**South Carolina General Assembly**

125th Session, 2023-2024

**H. 4187**

**STATUS INFORMATION**

General Bill

Sponsors: Reps. J.E. Johnson, W. Newton, Robbins, Haddon, Mitchell, Yow, Chapman, Gagnon, Ligon, O'Neal, B. Newton, Sessions, Felder, Blackwell, Oremus and Long

Companion/Similar bill(s): 563

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Introduced in the House on March 28, 2023

Introduced in the Senate on April 10, 2024

Last Amended on April 9, 2024

Currently residing in the House

Summary: Organized Retail Crime

**HISTORY OF LEGISLATIVE ACTIONS**

Date Body Action Description with journal page number

3/28/2023 House Introduced and read first time ([House Journal‑page 30](h:\hj\20230328.docx))

3/28/2023 House Referred to Committee on **Judiciary** ([House Journal‑page 30](h:\hj\20230328.docx))

1/9/2024 House Member(s) request name added as sponsor: W. Newton

3/7/2024 House Member(s) request name added as sponsor: Robbins,
Haddon

3/20/2024 House Member(s) request name added as sponsor: Mitchell, Yow

3/20/2024 House Committee report: Favorable with amendment **Judiciary** ([House Journal‑page 12](h:\hj\20240320.docx))

3/26/2024 House Member(s) request name added as sponsor: Chapman,
Gagnon, Ligon, O'Neal, B. Newton, Sessions,
Felder

3/26/2024 House Requests for debate-Rep(s). Rutherford, Pendarvis, Hart, Williams, McDaniels, Rivers, Jefferson, Stavrinakis, Jordan, JE Johnson, Weeks, Brittain, Magnuson, Harris, T Moore, Henegan, BL Cox, Hosey, Gilliard, King, Bauer, Forrest ([House Journal‑page 32](h:\hj\20240326.docx))

3/27/2024 House Debate adjourned ([House Journal‑page 41](h:\hj\20240327.docx))

3/27/2024 House Member(s) request name added as sponsor:
Blackwell, Oremus

4/9/2024 House Member(s) request name added as sponsor: Long

4/9/2024 House Amended ([House Journal‑page 68](h:\hj\20240409.docx))

4/9/2024 House Read second time ([House Journal‑page 68](h:\hj\20240409.docx))

4/9/2024 House Roll call Yeas-87 Nays-21 ([House Journal‑page 71](h:\hj\20240409.docx))

4/10/2024 House Read third time and sent to Senate ([House Journal‑page 18](h:\hj\20240410.docx))

4/10/2024 Scrivener's error corrected

4/10/2024 Senate Introduced and read first time ([Senate Journal‑page 3](h:\sj\20240410.docx))

4/10/2024 Senate Referred to Committee on **Judiciary** ([Senate Journal‑page 3](h:\sj\20240410.docx))

4/23/2024 Senate Referred to Subcommittee: Hutto (ch), Adams,
Goldfinch, Gustafson, Tedder

View the latest  [legislative information](https://www.scstatehouse.gov/billsearch.php?billnumbers=4187&session=125&summary=B)  at the website

**VERSIONS OF THIS BILL**

[03/28/2023](https://www.scstatehouse.gov/sess125_2023-2024/prever/4187_20230328.docx)

[03/20/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4187_20240320.docx)

[04/09/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4187_20240409.docx)

[04/10/2024](https://www.scstatehouse.gov/sess125_2023-2024/prever/4187_20240410.docx)

Indicates Matter Stricken

Indicates New Matter

Amended

April 09, 2024

H. 4187

Introduced by Reps. J. E. Johnson, W. Newton, Robbins, Haddon, Mitchell, Yow, Chapman, Gagnon, Ligon, O'Neal, B. Newton, Sessions, Felder, Blackwell, Oremus and Long

S. Printed 04/09/24--H. [SEC 4/10/2024 12:55 PM]

Read the first time March 28, 2023

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statement of estimated fiscal impact

Explanation of Fiscal Impact

State Expenditure

This bill provides that it is unlawful to commit organized retail crime having a value exceeding $2,000 over a 90-day period when the offender has the intent to cause the retail property to be placed in the control of a retail property fence or other person in exchange for consideration.

