

FILED

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

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**

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 473

(SENATORS HUNTER AND MINEAR, *original sponsors*)

[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.

§61-3A-1. Shoplifting defined.

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
6 in 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
11 affixed 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
15 device to reflect less than the merchant's stated price for
16 the merchandise; or

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

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

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

§61-3A-6. Definitions.

1 (a) “Card-not-present credit or debit transaction” means
2 a credit or debit sale of merchandise by telephone, mail
3 order, internet or other means that does not require the
4 cardholder’s signature or physical presentation of the
5 credit or debit card to the merchant.

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

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

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

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

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

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

Candy White
.....
Chairman Senate Committee

W. Rick Beard
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Donell Adams
.....
Clerk of the Senate

Gregg M. Paul
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

[Signature]
.....
Speaker House of Delegates

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

[Signature]
.....
Governor

PRESENTED TO THE
GOVERNOR

APR 15 2005

Time 4:00 pm