



2011 ASSEMBLY BILL 56

March 21, 2011 - Introduced by Representatives KLEEFISCH and DANOU, cosponsored by Senators WANGGAARD and TAYLOR. Referred to Committee on Criminal Justice and Corrections.

1 **AN ACT to amend** 943.50 (4) (a), 943.50 (4) (bf) and 946.82 (4); and **to create**
2 134.715, 943.50 (3m) (am) and 943.50 (4m) of the statutes; **relating to:** retail
3 theft, proof of ownership for flea market sales, and providing penalties.

Analysis by the Legislative Reference Bureau

Under current law, the penalty for retail theft varies according to the value of the merchandise taken. Retail theft is a Class G felony if the value of the merchandise is more than \$10,000, a Class H felony if the value of the merchandise is more than \$5,000 but not more than \$10,000, a Class I felony if the value of the merchandise is more than \$2,500 but not more than \$5,000, and a Class A misdemeanor if the value of the merchandise is not more than \$2,500. This bill changes the penalties so that retail theft is a Class I felony if the value of the merchandise is more than \$1,500 but not more than \$5,000. Retail theft of merchandise with a value that is not more than \$1,500 remains a Class A misdemeanor unless the actor acts with another to commit the theft and the actor has the intent to sell the merchandise by means of the Internet, and then the theft is a Class I felony.

Felony retail theft, including the felonies this bill creates, is a racketeering activity; a person may be convicted of engaging in organized crime, which is a Class E felony, if the person participates as part of an enterprise in committing at least three incidents of racketeering activities that have similar intents, results, accomplices, victims, or methods of commission.

The bill also requires a person selling certain merchandise at a flea market or similar facility to have proof that the person owns the merchandise and to make the

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proof available to a law enforcement officer for inspection. The merchandise covered by the bill's requirements includes baby food, cosmetics, drugs, infant formula, and batteries. Under the bill, "proof of ownership" means all of the following: 1) the name, address, and telephone number of the supplier of the merchandise; 2) the name and address of the person that received the merchandise; and 3) a description of the merchandise. Violators are subject to a fine up to \$500, up to 30 days' imprisonment, or both.

Because this bill creates a new crime or revises a penalty for an existing crime, the Joint Review Committee on Criminal Penalties may be requested to prepare a report concerning the proposed penalty and the costs or savings that are likely to result if the bill is enacted.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 134.715 of the statutes is created to read:

2 **134.715 Flea markets; proof of ownership, receipts, returns. (1)**

3 DEFINITIONS. In this section:

4 (a) "Cosmetic" means an article intended to be applied to the human body for
5 cleansing, beautifying, or altering appearance, but does not include soap.

6 (b) "Device" has the meaning given in s. 450.01 (6).

7 (c) "Drug" has the meaning given in s. 450.01 (10).

8 (d) "Infant formula" means a food that is intended for consumption by infants.

9 (e) "Proof of ownership" means all of the following information:

10 1. The name, address, and telephone number of the person that supplied the
11 merchandise or a representative of the person that supplied the merchandise.

12 2. The name and address of the person that received the merchandise from the
13 person who supplied the merchandise.

14 3. A description of the product, including the quantity of the product received
15 from the person who supplied the merchandise.

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1 **(2) PROOF REQUIRED.** (a) A person engaged in the sale of used or new goods at
2 a flea market or at a similar facility may not sell any of the following merchandise,
3 unless the person has proof of ownership of the merchandise:

4 1. Baby food of a type usually consumed by children under 3 years of age.

5 2. Cosmetics.

6 3. Devices.

7 4. Drugs.

8 5. Infant formula.

9 6. Batteries.

10 7. Razor blades.

11 (b) A person required to have proof of ownership under this section shall make
12 proof of ownership available for inspection by a law enforcement officer at any
13 reasonable time.

14 **(3) PENALTY.** A person who violates this section may be fined not more than
15 \$500 or imprisoned for not more than 30 days or both.

16 **SECTION 2.** 943.50 (3m) (am) of the statutes is created to read:

17 943.50 **(3m)** (am) For the purpose of sub. (4m), evidence that a person sold by
18 means of the Internet merchandise that is similar to the merchandise that is the
19 subject of a violation under sub. (1m) (a), (b), (c), (d), (e), or (f), within 90 days before
20 the violation, is prima facie evidence of the person's intent to sell the merchandise
21 by means of the Internet.

22 **SECTION 3.** 943.50 (4) (a) of the statutes is amended to read:

23 943.50 **(4)** (a) ~~A~~ Except as provided in sub. (4m), a Class A misdemeanor, if
24 the value of the merchandise does not exceed ~~\$2,500~~ \$1,500.

25 **SECTION 4.** 943.50 (4) (bf) of the statutes is amended to read:

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1 943.50 (4) (bf) A Class I felony, if the value of the merchandise exceeds \$2,500
2 \$1,500 but does not exceed \$5,000.

3 **SECTION 5.** 943.50 (4m) of the statutes is created to read:

4 943.50 (4m) Whoever violates sub. (1m) (a), (b), (c), (d), (e), or (f) is guilty of a
5 Class I felony if all of the following apply:

6 (a) The value of the merchandise does not exceed \$1,500.

7 (b) The person agrees or combines with another to commit the violation.

8 (c) The person intends to sell the merchandise by means of the Internet.

9 **SECTION 6.** 946.82 (4) of the statutes is amended to read:

10 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
11 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
12 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
13 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
14 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
15 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and
16 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
17 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
18 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30, 943.32,
19 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)
20 (bf), (bm), and (c) and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84,
21 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 944.33
22 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12,
23 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,
24 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

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