The bill also provides that any property, funds, or interest a person has acquired or maintained in violation of these provisions are subject to forfeiture and modifies the penalty schedules for organized retail crime as follows:

|  |  |
| --- | --- |
| **PENALTY SCHEDULE FOR ORGANIZED RETAIL CRIME** | |
| ***Current – First Offense, Misdemeanor*** | Fine of ≤$5,000 or imprisonment for ≤3 years, or both, regardless of amount of theft |
|  | |
| ***New – First Offense, Felony*** | |
| If value of retail property or merchandise credit is >$2,000 but <$10,000 | Fine of ≤$5,000 or imprisonment for ≤3 years, or both |
| If value of retail property or merchandise credit is >$10,000 but <$20,000 | Fine of ≤$10,000 or imprisonment for ≤5 years, or both |
| If value of retail property or merchandise credit is >$20,000 but <$50,000 | Fine of ≤$20,000 or imprisonment for ≤10 years, or both |
| If value of retail property or merchandise credit is >$50,000 | Fine of ≤$50,000 or imprisonment for ≤20 years, or both |
|  | |
| ***Current – Second Offense or Subsequent Offense, Felony*** | Fine of ≤$10,000 or imprisonment for ≤20 years, or both, regardless of amount of theft |
| ***New – Second Offense or Subsequent Offense, Felony*** | Fine of ≤$50,000 or imprisonment for ≤20 years, or both, regardless of amount of theft |

The bill also provides that organized retail crime is a lesser offense of organized retail crime of an aggravated nature. It also defines organized retail crime of an aggravated nature as, while in the act of organized retail crime, damaging real or personal property in excess of $2,000 or causing unlawful bodily injury to another person.

Persons convicted of the felony of organized retail crime of an aggravated nature must pay a fine of not more than $50,000 or be imprisoned for not more than 15 years, or both.

**Judicial.** Judicial reports that implementation of the bill may result in an increase in general sessions court caseloads, which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for Judicial.

**Commission on Prosecution Coordination.** The Commissionreports that implementation of the bill may result in an increase in work which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for the Commission.

**Commission on Indigent Defense.** This bill may result in an increase in the number cases handled by the Commission on Indigent Defense. The agency indicates that if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations.

**Department of Corrections.** This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was $37,758, of which $34,570 was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations.

**Department of Probation, Parole & Pardon.** The department reports the bill requires Probation, Parole & Pardon to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact.

State Revenue

This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the RFA anticipates this bill may result in an undetermined impact to General Fund and Other Funds revenue due to the increase in fines and fees collections in court.

Local Expenditure

RFA anticipates that this bill may result in an increase in local expenditures due to a potential increase in the local jail population. However, as the number of such offenses resulting in jail time that might occur in a given year is unknown, the potential increase in the local jail population and local expenditure is undetermined.

Local Revenue

This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. However, as the number of organized retail crime offenses and the resulting fines and fees that might occur in a given year is unknown, the revenue impact is undetermined.

Introduced on March 28, 2023

State Expenditure

This bill provides that the following offenses are unlawful felony offenses for retail theft:

Committing theft of merchandise credit from a retail establishment in a value exceeding $2,000 over a 90-day period when the offender has the intent to sell, barter, take, or cause the credit to be placed in the control of a retail property fence or other person for consideration; and

Conspiring with another person to commit theft of merchandise credit from a retail establishment in a value exceeding $2,000, aggregated over a 90-day period, when the offender intends to sell, barter, or exchange the credit for monetary or other gain; place the credit in the control of a retail property fence or other person in exchange for consideration; or illegally or fraudulently obtain confidential data or consumer personally identifiable information for the purpose of converting it into financial gain.

