

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2367

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[Originating in the Committee on Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
2 designated §61-3F-1, §61-3F-2 and §61-3F-3, all relating to establishing a criminal offense
3 of organized retail crime; defining terms; making it unlawful for a person to knowingly
4 commit an organized retail crime; making it unlawful for a person to knowingly organize,
5 supervise, finance, conspire, receive retail goods from, or otherwise manage or assist
6 another person in committing an organized retail crime; establishing criminal penalties;
7 providing for the aggregation of counts and sum of property value; providing for
8 prosecution in any county in which a retail crime occurred; allowing for inference by trier
9 of fact that a particular scheme or course of conduct was undertaken for profit; and
10 providing for seizure and forfeiture of cash, assets or other property derived in part or total
11 from any proceeds from participating in an organized retail crime.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto
2 a new article, designated §61-3F-1, §61-3F-2 and §61-3F-3, all to read as follows:

ARTICLE 3F. ORGANIZED RETAIL CRIME.

§61-3F-1. Definitions.

1 For the purpose of this article:

2 (1) "Organized retail crime" means the commission of two or more retail crimes, either
3 alone or with any person or persons, as part of an organized scheme within a ninety-day period,
4 and the aggregate value of the retail price of the merchandise involved in the retail crimes exceeds
5 \$1,500.

6 (2) "Organized scheme" means a plan, scheme, or course of conduct between two or more
7 individuals to engage in a retail crime.

8 (3) "Retail crime" means the theft of retail merchandise from a retail establishment with
9 the intent or purpose of reselling, trading, bartering, distributing, or otherwise reentering the retail

10 merchandise in commerce, including the transfer of the stolen retail merchandise to another retail
11 merchant or to any other person personally, through the mail, or through any electronic medium,
12 including the internet, in exchange for anything of value.

13 (4) "Retail establishment" means any business, whether a sole proprietorship, corporation,
14 partnership, or otherwise, which holds or stores articles, products, commodities, items, or
15 components for sale to the public or to other retail establishments.

16 (5) "Retail merchandise" means any article, product, commodity, item, or component
17 intended to be sold to the public or to other retail establishments.

18 (6) "Retail price" means the retail value of an item offered for sale by a retail establishment.

19 (7) "Theft" means to take possession of, carry away, transfer, conceal or cause to be
20 carried away the retail merchandise of a retail establishment with the intent to deprive the retail
21 establishment of the ownership thereof.

22 (8) "Value" means the price of the retail merchandise as stated, posted, or advertised by
23 the affected retail establishment, including applicable sales tax.

§61-3F-2. Organized retail crime.

1 (a) It shall be unlawful for any person to knowingly:

2 (1) Commit an organized retail crime, or

3 (2) Organize, supervise, finance, conspire, receive retail goods from, or otherwise manage
4 or assist another person in committing an organized retail crime;

5 (b) A person who violates the provisions of subsection (a) of this section and the aggregate
6 value of the retail price of merchandise involved in the organized retail crime is not more than
7 \$2,500, is guilty of a misdemeanor, and upon conviction thereof, shall be fined not more than
8 \$3,000 or confined in jail for not more than one year, or both fined and confined.

9 (c) A person who violates the provisions of subsection (a) of this section and the aggregate
10 value of the retail price of merchandise involved in the organized retail crime is not less than
11 \$2,500 nor more than \$10,000, is guilty of a felony, and upon conviction, shall be fined not more

12 than \$5,000 or imprisoned in a state correctional facility not less than one year nor more than five
13 years, or both fined and imprisoned.

14 (d) A person who violates the provisions of subsection (a) of this section and the aggregate
15 value of the retail price of merchandise involved in the organized retail crime is more than \$10,000,
16 is guilty of a felony, and upon conviction, shall be fined not more than \$10,000 or imprisoned in a
17 state correctional facility not less than three years nor more than fifteen years, or both fined and
18 imprisoned.

§61-3F-3. General provisions

19 (a) For purposes of this article, a series of retail crimes from one or more mercantile
20 establishments over a period of ninety days as part of an organized retail crime may be
21 aggregated in one count and the sum of the value of all the property shall be the value considered
22 in determining the amount of the organized retail crime.

23 (b) A violation of this article occurring in one or more counties may be prosecuted in any
24 county in which one of the retail crimes occurred.

25 (c) In any prosecution for a violation under this article, it shall not be necessary for the
26 state to prove that any intended profit was actually realized. The trier of fact may infer that a
27 particular scheme or course of conduct was undertaken for profit from all of the attending
28 circumstances.

29 (d) Forfeiture- (1) Any interest a person has acquired or maintained in any cash, asset or
30 other property of value in any form, derived in part or total from any proceeds from participating
31 in an organized retail crime, may be seized and forfeited consistent with the procedures in the
32 West Virginia Contraband Forfeiture Act, as provided in article seven, chapter sixty-a of this code.

33 (2) Notwithstanding subdivision (1) of this subsection, the court, as part of sentencing for
34 a violation under this article, may direct the forfeiture to the state of any cash, asset or other
35 property of value in any form, derived in part or total from any proceeds from participating in the
36 organized retail crime.

NOTE: The purpose of this bill is to establish a new crime of organized retail crime, establishing penalties; and providing for forfeiture of property or other asset derived from organized retail crime.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.