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To: Judiciary, Division B

SENATE BILL NO. 2612

1 AN ACT TO ENACT THE MISSISSIPPI ORGANIZED RETAIL THEFT CRIME
2 PREVENTION ACT; TO DEFINE TERMS; TO CREATE THE CRIME OF ORGANIZED
3 RETAIL THEFT; TO PROVIDE PENALTIES FOR THE CRIME OF ORGANIZED
4 RETAIL THEFT BASED ON THE RETAIL VALUE OF THE MERCHANDISE STOLEN;
5 TO PROVIDE THAT ANY PROCEEDS, PROPERTY OBTAINED BY PROCEEDS, OR
6 INSTRUMENTS OF THE CRIMES OF ORGANIZED RETAIL THEFT MAY BE SUBJECT
7 TO FORFEITURE; TO REQUIRE THE COURT TO ORDER RESTITUTION AND
8 PAYMENT OF INVESTIGATIVE COSTS; TO SET FORTH THE VENUE FOR THE
9 CRIMINAL PROCEEDING; TO STATE CERTAIN EVIDENCE THAT SHALL BE PRIMA
10 FACIE EVIDENCE OF CERTAIN ELEMENTS OF THE CRIME; TO DIRECT THE
11 ATTORNEY GENERAL, THE DEPARTMENT OF PUBLIC SAFETY AND THE
12 MISSISSIPPI JUDICIAL COLLEGE TO COORDINATE EFFORTS TO TRAIN
13 PROSECUTORS AND LAW ENFORCEMENT AGENCIES THROUGHOUT THE STATE TO
14 COMBAT ORGANIZED RETAIL CRIME; TO AMEND SECTION 41-29-153,
15 MISSISSIPPI CODE OF 1972, TO CONFORM; AND FOR RELATED PURPOSES.

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

17 **SECTION 1.** This act shall be known and may be cited as the
18 "Mississippi Organized Retail Theft Crime Prevention Act."

19 **SECTION 2.** As used in this act, the following terms have the
20 meaning herein ascribed:

21 (a) "Conceal" means to place merchandise in a manner
22 that is not visible through ordinary observation.

23 (b) "Organized retail theft" means obtaining or
24 exerting unauthorized control over retail merchandise from a



25 retail merchant, retail establishment, or premises of a retail
26 establishment with the intent to deprive the owner or retail
27 merchant of his or her property, or converting the retail
28 merchandise of the owner or retail merchant, or reselling,
29 distributing, or otherwise reentering the retail merchandise in
30 commerce, including the transfer of the stolen retail merchandise
31 to another retail merchant or to any other person, whether in
32 person, through the mail, or through any electronic medium,
33 including the internet, in exchange for anything of value.

34 (c) "Premises of a retail establishment" means retail
35 establishment, common use areas in shopping centers, and parking
36 areas designated by a merchant or on behalf of a merchant for the
37 parking of motor vehicles for the convenience of the patrons of
38 the retail establishment or where stored for delivery or transport
39 to a retail establishment.

40 (d) "Retail establishment" means any place where
41 merchandise is displayed, held, stored, or offered for sale to the
42 public.

43 (e) "Retail merchandise" means any article, product,
44 commodity, component, or item of tangible personal property
45 displayed, held, stored, or offered for sale within a retail
46 establishment.

47 (f) "Retail merchant" means an owner or operator of a
48 retail establishment or an agent, employee, lessee, officer, or
49 director of the owner or operator.



50 (g) "Retail value" means the actual retail price of
51 merchandise prior to the commission of the subject criminal
52 offense.

53 **SECTION 3.** (1) A person commits the crime of organized
54 retail theft when the person, in association with one or more
55 other persons, knowingly does any of the following:

56 (a) Organizes, supervises, finances, participates,
57 directs, solicits, or otherwise manages or assists another person
58 in committing a violation of Section 97-23-93;

59 (b) Organizes, supervises, finances, participates,
60 directs, solicits, or otherwise manages or assists another person
61 in committing organized retail theft;

62 (c) Removes, destroys, deactivates, or knowingly evades
63 any component of an antishoplifting or inventory control device to
64 prevent the activation of that device or to facilitate another
65 person in committing organized retail theft;

66 (d) Attempts, solicits, or conspires with another
67 person to commit organized retail theft;

68 (e) Receives, purchases, or possesses retail
69 merchandise for sale or resale knowing or believing the retail
70 merchandise to be stolen is from a retail merchant;

71 (f) Uses any fraud, artifice, instrument, container,
72 device, or other article to facilitate the commission of organized
73 retail theft;



74 (g) Remains unlawfully inside a retail establishment
75 after business hours, with the intent to commit a retail theft
76 therein;

77 (h) Uses a wireless telecommunication device or other
78 digital or electronic device to facilitate the theft of retail
79 merchandise;

80 (i) Uses a rental or stolen motor vehicle or vehicle of
81 another in the course of committing retail theft for the purposes
82 of the concealment of his or her identity; or

83 (j) Receives, retains, or disposes of retail
84 merchandise knowing that it has been stolen or having reasonable
85 grounds to believe it has been stolen.