The bill also provides that any property, funds, or interest a person has acquired or maintained in violation of these provisions are subject to forfeiture and modifies the penalty schedules for retail theft as follows:

|  |  |
| --- | --- |
| **PENALTY SCHEDULE FOR THEFT OF RETAIL PROPERTY OR MERCHANDISE CREDIT** | |
| ***Current – First Offense, Misdemeanor*** | Fine of ≤$5,000 or imprisonment for ≤3 years, or both, regardless of amount of theft |
|  | |
| ***New – First Offense, Felony*** | |
| If value of retail property or merchandise credit is >$2,000 but <$10,000 | Fine of ≤$5,000 or imprisonment for ≤3 years, or both |
| If value of retail property or merchandise credit is >$20,000 but <$50,000 | Fine of ≤$10,000 or imprisonment for ≤5 years, or both |
| If value of retail property or merchandise credit is >$50,000 but <$100,000 | Fine of ≤$20,000 or imprisonment for ≤10 years, or both |
| If value of retail property or merchandise credit is >$100,000 | Fine of ≤$50,000 or imprisonment for ≤20 years, or both |
|  | |
| ***Current – Second Offense or Subsequent Offense, Felony*** | Fine of ≤$10,000 or imprisonment for ≤20 years, or both, regardless of amount of theft |
| ***New – Second Offense or Subsequent Offense, Felony*** | Fine of ≤$50,000 or imprisonment for ≤20 years, or both, regardless of amount of theft |

The bill also provides that organized retail crime is a lesser offense of organized retail crime of an aggravated nature. It also defines organized retail crime of an aggravated nature as consisting of the following, if committed during the act of organized retail crime:

Damaging real or personal property in excess of $1,000;

Assaulting an employee or independent contractor of an establishment;

Assaulting a law enforcement officer;

Removing, destroying, or deactivating an antishoplifting or inventory control device;

Stealing infant formula costing more than $100;

Using an emergency exit to remove retail property if the value of the property is more than $200; or

Exchanging property for cash, a gift card, a merchandise credit, or other item of value while knowing or having reasonable grounds to believe the property exchanged is stolen.

Persons convicted of felony organized retail theft of an aggravated nature must pay a fine of not more than $50,000 or be imprisoned for not more than 20 years, or both, regardless of the value of the retail property.

**Judicial.** Judicial reports that implementation of the bill may result in an increase in general sessions court caseloads, which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for Judicial.

**Commission on Prosecution Coordination.** The Commissionreports that implementation of the bill may result in an increase in work which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for the Commission.

**Commission on Indigent Defense.** This bill creates new offenses, which could result in an increase in the number cases handled by the Commission on Indigent Defense. The agency indicates that if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations.

**Department of Corrections.** This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was $37,758, of which $34,570 was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations.

**Department of Probation, Parole & Pardon.** The department reports the bill requires Probation, Parole & Pardon to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact.

State Revenue

This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the RFA anticipates this bill may result in an undetermined impact to General Fund and Other Funds revenue due to the increase in fines and fees collections in court.

Local Expenditure

RFA anticipates that this bill may result in an increase in local expenditures due to a potential increase in the local jail population resulting from the newly created felony punishable by imprisonment or a fine, or both. However, as the number of such offenses that might occur in a given year is unknown, the potential increase in the local jail population and local expenditure is undetermined.

Frank A. Rainwater, Executive Director

Revenue and Fiscal Affairs Office

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A bill

TO AMEND THE SOUTH CAROLINA CODE OF LAWS BY AMENDING SECTION 16‑13‑135, RELATING TO the offense of RETAIL THEFT and associated PENALTIES, SO AS TO DEFINE necessary terms, to Revise the previous offense of retail theft to create the offenses of felony ORGANIZED RETAIL CRIME AND felony ORGANIZED RETAIL CRIME OF AN AGGRAVATED NATURE, and to provide graduated penalties for the offenses.

