

**SUBSTITUTE FOR
HOUSE BILL NO. 5843**

A bill to prohibit organized retail crime and to provide penalties for that crime; to provide for forfeiture of and restitution for stolen retail merchandise in certain circumstances; to create the organized retail crime advisory board and to prescribe its powers and duties; and to provide for the administration of this act.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "organized retail crime act".

3 Sec. 2. It is the intent of the legislature to protect the
4 public health, safety, and welfare of the citizens of the state by
5 recognizing the negative impact of persons who engage in planned,
6 organized, and methodical theft of retail merchandise for resale in
7 unregulated retail commerce, including, but not limited to,

1 medications, infant formula, and pharmaceutical items; the
2 potential use of the proceeds of the sale of that merchandise to
3 support other crimes and criminal enterprises and the nature,
4 extent, and impact of those activities upon commerce and public
5 safety; and to take appropriate actions to prevent and punish those
6 who engage in those activities.

7 Sec. 3. As used in this act:

8 (a) "Board" means the organized retail crime advisory board
9 created under section 6.

10 (b) "Department" means the department of state police.

11 (c) "Organized retail crime" means the theft of retail
12 merchandise from a retail merchant with the intent or purpose of
13 reselling, distributing, or otherwise reentering the retail
14 merchandise in commerce, including the transfer of the stolen
15 retail merchandise to another retail merchant or to any other
16 person personally, through the mail, or through any electronic
17 medium, including the internet, in exchange for anything of value.

18 (d) "Person" means an individual, sole proprietorship,
19 partnership, cooperative, association, corporation, limited
20 liability company, personal representative, receiver, trustee,
21 assignee, or other entity.

22 (e) "Retail merchant" means any person that is in the business
23 of selling retail merchandise at retail.

24 (f) "Retail merchandise" means any new article, product,
25 commodity, item, or component intended to be sold in retail
26 commerce.

27 Sec. 4. (1) A person is guilty of organized retail crime when

1 that person, alone or in association with another person, does any
2 of the following:

3 (a) Knowingly commits an organized retail crime.

4 (b) Organizes, supervises, finances, or otherwise manages or
5 assists another person in committing an organized retail crime.

6 (c) Removes, destroys, deactivates, or knowingly evades any
7 component of an antishoplifting or inventory control device to
8 prevent the activation of that device or to facilitate another
9 person in committing an organized retail crime.

10 (d) Conspires with another person to commit an organized
11 retail crime.

12 (e) Receives, purchases, or possesses retail merchandise for
13 sale or resale knowing or believing the retail merchandise to be
14 stolen from a retail merchant.

15 (f) Uses any artifice, instrument, container, device, or other
16 article to facilitate the commission of an organized retail crime
17 act.

18 (g) Knowingly causes a fire exit alarm to sound or otherwise
19 activate, or deactivates or prevents a fire exit alarm from
20 sounding, in the commission of an organized retail crime or to
21 facilitate the commission of an organized retail crime by another
22 person.

23 (h) Knowingly purchases a wireless telecommunication device
24 using fraudulent credit, knowingly procures a wireless
25 telecommunications service agreement with the intent to defraud
26 another person or to breach that agreement, or uses another person
27 to obtain a wireless telecommunications service agreement with the

1 intent to defraud another person or to breach that agreement.

2 (2) Organized retail crime is a felony punishable by
3 imprisonment for not more than 5 years or a fine of \$5,000.00, or
4 both.

5 (3) If the true owner of stolen retail merchandise cannot be
6 identified, the retail merchandise, and any proceeds from the sale
7 or resale of that merchandise, is subject to forfeiture to the
8 state for use by the board in the performance of its duties. The
9 court shall order forfeiture of the retail merchandise in the
10 manner and upon terms and conditions as determined by the court to
11 be appropriate.

12 (4) The court shall order a person who is found guilty of
13 organized retail crime to make restitution to any retail merchant
14 victim in the manner provided in the crime victim's rights act,
15 1985 PA 87, MCL 780.751 to 780.834, and to reimburse the
16 governmental entity for its expenses incurred as a result of the
17 violation of this act in the manner provided in section 1f of
18 chapter IX of the code of criminal procedure, 1927 PA 175, MCL
19 769.1f.

20 (5) It is not a defense to a charge under this section that
21 the property was not stolen, embezzled, or converted property at
22 the time of the violation if the property was explicitly
23 represented to the accused person as being stolen, embezzled, or
24 converted property.

25 Sec. 5. This act does not prohibit a person from being charged
26 with, convicted of, or sentenced for any violation of law arising
27 out of the same criminal transaction that violates this act.

1 Sec. 6. (1) There is created within the department of state
2 police an organized retail crime advisory board. The board shall
3 consist of the following members:

4 (a) One member who is a county prosecuting attorney or an
5 assistant county prosecuting attorney.

6 (b) One member who is a representative of law enforcement.

7 (c) The state attorney general or his or her designated
8 representative.

9 (d) One member who is recommended by the Michigan retailers
10 association.

11 (e) One member who is a member of the general public.

12 (f) The director of the department of state police or his or
13 her designated representative.

14 (2) All members of the board, other than the attorney general
15 and the director of the department of state police, shall be
16 appointed by the governor by and with the advice and consent of the
17 senate for terms of 4 years.

18 (3) A vacancy on the board shall be filled in the same manner
19 as the original appointment for the remainder of any unexpired
20 term.

21 (4) The duties of the board shall be to develop a database of
22 organized retail crimes, to compile annual statistics on organized
23 retail crime acts, to recommend actions to be taken by the
24 department and law enforcement to further combat organized retail
25 crime, and to submit an annual report to the director of the
26 department on the effectiveness of this act in reducing organized
27 retail crime.

1 (5) The director of the department of state police or his or
2 her designee shall serve as chairperson of the board. The board
3 shall meet not less often than 4 times each year. Special meetings
4 may be called by the chairperson, or upon written request of not
5 fewer than 3 board members. Meetings shall be held at a location
6 designated by the chairperson.

7 (6) The board shall keep minutes of its proceedings. A record
8 of board action and business shall be made and maintained.

9 (7) The board members shall not be compensated for their
10 service but may be reimbursed for their actual and reasonable
11 expenses.

12 (8) The board shall not retain a staff.

13 (9) The business performed by the board shall be conducted at
14 a public meeting of the board held in compliance with the open
15 meetings act, 1976 PA 267, MCL 15.261 to 15.275.

16 (10) A writing prepared, owned, used, in the possession of, or
17 retained by the board in the performance of an official function
18 shall be made available to the public in compliance with the
19 freedom of information act, 1976 PA 442, MCL 15.231 to 15.246.

20 Sec. 7. This act shall be administered by the director of the
21 department.

22 Enacting section 1. This act takes effect January 1, 2013.