



SPONSOR: Rep. Miro & Sen. DeLuca
Reps. Hudson, Valihura

HOUSE OF REPRESENTATIVES

144th GENERAL ASSEMBLY

HOUSE BILL NO. 121
AS AMENDED BY
HOUSE AMENDMENT NO. 3
AND
SENATE AMENDMENT NO. 1

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO SPECIFIC OFFENSES.

WHEREAS, organized retail crime involving the obtaining by fraud and theft of merchandise from entities engaged in interstate commerce is a nationwide problem of an increasing scale and cost American companies and consumers \$37 billion in 2006; and

WHEREAS, the increasing losses by retailers as a result of organized retail crime have made certain goods and products less available and accessible to Delaware consumers; and

WHEREAS, organized retail crime is separate and distinct from shoplifting in that it involves professional theft rings that move quickly from community to community and across state lines, to steal large amounts of merchandise. Shoplifting is limited to items that are stolen by an individual for personal use or gain; and

WHEREAS, the uncontrolled redistribution and unsafe storage of stolen and fraudulently obtained consumer products such as baby formula, over-the-counter drugs and other products by persons engaged in such organized crime is a health and safety hazard to Delaware consumers; and

WHEREAS, the unregulated black market sales of such fraudulently obtained and stolen merchandise results in millions of dollars in loss of sales and income tax revenues to State and local governments; and

WHEREAS, the illegal income from the expanding theft and resale of stolen retail goods is often used to benefit persons and organizations engaged in other forms of organized crime such as drug trafficking, gang activity and terrorism; and

WHEREAS, organized retail crime rings often defraud retailers through the use of stolen, altered, or other fraudulent payment mechanisms. In addition, these crime rings also frequently return stolen merchandise to fraudulently obtain refunds; and

WHEREAS, organized retail crime rings are increasingly using counterfeit, forged, misappropriated and improperly transferred Universal Product Code labels and other devices employed to identify articles for sale as a method for achieving their ends; and

WHEREAS, criminals engaged in organized retail crime often sell stolen merchandise in settings such as swap meets, flea markets and illegal store fronts. These criminals also increasingly use anonymous, internet-based marketplaces to sell goods and avoid detection by law enforcement.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE: (Two-thirds of all members elected to each house thereof concurring therein)

Section 1. This Act shall be known and may be cited as the Delaware Organized Retail Crime Act.

Section 2. (a) It is the intent of the Legislature in enacting this statute to define Organized Retail Crime to provide law enforcement and prosecutorial authorities and the judiciary with an understanding of the unique nature of Organized Retail Crime and to provide them with additional tools to help stop this crime.

(b) It is the intent of the Legislature in enacting this statute to facilitate cooperation among law enforcement and prosecutorial authorities by removing jurisdictional barriers and allowing cooperation and assistance across jurisdictions.

(c) It is the intent of the Legislature in enacting this statute to limit or remove the ability of criminals engaged in Organized Retail Crime to take advantage of monetary and/or geographic jurisdictional requirements, and the anonymity provided by internet-based or other marketplaces.

Section 3. Amend §841(a), Chapter 5, Title 11 of the Delaware Code by striking the last sentence of subsection (a) and by substituting in lieu thereof the following: ‘Theft includes the acts described in this section, as well as those described in §§841A - 846 of this title.’

Section 4. Amend Chapter 5, Title 11 of the Delaware Code by adding thereto a new section to read:

“§841B. Theft: Organized Retail Crime; class A misdemeanor; class E felony.

(a) A person is guilty of “Theft: Organized Retail Crime” when the person takes, exercises control over, or obtains retail merchandise of another person intending to deprive that person of it, or receives stolen property in violation of § 851 of Title 11, in quantities that would not normally be purchased for

personal use or consumption, with the intent to appropriate or to resell or re-enter the merchandise into commerce.

- (b) For purposes of this section, a series of organized retail crime thefts committed by a person or group of persons may be aggregated into one count or charge, with the sum of the value of all the retail merchandise being the value considered in determining the degree of Theft: Organized Retail Crime.
- (c) In addition to the provisions of §841(c) and (d) of this chapter, if a defendant has two or more times been convicted of Theft: Organized Retail Crime, the offense of Theft: Organized Retail Crime is a class E felony.”.