WEST VIRGINIA CODE CHAPTER 61 ARTICLE 3A

WV Legislature

§61-3A-1. Shoplifting defined.

(a) A person commits the offense of shoplifting if, with intent to appropriate merchandise without paying the merchant's stated price for the merchandise, such person, alone or in concert with another person, knowingly:

(1) Conceals the merchandise upon his or her person or in another manner; or

(2) Removes or causes the removal of merchandise from the mercantile establishment or beyond the last station for payment; or

(3) Alters, transfers or removes any price marking affixed to the merchandise; or

(4) Transfers the merchandise from one container to another; or

(5) Causes the cash register or other sales recording device to reflect less than the merchant's stated price for the merchandise; or

(6) Removes a shopping cart from the premises of the mercantile establishment; or

(7) Repudiates a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant and does not return the merchandise or attempt to make other arrangements with the vendor.

(b) A person also commits the offense of shoplifting if such person, alone or in concert with another person, knowingly and with intent obtains an exchange or refund or attempts to obtain an exchange or refund for merchandise which has not been purchased from the mercantile establishment.

WV Legislature

§61-3A-2. Evidence.

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

(1) The actual merchandise alleged to have been shoplifted; or

(2) The unaltered content of the price tag or marking from such merchandise; or

(3) Properly identified photographs of such merchandise.

(b) Any merchant may testify at a trial as to the stated price or ownership of merchandise, as well as to other matters pertaining to the case.

WV Legislature

§61-3A-3. Penalties.

A person convicted of shoplifting shall be punished as follows:

(a) First offense conviction. — Upon a first shoplifting conviction:

(1) When the value of the merchandise is less than or equal to $500, the person is guilty of a misdemeanor and, shall be fined not more than $250.

(2) When the value of the merchandise exceeds $500, the person is guilty of a misdemeanor and, shall be fined not less than $100 nor more than $500, and such fine shall not be suspended, or the person shall be confined in jail not more than 60 days, or both.

(b) Second offense conviction. — Upon a second shoplifting conviction:

(1) When the value of the merchandise is less than or equal to $500, the person is guilty of a misdemeanor and, shall be fined not less than $100 nor more than $500, and such fine shall not be suspended, or the person shall be confined in jail not more than six months or both.

(2) When the value of the merchandise exceeds $500, the person is guilty of a misdemeanor and, shall be fined not less than $500 and shall be confined in jail for not less than six months nor more than one year.

(c) Third offense conviction. — Upon a third or subsequent shoplifting conviction, regardless of the value of the merchandise, the person is guilty of a felony and, shall be fined not less than $500 nor more than $5000, and shall be imprisoned in a state correctional facility for not less than one year nor more than 10 years. If the court finds that probable cause exists that a person convicted of third or subsequent offense was abusing drugs or alcohol at the time of his or her arrest, it shall order an evaluation of the defendant to determine whether he or she has a substance use disorder. Upon a finding by the Court that the person convicted of a third or subsequent offense suffers from a substance use disorder, the Court may order that the defendant undergo treatment for the substance use disorder as part of his or her sentence.

(d) Mandatory penalty. — In addition to the fines and imprisonment imposed by this section, in all cases of conviction for the offense of shoplifting, the court shall order the defendant to pay a penalty to the mercantile establishment involved in the amount of $50, or double the value of the merchandise involved, whichever is higher. The mercantile establishment shall be entitled to collect such mandatory penalty as in the case of a civil judgment. This penalty shall be in addition to the mercantile establishment's rights to recover the stolen merchandise.

(e) In determining the number of prior shoplifting convictions a defendant has, the court shall count convictions in other jurisdictions if that jurisdiction’s offense has the same essential elements of this section, disregarding the value of the property shoplifted: *Provided*, That regardless of the jurisdiction, the court shall not count prior convictions that

www.legislature

occurred more than seven years prior to the date of the third or subsequent offense.

WV Legislature

§61-3A-4. Shoplifting constitutes breach of peace; detention.

An act of shoplifting as defined herein, is hereby declared to constitute a breach of peace and any owner of merchandise, his agent or employee, or any law-enforcement officer who has reasonable ground to believe that a person has committed shoplifting, may detain such person in a reasonable manner and for a reasonable length of time not to exceed thirty minutes, for the purpose of investigating whether or not such person has committed or attempted to commit shoplifting. Such reasonable detention shall not constitute an arrest nor shall it render the owner of merchandise, his agent or employee, liable to the person detained.

WV Legislature

§61-3A-4a. Criminal offenses involving theft detection shielding devices; detention.

(a) As used in this section:

(1) "Theft detection device" means any tag or other device that is used to prevent or detect theft and that is attached to merchandise held for resale by a merchant or to property of a merchant.

(2) "Theft detection device remover" means any tool or device specifically designed or manufactured to be used to remove a theft detection device from merchandise held for resale by a merchant or property of a merchant.

(3) "Theft detection shielding device" means any laminated or coated bag or device designed to shield merchandise held for resale by a merchant or property of a merchant from being detected by an electronic or magnetic theft alarm sensor.

(b) A person commits unlawful distribution of a theft detection shielding device when he or she knowingly manufactures, sells, offers to sell or distribute any theft detection shielding device.

(c) A person commits unlawful possession of a theft detection shielding device when he or she knowingly possesses any theft detection shielding device with the intent to commit theft or retail theft.

(d) A person commits unlawful possession of a theft detection shielding device remover when he or she knowingly possesses any theft detection device remover with the intent to use such tool to remove any theft detection device from any merchandise without the permission of the merchant or person owning or holding said merchandise.

(e) A person commits unlawful use of a theft detection shielding device or a theft detection shielding remover when he or she uses or attempts to use either device while committing a violation of this article.