86 (2) (a) Theft of one or more items of retail merchandise,
87 the aggregate value of which exceeds Two Thousand Five Hundred
88 Dollars (\$2,500.00) in retail value, during a one-year or longer
89 period, constitutes organized retail theft.

90 (b) Theft of retail merchandise consisting of one or
91 more items of retail merchandise during a 180-day period, the
92 aggregate value of which is One Thousand Dollars (\$1,000.00) or
93 more, constitutes organized retail theft.

94 (c) Theft of retail merchandise consisting of one or
95 more items of retail merchandise during a 30-day period, the
96 aggregate value of which is Five Hundred Dollars (\$500.00) or
97 more, constitutes organized retail theft.



98 (3) A person convicted of organized retail theft shall be
99 guilty of a felony and shall be fined up to Seven Thousand Five
100 Hundred Dollars (\$7,500.00), imprisoned in the custody of the
101 Department of Corrections for a term not less than two (2) years
102 nor more than seven (7) years or both fined and imprisoned.

103 (4) It shall be prima facie evidence that a person who
104 violates this section acts knowingly when any of the following
105 apply:

106 (a) On two (2) or more separate occasions within a year
107 prior of the commission of the instant offense of organized retail
108 theft, the person is found in possession or control of stolen
109 retail merchandise;

110 (b) The person possesses retail merchandise that has
111 been recently stolen; or

112 (c) The person regularly buys, sells, uses, or handles
113 in the course of business retail merchandise of the sort received,
114 and acquired the retail merchandise without making reasonable
115 inquiry whether the individual selling or delivering the retail
116 merchandise to him or her had a legal right to do so.

117 (5) The fact that the person or persons who acted in
118 association with the person charged under this act have not been
119 charged, convicted, apprehended, or identified is not a defense to
120 a charge of organized retail theft.

121 **SECTION 4.** (1) Any proceeds, property obtained by proceeds,
122 or instruments of the crimes of organized retail theft may be



123 subject to forfeiture pursuant to the procedures set forth in
124 Section 41-29-153.

125 (2) When a person is convicted of organized retail theft,
126 upon request of the district attorney, the court shall order the
127 defendant to make restitution as following:

128 (a) To the retail merchant victim, pursuant to the
129 procedures set forth in Section 99-37-3; and

130 (b) To the primary investigative law enforcement and
131 prosecutorial entities for any legitimate cost incurred in the
132 course of the investigation or prosecution or an amount agreed
133 upon by the district attorney.

134 **SECTION 5.** It is not a defense to a charge under this act
135 that the property was not stolen, embezzled, or converted property
136 at the time of the violation if the property was explicitly
137 represented to the accused person as being stolen, embezzled, or
138 converted property.

139 **SECTION 6.** Nothing in this act prohibits a person from being
140 charged with, convicted of, or sentenced for any violation of law
141 arising out of the same criminal transaction that violates this
142 act.

143 **SECTION 7.** (1) In any criminal proceeding brought pursuant
144 to this act, the crime shall be considered to be committed in any
145 county in which any part of the crime took place, regardless of
146 whether the defendant was ever actually present in that county, or



147 in the county of residence of the person who is the subject of the
148 theft by organized retail theft.

149 (2) Any arrest or detention by a retail merchant shall be
150 subject to the requirements and protections as provided in Section
151 97-23-95.

152 **SECTION 8.** (1) The fact that a person conceals merchandise
153 for which he or she has not paid the full value, and the retail
154 merchandise has been taken beyond the area within the retail
155 establishment or premises of a retail establishment where payment
156 for it is to be made, shall be prima facie evidence that the
157 person possessed, carried away, or transferred the retail
158 merchandise with the intention of depriving the retail merchant of
159 all or part of the full value of the retail merchandise without
160 paying the full value of the retail merchandise in violation of
161 this act.

162 (2) (a) A violation of this act shall be deemed prima facie
163 evidence that the person intended to deprive the retail merchant
164 of all or part of the full retail value of the retail merchandise
165 without paying the full value of the retail merchandise.

