



# SENATE BILL 766: Organized Retail Theft.

**This Bill Analysis  
reflects the contents  
of the bill as it was  
presented in  
committee.**

2021-2022 General Assembly

<b>Committee:</b>	Senate Judiciary. If favorable, re-refer to Rules and Operations of the Senate	<b>Date:</b>	June 1, 2022
<b>Introduced by:</b>	Sens. Britt, McInnis, Craven	<b>Prepared by:</b>	Susan Sitze* Staff Attorney
<b>Analysis of:</b>	PCS to First Edition S766-CSSA-40		

**OVERVIEW: The Proposed Committee Substitute (PCS) for Senate Bill 766 would do the following:**

- Increase the penalties for organized retail theft.
- Provide additional penalties for damage to property or assault of a person during the commission of organized retail theft.
- Provide additional recovery to retail establishments for loss due to organized retail theft.
- Regulate high-volume third-party sellers operating on online marketplaces.
- Amend the requirements for custody mediation.

[As introduced, this bill was identical to H1005, as introduced by Reps. Boles, Davis, McNeill, C. Smith, which is currently in House Judiciary 2.]

**CURRENT LAW AND BILL ANALYSIS:**

**Section 1**

Under current law, G.S. 14-86.6 the punishment for organized retail theft is as follows:

- A Class H felony for organized retail theft of property with a value exceeding \$1,500 aggregated over 90 days or receipt or possession of that property knowing or having reasonable grounds to know the property is stolen.
- A Class G felony for organized retail theft of property with a value exceeding \$20,000 aggregated over 90 days.
- A Class G felony for conspiring with two or more other persons as an organizer, supervisor, financier, leader, or manager to engage for profit in a scheme or course of conduct to transfer or sell property stolen through organized retail theft.

**Section 1** of the PCS would amend G.S. 14-86.6 as follows:

- Create a Class F felony for organized retail theft of property with a value exceeding \$50,000 aggregated over 90 days.
- Create a Class C felony for organized retail theft of property with a value exceeding \$100,000 aggregated over 90 days.

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- Connect the offense class for a person who receives or possesses property stolen through organized retail theft and a person who conspires to transfer or sell property stolen through organized retail theft to the value of the property stolen through organized retail theft.

## Section 2

**Section 2** would enact a new G.S. 14-86.7 which would create a Class G felony for each of the following offenses:

- Damaging real or personal property in excess of \$1,000 during the commission of organized retail theft.
- Assaulting an employee or independent contractor of a retail establishment or a law enforcement officer during the commission of the theft of retail property.

## Section 3

**Section 3** would amend G.S. 14-86.1 to provide that a vehicle used in the commission of organized retail theft is subject to forfeiture.

## Section 4

**Section 4** would authorize property seized as evidence for an offense of larceny, organized retail theft, embezzlement, or obtaining property by false pretenses to be returned to the owner prior to trial upon findings that photos or other analyses of the evidence will be sufficient evidence at the time of trial and is no likely to substantially prejudice the rights of the defendant in the criminal trial.

## Section 5

**Section 5** would amend G.S. 1-538.2, which provides civil liability for offenses of larceny and other offenses as follows:

- Would add G.S. 14-72.11 (Larceny from a merchant), G.S. 14-86.6 (Organized retail theft), and G.S. 14-86.7 (Damage to property during organized retail theft; assault during organized retail theft) to the offenses covered by the statute.
- Would provide that the owner of the property is also entitled to recover for loss to real or personal property caused in the commission of the offense.
- Would remove the cap on compensatory damages.
- Would increase the cap on consequential damages to \$3,000 (currently \$1,000).
- Would add organized retail theft and damage or assault during organized retail theft to the list of offenses for which there is no cap on consequential damages.

## Section 6

**Section 6** would amend Chapter 66 (Commerce and Business) to enact a new Article 49. Regulation of High-Volume Third-Party Sellers Operating on Online Marketplaces. A **high-volume third-party seller** would be an independent seller of consumer goods on an online marketplace that meets the following criteria:

- Has entered into 200 or more separate sales or transactions of new or unused consumer products through the online marketplace to consumers in this state in any continuous 12 month period during the previous 24 months.
- Has an aggregate total of \$5,000 or more in gross revenues for those sales or transactions.

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- Processed payment for those sales through the online marketplace or a third party.

This section would do the following:

- Require a high-volume third-party seller to provide certain contact and identifying information to the online marketplace.
- Require the online marketplace to verify the information.
- Require the online marketplace to disclose to consumers certain contact information for high-volume third-party sellers.
- Require the online marketplace to suspend sales by a high-volume third-party seller that refuses to provide information, provides false information, or otherwise is unresponsive to consumers.
- Authorizes the Attorney General to initiate civil action against an online marketplace that violates this act and to seek public remedies available under Chapter 75, Monopolies, Trusts, and Consumer Protection.

## **Section 7**

Under current law, G.S. 50-13.1(b) that whenever custody and visitation issues arise in motions for contempt or for modifications in other pleadings, the court must set the matter for mediation of those issues unless mediation is waived by the court pursuant to G.S. 50-13.1(c).

G.S. 50-13.1(c) provides that for good cause, on the motion of a party or on the court's own motion, "the court may waive the mandatory setting... of a contested custody or visitation matter for mediation."

**Section 7** would make the following changes to G.S. 50-13.1:

- Amend G.S. 50-13.1(b) to make mediation optional for custody and visitation issues arising from motions for contempt or motions to show cause.
- Make a conforming change to G.S. 50-13.1(c) by deleting the word "mandatory."

**EFFECTIVE DATE:** Sections 1 through 5 of this act become effective December 1, 2022, and apply to offenses committed on or after that date. Section 6 of this act becomes effective January 1, 2023. Section 7 of this act becomes effective December 1, 2022, and applies to motions filed on or after that date. The remainder of this act is effective when it becomes law.

*\*Debbie Griffiths and Bill Patterson substantially contributed to this summary.*