

Senate Amendments to House Bill No. 438

TO THE CLERK OF THE HOUSE:

THIS IS TO INFORM YOU THAT THE SENATE HAS ADOPTED THE AMENDMENTS SET OUT BELOW:

AMENDMENT NO. 1

Amend by striking all after the enacting clause and inserting in lieu thereof the following:

8 **SECTION 1.** Section 97-23-93, Mississippi Code of 1972, is
9 amended as follows:

10 97-23-93. (1) Any person who shall willfully and unlawfully
11 take possession of any merchandise owned or held by and offered or
12 displayed for sale by any merchant, store or other mercantile
13 establishment with the intention and purpose of converting such
14 merchandise to his own use without paying the merchant's stated
15 price therefor shall be guilty of the crime of shoplifting and,
16 upon conviction, shall be punished as is provided in this section.

17 (2) The requisite intention to convert merchandise without
18 paying the merchant's stated price for the merchandise is
19 presumed, and shall be prima facie evidence thereof, when such
20 person, alone or in concert with another person, willfully:

21 (a) Conceals the unpurchased merchandise;

22 (b) Removes or causes the removal of unpurchased
23 merchandise from a store or other mercantile establishment;

24 (c) Alters, transfers or removes any price-marking, any
25 other marking which aids in determining value affixed to the
26 unpurchased merchandise, or any tag or device used in electronic
27 surveillance of unpurchased merchandise;

28 (d) Transfers the unpurchased merchandise from one (1)
29 container to another; or

30 (e) Causes the cash register or other sales recording
31 device to reflect less than the merchant's stated price for the
32 unpurchased merchandise.

33 (3) Evidence of stated price or ownership of merchandise may
34 include, but is not limited to:

35 (a) The actual merchandise or the container which held
36 the merchandise alleged to have been shoplifted; or

37 (b) The content of the price tag or marking from such
38 merchandise; or

39 (c) Properly identified photographs of such
40 merchandise.

41 (4) Any merchant or his agent or employee may testify at a
42 trial as to the stated price or ownership of merchandise.

43 (5) A person convicted of shoplifting merchandise for which
44 the total price of all items shoplifted in violation of this
45 section is less than or equal to One Thousand Dollars (\$1,000.00)
46 shall be punished as follows:

47 (a) Upon a first shoplifting conviction the defendant
48 shall be guilty of a misdemeanor and fined not more than One
49 Thousand Dollars (\$1,000.00), or punished by imprisonment in the

50 county jail not to exceed six (6) months, or by both, if the court
51 finds * * * the offender cannot be safely and effectively
52 supervised in the community, is not amenable to community-based
53 treatment, or poses a significant risk to public safety. If such
54 a finding is not made, the court shall suspend the sentence of
55 imprisonment and impose a period of probation not exceeding one
56 (1) year or a fine of not more than One Thousand Dollars
57 (\$1,000.00).

58 (b) Upon a second shoplifting conviction the defendant
59 shall be guilty of a misdemeanor and fined not more than Two
60 Thousand Five Hundred Dollars (\$2,500.00) or punished by
61 imprisonment in the county jail for a term not less than
62 forty-eight (48) hours, not to exceed six (6) months, or by both,
63 if the court finds * * * the offender cannot be safely and
64 effectively supervised in the community, is not amenable to
65 community-based treatment, or poses a significant risk to public
66 safety. If such a finding is not made, the court shall suspend
67 the sentence of imprisonment and impose a period of probation not
68 exceeding one (1) year or a fine of not more than One Thousand
69 Dollars (\$1,000.00), or both.

70 (6) Upon a third or subsequent shoplifting conviction where
71 the total price of all shoplifted merchandise is not less than
72 Five Hundred Dollars (\$500.00) or greater than One Thousand
73 Dollars (\$1,000.00), the defendant shall be guilty of a felony and
74 fined not more than Three Thousand Dollars (\$3,000.00), or

75 imprisoned for a term not to exceed three (3) years, or by both
76 such fine and imprisonment.

77 (7) A person convicted of shoplifting merchandise for which
78 the total price of all items shoplifted in violation of this
79 section exceeds One Thousand Dollars (\$1,000.00) shall be guilty
80 of a felony and, upon conviction, punished as provided in Section
81 97-17-41 for the offense of grand larceny.

82 (8) In determining the number of prior shoplifting
83 convictions for purposes of imposing punishment under this
84 section, the court shall disregard all such convictions occurring
85 more than seven (7) years prior to the shoplifting offense in
86 question.

87 (9) For the purpose of determining the gravity of the
88 offense under subsection (7) of this section, the prosecutor may
89 aggregate the total price of merchandise shoplifted from the same
90 or separate mercantile establishments within the same legal
91 jurisdiction over a period of thirty (30) or fewer days.

92 **SECTION 2.** This act shall take effect and be in force from
93 and after July 1, 2024.

**Further, amend by striking the title in its entirety and
inserting in lieu thereof the following:**

1 AN ACT TO AMEND SECTION 97-23-93, MISSISSIPPI CODE OF 1972,
2 TO MODIFY THE EVIDENTIARY STANDARD FOR IMPOSING A PENALTY OF
3 IMPRISONMENT FOR THE CRIME OF SHOPLIFTING BY DELETING THE
4 REQUIREMENT THAT A COURT FINDS SUBSTANTIAL AND COMPELLING REASONS
5 FOR A REQUIRED FINDING UNDER THIS SECTION; AND FOR RELATED
6 PURPOSES.

SS08\HB438A.1J

Amanda White
Secretary of the Senate