166 (b) The unaltered price tag or other marking on the
167 merchandise, or duly identified photographs of the merchandise,
168 shall be prima facie evidence of the merchandise's actual retail
169 value and ownership.

170 (3) Nothing in this subsection shall be construed to provide
171 that the mere possession of goods or the production by shoppers of



172 improperly priced merchandise for checkout shall constitute prima
173 facie evidence of guilt.

174 **SECTION 9.** The Attorney General, the Department of Public
175 Safety and the Mississippi Judicial College shall make reasonable
176 coordinated efforts to develop training for prosecutors and law
177 enforcement agencies throughout the state to combat organized
178 retail crime and other crimes negatively impacting small and large
179 businesses in Mississippi and make recommendations to the
180 Legislature and Governor regarding public safety and the
181 prevention of organized retail crime as well as the impact of
182 organized retail thefts on Mississippi businesses and the public.

183 **SECTION 10.** Section 41-29-153, Mississippi Code of 1972, is
184 amended as follows:

185 41-29-153. (a) The following are subject to forfeiture:

186 (1) All controlled substances which have been
187 manufactured, distributed, dispensed or acquired in violation of
188 this article or in violation of Article 5 of this chapter or
189 Chapter 137 of this title;

190 (2) All raw materials, products and equipment of any
191 kind which are used, or intended for use, in manufacturing,
192 compounding, processing, delivering, importing, or exporting any
193 controlled substance in violation of this article or in violation
194 of Article 5 of this chapter or Chapter 137 of this title;

195 (3) All property which is used, or intended for use, as
196 a container for property described in paragraph (1) or (2) of this



197 subsection or for stolen retail merchandise in violation of
198 Sections 1 through 9 of this act;

199 (4) All conveyances, including aircraft, vehicles or
200 vessels, which are used, or intended for use, to transport, or in
201 any manner to facilitate the transportation, sale, receipt,
202 possession or concealment of property described in paragraph (1)
203 or (2) of this subsection or for stolen retail merchandise in
204 violation of Sections 1 through 9 of this act, however:

205 A. No conveyance used by any person as a common
206 carrier in the transaction of business as a common carrier is
207 subject to forfeiture under this section unless it appears that
208 the owner or other person in charge of the conveyance is a
209 consenting party or privy to a violation of this article;

210 B. No conveyance is subject to forfeiture under
211 this section by reason of any act or omission proved by the owner
212 thereof to have been committed or omitted without his knowledge or
213 consent; if the confiscating authority has reason to believe that
214 the conveyance is a leased or rented conveyance, then the
215 confiscating authority shall notify the owner of the conveyance
216 within five (5) days of the confiscation;

217 C. A forfeiture of a conveyance encumbered by a
218 bona fide security interest is subject to the interest of the
219 secured party if he neither had knowledge of nor consented to the
220 act or omission;



221 D. A conveyance is not subject to forfeiture for a
222 violation of Section 41-29-139(c)(2)(A) 1, 2 or (B)1 or (C)1, 2,
223 3;

224 (5) All money, deadly weapons, books, records, and
225 research products and materials, including formulas, microfilm,
226 tapes and data which are used, or intended for use, in violation
227 of this article or in violation of Article 5 of this chapter or
228 Chapter 137 of this title or in violation of Sections 1 through 9
229 of this act;

230 (6) All drug paraphernalia as defined in Section
231 41-29-105(v); and

232 (7) Everything of value, including real estate,
233 furnished, or intended to be furnished, in exchange for a
234 controlled substance in violation of this article or for stolen
235 retail merchandise in violation of Sections 1 through 9 of this
236 act, all proceeds traceable to such an exchange, and all monies,
237 negotiable instruments, businesses or business investments,
238 securities, and other things of value used, or intended to be
239 used, to facilitate any violation of this article. All monies,
240 coin and currency found in close proximity to forfeitable
241 controlled substances, to forfeitable drug manufacturing or
242 distributing paraphernalia, or to forfeitable records of the
243 importation, manufacture or distribution of controlled substances
244 are presumed to be forfeitable under this paragraph; the burden of
245 proof is upon claimants of the property to rebut this presumption.



246 A. No property shall be forfeited under the
247 provisions of subsection (a) (7) of this section, to the extent of
248 the interest of an owner, by reason of any act or omission
249 established by him to have been committed or omitted without his
250 knowledge or consent.

251 B. Neither personal property encumbered by a bona
252 fide security interest nor real estate encumbered by a bona fide
253 mortgage, deed of trust, lien or encumbrance shall be forfeited
254 under the provisions of subsection (a) (7) of this section, to the
255 extent of the interest of the secured party or the interest of the
256 mortgagee, holder of a deed of trust, lien or encumbrance by
257 reason of any act or omission established by him to have been
258 committed or omitted without his knowledge or consent.

