

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-29-81

Time _____

No. 560

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981



ENROLLED
Committee Substitute
SENATE BILL NO. 560

(By Mr. Palumbo)



PASSED April 10, 1981
In Effect ninety days from Passage

OFFICE
SECY. OF STATE

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COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 560
(MR. PALUMBO, *original sponsor*)

[Passed April 10, 1981; in effect ninety days from passage.]

AN ACT to amend and reenact article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, all relating to crimes and their punishment; shoplifting; defining the offense of shoplifting; providing evidence; providing criminal penalties for first, second and third convictions; mandatory penalty; shoplifting constituting breach of peace; detention of suspected shoplifter; making shoplifters civilly liable; and defining terms.

Be it enacted by the Legislature of West Virginia:

That article three-a, chapter sixty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, all to read as follows:

ARTICLE 3A. SHOPLIFTING.

§61-3A-1. Shoplifting; definition of offense.

- 1 (a) A person commits the offense of shoplifting if, with
- 2 intent to appropriate merchandise without paying the
- 3 merchant's stated price for the merchandise, such person,
- 4 alone or in concert with another person, knowingly:
 - 5 (1) Conceals the merchandise upon his or her person or in
 - 6 another manner; or
 - 7 (2) Removes or causes the removal of merchandise from
 - 8 the mercantile establishment or beyond the last station for
 - 9 payment; or

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

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

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

17 (6) Removes a shopping cart from the premises of the
18 mercantile establishment.

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

§61-3A-2. Evidence.

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

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

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

7 (3) Properly identified photographs of such merchandise.

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

§61-3A-3. Penalties.

1 A person convicted of shoplifting shall be punished as
2 follows:

3 (a) *First offense conviction:* Upon a first shoplifting
4 conviction:

5 (1) When the value of the merchandise is less than or equal
6 to one hundred dollars, the defendant shall be guilty of a
7 misdemeanor and shall be fined not more than two hundred
8 fifty dollars.

9 (2) When the value of the merchandise exceeds one
10 hundred dollars, the defendant shall be guilty of a
11 misdemeanor and shall be fined not less than one hundred
12 dollars, nor more than five hundred dollars, and such fine
13 shall not be suspended; or the defendant shall be imprisoned
14 in the county jail not more than sixty days; or both fined and
15 imprisoned.

16 (b) *Second offense conviction:* Upon a second shoplifting
17 conviction:

18 (1) When the value of the merchandise is less than or equal
19 to one hundred dollars, the defendant shall be guilty of a
20 misdemeanor and shall be fined not less than one hundred
21 dollars nor more than five hundred dollars, and such fine
22 shall not be suspended; or the defendant shall be imprisoned
23 in the county jail not more than six months; or both fined and
24 imprisoned.

25 (2) When the value of the merchandise exceeds one
26 hundred dollars, the defendant shall be guilty of a
27 misdemeanor and fined not less than five hundred dollars
28 and shall be imprisoned in the county jail for not less than six
29 months nor more than one year. At least thirty days shall
30 actually be spent in confinement and not subject to
31 probation.

32 (c) *Third offense convictions:* Upon a third or subsequent
33 shoplifting conviction, regardless of the value of the
34 merchandise, the defendant shall be guilty of a felony and
35 shall be fined not less than five hundred dollars nor more
36 than five thousand dollars, and shall be imprisoned in the
37 penitentiary for one to ten years. At least one year shall
38 actually be spent in confinement and not subject to
39 probation.

40 (d) *Mandatory penalty:* In addition to the fines and
41 imprisonment imposed by this section, in all cases of
42 conviction for the offense of shoplifting, the court shall order
43 the defendant to pay a penalty to the mercantile
44 establishment involved in the amount of fifty dollars, or
45 double the value of the merchandise involved, whichever is
46 higher. The mercantile establishment shall be entitled to
47 collect such mandatory penalty as in the case of a civil
48 judgment. This penalty shall be in addition to the mercantile
49 establishment's rights to recover the stolen merchandise.

50 (e) In determining the number of prior shoplifting
51 convictions for purposes of imposing punishment under this
52 section, the court shall disregard all such convictions
53 occurring more than seven years prior to the shoplifting
54 offense in question.

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

1 An act of shoplifting as defined herein, is hereby declared
2 to constitute a breach of peace and any owner of

3 merchandise, his agent or employee, or any law-enforcement
4 officer who has reasonable ground to believe that a person
5 has committed shoplifting, may detain such person in a
6 reasonable manner and for a reasonable length of time not to
7 exceed thirty minutes, for the purpose of investigating
8 whether or not such person has committed or attempted to
9 commit shoplifting. Such reasonable detention shall not
10 constitute an arrest nor shall it render the owner of
11 merchandise, his agent or employee, liable to the person
12 detained.

§61-3A-5. Civil liability.

1 (a) *General rule:* Any person who commits any of the acts
2 described in section one of this code shall be civilly liable:

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

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

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

12 (4) In all cases, for a penalty to be paid to the mercantile
13 establishment in the amount of fifty dollars or double the
14 value of the merchandise, whichever is higher.

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

17 (c) *Effect of conviction:* A conviction for the offense of
18 theft by shoplifting is not a prerequisite to the maintenance of
19 a civil action authorized by this section. However, a merchant
20 who has recovered the penalty prescribed by section three of
21 this code is not entitled to recover the penalty imposed by
22 this section.

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

§61-3A-6. Definitions.

1 (a) "Conceal" means to hide, hold or carry merchandise so
2 that, although there may be some notice of its presence, it is
3 not visible through ordinary observation.

4 (b) "Merchant" means an owner or operator of any
5 mercantile establishment, and includes the merchant's
6 employees, servants, security agents or other agents.

7 (c) "Mercantile establishment" means any place where
8 merchandise is displayed, held or offered for sale, either at
9 retail or wholesale. "Mercantile establishment" does not
10 include adjoining parking lots or adjoining areas of common
11 use with other establishments.

12 (d) "Merchandise" means any goods, foodstuffs, wares or
13 personal property, or any part or portion thereof of any type
14 or description displayed, held or offered for sale, or a
15 shopping cart.

16 (e) "Value of the merchandise" means the merchant's
17 stated price of the merchandise, or, in the event of altering,
18 transferring or removing a price marking or causing a cash
19 register or other sales device to reflect less than the retail
20 value of the merchandise, as defined in section one, the
21 difference between the merchant's stated price of the
22 merchandise and the altered price.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

R. P. Bayle
Chairman Senate Committee

Tony E. Whitlow
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

Jodd C. Willis
Clerk of the Senate

V. Blankenship
Clerk of the House of Delegates

Walter A. Haun
President of the Senate

Hyde H. See, Jr.
Speaker House of Delegates

The within *is approved* this the *29*
day of *April*, 1981.

John R. Ralston
Governor

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