3) The ~~register or other tangible or~~ electronic record, as well as
7 a copy of the contract for purchase or a receipt of the purchase
8 transaction, shall be made ~~available~~ ACCESSIBLE to any local law
9 enforcement agency for inspection at any reasonable time.

10 (4) The pawnbroker shall keep each ~~register or other tangible or~~
11 electronic record for at least three years after the date of the last
12 transaction entered in the register.

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14 **SECTION 5. Act subject to petition - effective date -**

15 **applicability.** (1) This act takes effect at 12:01 a.m. on the day following
16 the expiration of the ninety-day period after final adjournment of the
17 general assembly (August 2, 2019, if adjournment sine die is on May 3,
18 2019); except that, if a referendum petition is filed pursuant to section 1
19 (3) of article V of the state constitution against this act or an item, section,
20 or part of this act within such period, then the act, item, section, or part
21 will not take effect unless approved by the people at the general election
22 to be held in November 2020 and, in such case, will take effect on the
23 date of the official declaration of the vote thereon by the governor.

24 (2) This act applies to offenses committed on or after the
25 applicable effective date of this act.