259 (b) Property subject to forfeiture may be seized by the
260 bureau, local law enforcement officers, enforcement officers of
261 the Mississippi Department of Transportation, highway patrolmen,
262 the board, the State Board of Pharmacy, or law enforcement
263 officers of the Mississippi Department of Revenue or Mississippi
264 Department of Health acting with their duties in accordance with
265 the Mississippi Medical Cannabis Act, upon process issued by any
266 appropriate court having jurisdiction over the property. Seizure
267 without process may be made if:

268 (1) The seizure is incident to an arrest or a search
269 under a search warrant or an inspection under an administrative
270 inspection warrant;



271 (2) The property subject to seizure has been the
272 subject of a prior judgment in favor of the state in a criminal
273 injunction or forfeiture proceeding based upon this article;

274 (3) The bureau, the board, local law enforcement
275 officers, enforcement officers of the Mississippi Department of
276 Transportation, or highway patrolmen, the State Board of Pharmacy,
277 or law enforcement officers of the Mississippi Department of
278 Revenue or Mississippi Department of Health acting with their
279 duties in accordance with the Mississippi Medical Cannabis Act,
280 have probable cause to believe that the property is directly or
281 indirectly dangerous to health or safety;

282 (4) The bureau, local law enforcement officers,
283 enforcement officers of the Mississippi Department of
284 Transportation, highway patrolmen, the board, the State Board of
285 Pharmacy, or law enforcement officers of the Mississippi
286 Department of Revenue or Mississippi Department of Health acting
287 with their duties in accordance with the Mississippi Medical
288 Cannabis Act, have probable cause to believe that the property was
289 used or is intended to be used in violation of this article; or

290 (5) The seizing law enforcement agency obtained a
291 seizure warrant as described in subsection (f) of this section.

292 (c) Controlled substances listed in Schedule I of Section
293 41-29-113 that are possessed, transferred, sold, or offered for
294 sale in violation of this article are contraband and shall be
295 seized and summarily forfeited to the state. Controlled



296 substances listed in the said Schedule I, which are seized or come
297 into the possession of the state, the owners of which are unknown,
298 are contraband and shall be summarily forfeited to the state.

299 (d) Species of plants from which controlled substances in
300 Schedules I and II of Sections 41-29-113 and 41-29-115 may be
301 derived which have been planted or cultivated in violation of this
302 article, or of which the owners or cultivators are unknown, or
303 which are wild growths, may be seized and summarily forfeited to
304 the state.

305 (e) The failure, upon demand by the bureau and/or local law
306 enforcement officers, or their authorized agents, or highway
307 patrolmen designated by the bureau, the board, the State Board of
308 Pharmacy, or law enforcement officers of the Mississippi
309 Department of Revenue or Mississippi Department of Health acting
310 with their duties in accordance with the Mississippi Medical
311 Cannabis Act, of the person in occupancy or in control of land or
312 premises upon which the species of plants are growing or being
313 stored, to produce an appropriate registration, or proof that he
314 is the holder thereof, constitutes authority for the seizure and
315 forfeiture of the plants.

316 (f) (1) When any property is seized under the Uniform
317 Controlled Substances Law or Sections 1 through 9 of this act,
318 except as otherwise provided in paragraph (3) of this subsection,
319 by a law enforcement agency with the intent to be forfeited, the
320 law enforcement agency that seized the property shall obtain a



321 seizure warrant from the county or circuit court having
322 jurisdiction of such property within seventy-two (72) hours of any
323 seizure, excluding weekends and holidays. Any law enforcement
324 agency that fails to obtain a seizure warrant within seventy-two
325 (72) hours as required by this section shall notify the person
326 from whom the property was seized that it will not be forfeited
327 and shall provide written instructions advising the person how to
328 retrieve the seized property.

329 (2) A circuit or county judge having jurisdiction of
330 any property other than a controlled substance, raw material or
331 paraphernalia, may issue a seizure warrant upon proper oath or
332 affirmation from a law enforcement agency. The law enforcement
333 agency that is seeking a seizure warrant shall provide the
334 following information to the judge:

335 A. Probable cause to believe that the property was
336 used or intended to be used in violation of this article;

337 B. The name of the person from whom the property
338 was seized; and

339 C. A detailed description of the property which is
340 seized, including the value of the property.

341 (3) This subsection does not apply to seizures
342 performed pursuant to Section 41-29-157 when property is
343 specifically set forth in a search and seizure warrant.

344 **SECTION 11.** This act shall take effect and be in force from
345 and after July 1, 2024.

