



2009 ASSEMBLY BILL 241

April 30, 2009 – Introduced by Representatives DANOU, TURNER, JORGENSEN, PASCH, KESTELL, VAN ROY, BROOKS, LOTHIAN, KERKMAN, STASKUNAS, A. OTT, STEINBRINK, ZEPNICK, KLEEFISCH, KAUFERT, BIES and HEBL, cosponsored by Senators TAYLOR, SULLIVAN, KREITLOW, HOLPERIN, LASSA, WIRCH, HARSDORF and DARLING. Referred to Committee on Criminal Justice.

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 is based on the value of the merchandise taken. Retail theft is a Class A misdemeanor if the value of the merchandise does not exceed \$2,500, a Class I felony if the value of the merchandise exceeds \$2,500 but does not exceed \$5,000, a Class H felony if the value of the merchandise exceeds \$5,000 but does not exceed \$10,000, and a Class G felony if the value of the merchandise exceeds \$10,000.

Also under current law a person may be convicted of engaging in organized crime, a Class E felony, if the person participates as part of an enterprise in the commission of at least three incidents of racketeering activity that have the same or similar intents, results, accomplices, victims, or methods of commission or otherwise are interrelated by distinguishing characteristics. “Racketeering activity” is the attempt, conspiracy to commit, or commission of various felonies including felony retail theft.

This bill makes retail theft of merchandise a Class I felony, and racketeering activity, if the value of the merchandise exceeds \$1,500 but does not exceed \$5,000. The bill also makes retail theft of merchandise that is valued at less than \$1,500 a Class I felony, and racketeering activity, if the actor commits the theft with intent to sell the merchandise by means of the Internet. The bill further provides that

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evidence that a person sold merchandise that is similar to stolen merchandise, by means of the Internet and within 90 days preceding the theft, is evidence of the person's intent to sell the stolen merchandise by means of the Internet.

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 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.

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 **(2) PROOF REQUIRED.** (a) A person engaged in the sale of used or new goods at
10 a flea market or at a similar facility may not sell any of the following merchandise,
11 unless the person has proof that the person is the owner of the merchandise as
12 described in par. (b):

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

14 2. Cosmetics.

15 3. Devices.

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1 4. Drugs.

2 5. Infant formula.

3 6. Batteries.

4 7. Razor blades.

5 (b) Proof of ownership means all of the following information:

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

8 2. The name and address of the person that received the merchandise from the
9 person who supplied the merchandise.

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

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

15 **(3) PENALTY.** A person who violates this section may be fined not more than
16 \$500 or imprisoned for not more than 30 days or both.

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

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

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

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

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

2 943.50 (4) (bf) A Class I felony, if the value of the merchandise exceeds \$2,500
3 \$1,500 but does not exceed \$5,000.

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

5 943.50 (4m) Whoever violates sub. (1m) (a), (b), (c), (d), (e), or (f) with intent
6 to sell the merchandise by means of the Internet is guilty of a Class I felony if the
7 value of the merchandise does not exceed \$1,500.

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

9 946.82 (4) “Racketeering activity” means any activity specified in 18 USC 1961
10 (1) in effect as of April 27, 1982, or the attempt, conspiracy to commit, or commission
11 of any of the felonies specified in: chs. 945 and 961, subch. V of ch. 551, and ss. 49.49,
12 134.05, 139.44 (1), 180.0129, 181.0129, 185.825, 201.09 (2), 215.12, 221.0625,
13 221.0636, 221.0637, 221.1004, 553.41 (3) and (4), 553.52 (2), 940.01, 940.19 (4) to (6),
14 940.20, 940.201, 940.203, 940.21, 940.30, 940.302 (2), 940.305, 940.31, 941.20 (2) and
15 (3), 941.26, 941.28, 941.298, 941.31, 941.32, 942.09, 943.01 (2), (2d), or (2g), 943.011,
16 943.012, 943.013, 943.02, 943.03, 943.04, 943.05, 943.06, 943.10, 943.20 (3) (bf) to (e),
17 943.201, 943.203, 943.23 (1g), (2) and (3), 943.24 (2), 943.27, 943.28, 943.30, 943.32,
18 943.34 (1) (bf), (bm), and (c), 943.38, 943.39, 943.40, 943.41 (8) (b) and (c), 943.50 (4)
19 (bf), (bm), and (c), and (4m), 943.60, 943.70, 943.76, 943.81, 943.82, 943.83, 943.84,
20 943.85, 943.86, 943.87, 943.88, 943.89, 943.90, 944.21 (5) (c) and (e), 944.32, 944.33
21 (2), 944.34, 945.03 (1m), 945.04 (1m), 945.05 (1), 945.08, 946.10, 946.11, 946.12,
22 946.13, 946.31, 946.32 (1), 946.48, 946.49, 946.61, 946.64, 946.65, 946.72, 946.76,
23 946.79, 947.015, 948.05, 948.051, 948.08, 948.12, and 948.30.

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