WEST VIRGINIA LEGISLATURE
Regular Session, 2005

ENROLLED
Committee Substitute for

SENATE BILL NO. 473

(By Senators Hunter and Minear)

PASSED ____________

April 9, 2005

In Effect ninety days from Passage
AN ACT to amend and reenact §61-3A-1 and §61-3A-6 of the Code of West Virginia, 1931, as amended, all relating to the crime of cyber-shoplifting; including in the definition of “shoplifting” customer’s repudiation of a card-not-present credit or debit transaction after having taken delivery of merchandise ordered from the merchant; and defining “card-not-present credit or debit transaction” to mean 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.

Be it enacted by the Legislature of West Virginia:

That §61-3A-1 and §61-3A-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:
ARTICLE 3A. SHOPLIFTING.


(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.

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

Chandy White
Chairman Senate Committee

D. Richo Bivin
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

David Blankenship
Clerk of the Senate

Jim Lay
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

Shane Y. Tackett
Speaker House of Delegates

The within bill is hereby approved this the 21st Day of April 2005.

Governor
PRESENTED TO THE GOVERNOR

APR 15 2005

Time 4:00 PM