Amend Title To Conform

Be it enacted by the General Assembly of the State of South Carolina:

SECTION 1. Section 16‑13‑135 of the S.C. Code is amended to read:

Section 16‑13‑135. (A) As used in this section:

(1) “Organized retail crime” means two or more people conspiring to commit theft of retail property from a retail establishment with the intent to sell, barter, exchange, or reenter such retail property into commerce for monetary or other gain.

(2) “Retail property” means a new an article, merchandise, property, money or negotiable documents, including gift cards or other forms of credit, productproducts, commoditycommodities, itemitems, or componentcomponents intended to be sold in retail commerce.

(2) (3) “Retail property fence” means a person or business that buys retail property knowing or believing that the retail property is stolen.

(3) (4) “Theft” means to take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to stealdeprive the merchant of possession, use, benefit, and value of the retail property.

(4) (5) “Value” means the retail value of an item as offered for sale to the public by the affected retail establishment and includes all applicable taxes.

(B) It is unlawful for a person to:

(1) commit theft of retail property from a retail establishmentorganized retail crime, with a value exceeding two thousand dollars aggregated over a ninety‑day period, with the intent to sell the retail property for monetary or other gain, and sell, barter, take, or cause the retail property to be placed in the control of a retail property fence or other person in exchange for consideration; or

(2) conspire with another person to commit theft of retail property from a retail establishment, with a value exceeding two thousand dollars aggregated over a ninety‑day period, with the intent to:

(a) sell, barter, or exchange the retail property for monetary or other gain; or

(b) place the retail property in the control of a retail property fence or other person in exchange for consideration; or

(3)(2) receive, possess, or sell retail property that has been taken or stolen in violation of item (1) or (2) while knowing or having reasonable grounds to believe the property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft.

(C) Acts committed in different counties that have been aggregated in one count may be indicted and prosecuted in any one of the counties in which the acts occurred. In a prosecution for a violation of this section, the State is not required to establish and it is not a defense that some of the acts constituting the crime did not occur within one city, county, or local jurisdiction.

(D) Property, funds, and interest a person has acquired or maintained in violation of this section are subject to forfeiture pursuant to the procedures for forfeiture as provided in Section 44‑53‑530.

(E) A person who violates this section commits the felony offense of organized retail crime and, upon conviction:

(1) for a first offense:

(a) for a first offense, is guilty of a misdemeanor and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than three years, or both;, if the value of the retail property is more than two thousand dollars but less than ten thousand dollars and;

(b) must be fined not more than ten thousand dollars or imprisoned for not more than five years, or both, if the value of the retail property is more than ten thousand dollars but less than twenty thousand dollars;

(c) must be fined not more than twenty thousand dollars or imprisoned for not more than ten years, or both, if the value of the retail property is more than twenty thousand dollars but less than fifty thousand dollars;

(d) must be fined not more than fifty thousand dollars or imprisoned for not more than twenty years, or both, if the value of the retail property is more than fifty thousand dollars;

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, regardless of the value of the retail property in any offense, must be fined not more than tenfifty thousand dollars or imprisoned for not more than twenty years, or both.

(3) For purposes of this section, multiple offenses occurring within a ninety-day period may be aggregated into a single count with the aggregated value used to determine the total value of the property.

(4) Organized retail crime is a lesser‑included offense of organized retail crime of an aggravated nature as provided in subsection (F).

(F)(1) A person commits the offense of organized retail crime of an aggravated nature if, while committing the offense of organized retail crime, the person wilfully and maliciously:

(a) damages, destroys, or defaces real or personal property in excess of two thousand dollars; or

(b) causes unlawful bodily injury to another person. “Bodily injury” has the same meaning as defined in Section 16-3-600.

(2) A person convicted of organized retail crime of an aggravated nature is guilty of a felony and must be fined not more than fifty thousand dollars or imprisoned not more than fifteen years, or both.

SECTION 2. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide.  After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 3. This act takes effect upon approval by the Governor.

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