

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

House Bill 2367

BY DELEGATES R. MILLER, MARCUM, ELDRIDGE,

RODIGHEIRO, PHILLIPS, SOBONYA, LOVEJOY AND HICKS

[Passed April 8, 2017; in effect ninety days from passage.]

1 AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section,
2 designated §61-3A-7, relating to establishing the offenses of organized retail theft and
3 knowing purchase of materials obtained by organized retail theft; establishing elements of
4 offenses; defining terms; establishing criminal penalties; providing for the cumulation of
5 merchandise values; providing for prosecution in any county in which any part of an
6 offense occurs; providing for seizure and forfeiture of cash, assets or other property
7 derived in part or total from any proceeds from participating in a violation of the section;
8 and authorizing a sentencing court to order disgorgement of illegal gains.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
2 section, designated §61-3A-7, to read as follows:

ARTICLE 3A. SHOPLIFTING.

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

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

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

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

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

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

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

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

34 (h)(1) Any interest a person has acquired or maintained in any cash, asset or other
35 property of value in any form, derived in part or total from any proceeds obtained from participating
36 in a violation of this section, may be seized and forfeited consistent with the procedures in the
37 West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code.

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

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

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Chairman, House Committee

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Chairman, Senate Committee

Originating in the House.

In effect ninety days from passage.

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Clerk of the House of Delegates

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Clerk of the Senate

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Speaker of the House of Delegates

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President of the Senate

The within this the.....
day of, 2017.

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Governor