(f) A person commits unlawful removal of a theft detection device when he or she intentionally removes any theft detection device by the use of manual force or by any tool or device, which is not specifically designed or manufactured to remove theft detection devices, from merchandise prior to purchase.

(g) Any person convicted for violating the provisions of subsections (b), (c), (d) or (e) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be confined in a county or regional jail facility for not less than thirty days nor more than one year, and fined not less than $250 nor more than $1,000.

(h) Any person convicted of violating the provisions of subsection (f) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $500, and such fine shall not be suspended, or the person shall be confined in the

WV Legislature

county or regional jail not more than sixty days, or both.

(i) The activation of an anti-shoplifting or inventory control device as a result of a person exiting the establishment or a protected area within the establishment shall constitute reasonable cause for the detention of the person so exiting by the owner or operator or the establishment or by an agent or employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that such a device is being utilized. Each such detention shall be made only in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device or for the recovery of goods.

(j) Such taking into custody and detention by a law-enforcement officer, merchant, or merchant's employee, if done in compliance with all the requirements of this section, does not render such law-enforcement officer, merchant, or merchant's employee criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

WV Legislature

§61-3A-5. Civil liability.

(a) General rule. -- Any person who commits any of the acts described in section one of this article shall be civilly liable:

(1) To restore the merchandise to the mercantile establishment; and

(2) If such merchandise is not recoverable or is damaged, for actual damages, including the value of the merchandise involved in the shoplifting; and

(3) For other actual damages arising from the incident, not including the loss of time or loss of wages incurred by the mercantile establishment or any merchant in connection with the apprehension and processing of the suspect; and

(4) In all cases, for a penalty to be paid to the mercantile establishment in the amount of $50 or double the value of the merchandise, whichever is higher.

(b) Costs and attorneys' fees. -- A merchant who is a prevailing party under this section is entitled to costs.

(c) Effect of conviction. -- A conviction for the offense of theft by shoplifting is not a prerequisite to the maintenance of a civil action authorized by this section. However, a merchant who has recovered the penalty prescribed by section three of this article is not entitled to recover the penalty imposed by this section.

(d) Right to demand payment. -- The fact that a mercantile establishment may bring an action against an individual as provided in this section does not limit the right of such establishment to demand, orally or in writing, that a person who is liable for damages or a penalty under this section remit said damages or penalty prior to the commencement of any legal action.

WV Legislature

§61-3A-6. Definitions.

(a) "Card-not-present credit or debit transaction" means a credit or debit sale of merchandise by telephone, mail order, Internet or other means that does not require the cardholder's signature or physical presentation of the credit or debit card to the merchant.

(b) “Conceal” means to hide, hold or carry merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation.

(c) “Merchant” means an owner or operator of any mercantile establishment and includes the merchant's employees, servants, security agents or other agents.

(d) “Mercantile establishment” means any place where merchandise is displayed, held or offered for sale, either at retail or wholesale. “Mercantile establishment” does not include adjoining parking lots or adjoining areas of common use with other establishments.

(e) “Merchandise” means any goods, foodstuffs, wares or personal property, or any part or portion thereof of any type or description displayed, held or offered for sale, or a shopping cart.

(f) “Value of the merchandise” means the merchant's stated price of the merchandise, or, in the event of altering, transferring or removing a price marking or causing a cash register or other sales device to reflect less than the retail value of the merchandise, as defined in section one of this article, the difference between the merchant's stated price of the merchandise and the altered price.

WV Legislature

§61-3A-7. Organized retail theft; offenses; penalties; cumulation; venue; forfeiture.

(a) Any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of $2,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than one nor more than ten years or be fined not less than $1,000 nor more than $10,000, or both imprisoned and fined.

(b) Notwithstanding the provisions of subsection (a) of this section any person who enters into a common scheme or plan with two or more other persons to violate the provisions of section one of this article involving merchandise of a cumulative value of $10,000 or more with the intent to sell, trade or otherwise distribute the merchandise shall be guilty of a felony, and, upon conviction, shall be imprisoned in a state correctional facility for a determinate term of not less than two nor more than twenty years fined not less than $2,000 nor more than $25,000, or both imprisoned and fined.

(c) Any person who purchases, trades or barters for, or otherwise obtains with any form of consideration, merchandise from persons he knows or has reason to believe was obtained by three or more persons engaged in a common scheme or plan to violate the provisions of section one of this article shall be guilty of a felony.

(d) Any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of $2,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than one year, nor more than ten years or fined not less than $1,000 nor more than $10,000, or both imprisoned and fined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person who violates the provisions of subsection (c) of this section by purchasing, trading or bartering for merchandise with a cumulative value of $10,000 or more shall, upon conviction, be imprisoned in a state correctional facility for a determinate term of not less than two years, nor more than twenty years or fined not less than $2,000 nor more than $25,000, or both imprisoned and fined.

(f) In determining the value of merchandise in a prosecution under this section, it is permissible to cumulate the value of merchandise obtained as part of a common scheme or plan.

(g) Violations of subsections (a), (b) and (c) of this section occurring in one or more counties of this state may be prosecuted in any county wherein any part of the offense was committed and the provisions of subsection (f) of this section are applicable to offenses so occurring.

(h)(1) Any interest a person has acquired or maintained in any cash, asset or other property of value in any form, derived in part or total from any proceeds obtained from participating

WV Legislature

in a violation of this section, may be seized and forfeited consistent with the procedures in the West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code.

(2) Notwithstanding subdivision (1) of this subsection, at sentencing for a violation of this section, the court may direct disgorgement to the victim or victims of any cash, asset or other property of value in any form, derived in part or total from any proceeds obtained from such violation.

WV Legislature