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# CRIMES AND OFFENSES Offenses Involving Theft: Change Certain Sections Relating to Shoplifting as a Felony When Multiple Acts Are Committed Within One County Within Seven Days; Create Code Section That Makes It a Felony Offense to Use Receipts and/or UPC Labels Fraudulently to Commit and Further Shoplifting

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## CRIMES AND OFFENSES

*Offenses Involving Theft: Change Certain Sections Relating to Shoplifting as a Felony When Multiple Acts Are Committed Within One County Within Seven Days; Create Code Section That Makes It a Felony Offense To Use Receipts and/or UPC Labels Fraudulently To Commit and Further Shoplifting*

**CODE SECTIONS:** O.C.G.A. §§ 16-8-14 (amended), -17 (new)  
**BILL NUMBER:** SB 307  
**ACT NUMBER:** 721  
**GEORGIA LAWS:** 2000 Ga. Laws 870  
**SUMMARY:** The Act affects areas of the Code that pertain to theft by defrauding retail merchants. The Act provides that when someone shoplifts property exceeding a value of \$100 from three separate retail stores within one county within seven days, that person has committed a felony. Additionally, the Act makes it a felony offense to fraudulently use retail sales receipts and Universal Product Code (UPC) labels to shoplift. The Act provides penalties for the aforementioned offenses.  
**EFFECTIVE DATE:** July 1, 2000

### *History*

Shoplifting has become an area of criminal law filled with technological advances.<sup>1</sup> Large crime rings have the technology to produce mass amounts of fraudulent UPC bar labels, which are then sold to thieves.<sup>2</sup> These fraudulent UPC labels enable a shoplifter to purchase or steal an item then replace its valid UPC label with a fraudulent one programmed for a much higher

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1. See Telephone Interview with Sen. Greg Hecht, Senate District No. 34 (May 18, 2000) [hereinafter Hecht interview].

2. See Telephone Interview with Steve McWilliams, President Georgia Retail Association (June 16, 2000) [hereinafter McWilliams Interview].

value.<sup>3</sup> The shoplifter then returns the item to a store within the same retail chain, using a fraudulent sales receipt to receive a full refund at the higher value.<sup>4</sup> By using fraudulent sales receipts and UPC labels, shoplifters are able to return goods for as much as an eighty percent profit.<sup>5</sup>

Upon request from the Georgia Retail Association, SB 307 was proposed to keep the law current with the vast technological advances benefitting shoplifters.<sup>6</sup> Positively received, SB 307 underwent few changes in reaching its approved status.<sup>7</sup> Changes within the bill stemmed from the need to create uniformity and continuity within the existing shoplifting law, to prevent unnecessary prosecution of small-time thieves, and to assist local district attorneys in the prosecution of future violators.<sup>8</sup>

### *SB 307*

#### *Consideration by the Senate Special Judiciary Committee*

Upon introduction, the Senate assigned the bill to its Special Judiciary Committee, which favorably reported the bill, as amended, to the Senate.<sup>9</sup> The Special Judiciary Committee addressed only the portion of the bill amending Code section 16-8-14, which would have established that if a person shoplifts by taking property from three separate mercantiles within seventy-two hours or less, he or she has committed a felony, which is punishable by imprisonment for not less than one nor more than ten years.<sup>10</sup> The Senate Special Judiciary Committee substituted "seven days" for the originally proposed "seventy-

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3. *See id.*

4. *See id.*

5. *See* Hecht Interview, *supra* note 1.

6. *See id.*; *see also* Audio Recording of Senate Proceedings, Feb. 2, 2000 (remarks by Sen. Greg Hecht) <<http://www.ganet.org/services/leg/audio/2000archive.html>>.

7. *Compare* SB 307, as introduced, 2000 Ga. Gen. Assem., *with* SB 307, as passed, 2000 Ga. Gen. Assem.

8. *See* Telephone Interview with Rep. Glenn Richardson, House District No. 26 (May 17, 2000) [hereinafter Richardson Interview]; *see also* Hecht Interview, *supra* note 1; McWilliams Interview, *supra* note 2.

9. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

10. *See* SB 307, as introduced, 2000 Ga. Gen. Assem.

two hours” within which the theft must occur for felony status to attach.<sup>11</sup>

*From the Senate Special Judiciary Committee to Passage on the Senate Floor*

The Senate adopted the Committee amendment and unanimously passed SB 307, as amended, on February 2, 2000.<sup>12</sup> The Senate then sent the bill to the House, which referred the bill to the House Special Judiciary Committee.<sup>13</sup>

*From the Senate Floor to the House Special Judiciary Committee*

The House Special Judiciary Committee favorably reported the bill, as substituted, on February 22, 2000.<sup>14</sup> The House Committee substitute altered the language in Code section 16-8-14(b)(3) by substituting “stores and retail establishments within one county” for the previous “mercantile establishments.”<sup>15</sup> The Committee also added that the property stolen in each theft must exceed \$100 in value.<sup>16</sup> The House Special Judiciary

11. Compare SB 307, as introduced, 2000 Ga. Gen. Assem., with SB 307 (SCA), 2000 Ga. Gen. Assem. See also Hecht Interview, *supra* note 1. The language was changed from “seventy-two hours” to “one week” because attempting to prove that three crimes were committed within a seventy-two hour period would be too difficult. See McWilliams Interview, *supra* note 2. Typically, when large crime groups choose an item to steal, they steal in mass quantities within the same retail chain within a period of only a few days. See *id.*

12. See Georgia Senate Voting Record, SB 307 (Feb. 2, 2000); State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

13. See State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

14. See *id.*

15. Compare SB 307 (SCA), 2000 Ga. Gen. Assem., with SB 307 (HCS), 2000 Ga. Gen. Assem. See also Hecht Interview, *supra* note 1. Local prosecutors directed the Committee’s attention to the jurisdictional problem that would have arisen if the crime parameters were not limited to one county. See *id.*; see also Audio Recording of House Proceedings, Mar. 14, 2000 (remarks by Rep. Curtis Jenkins) <<http://www.ganet.org/services/leg/audio/2000archive.html>> [hereinafter House Audio]. The requirement that each of the three offenses occur within a single county was proposed because prosecution is most effective when an offense occurs within a single jurisdiction. See *id.*

16. Compare SB 307 (SCA), 2000 Ga. Gen. Assem., with SB 307 (HCS), 2000 Ga. Gen. Assem. This change was intended to target organized crime groups that make their profit by stealing one type of item from various stores within one region in a short period of time, not petty thieves. See McWilliams Interview, *supra* note 2. By increasing the minimum amount of the property value necessary to achieve felony status, the petty

Committee also changed the sentencing provision of Code section 16-8-17(b) to imprisonment for not less than one nor more than ten years.<sup>17</sup>

*From the House Special Judiciary Committee to the House Floor*

After the House Special Judiciary Committee favorably reported SB 307, the House adopted the Committee substitute.<sup>18</sup> However, the House amended the bill by striking Code section 16-8-17(a) in its entirety and replacing it with sections 16-8-17(a)(1) and (a)(2).<sup>19</sup> Subsection (a)(1) establishes that it is a felony to use retail sales receipts or UPC labels unlawfully resulting in a theft exceeding \$300 in value.<sup>20</sup> Violation of this Code section will result in imprisonment for not less than one year but no more than three years, or by a fine, or both.<sup>21</sup>

Additionally, Code section 16-8-17(a)(2) establishes that when property as described in section (a)(1) is stolen from three separate stores within one county during a period of seven days or less and when the property of each theft exceeds \$100 in value, it is a felony.<sup>22</sup> This felony is punishable by imprisonment for not less than one nor more than ten years.<sup>23</sup>

*From the House Floor to the Senate for Approval*

The House version of the bill was returned to the Senate on March 14, 2000.<sup>24</sup> The Senate adopted the House version and

thieves are not as susceptible. *See id.*

17. Compare SB 307 (SCA), 2000 Ga. Gen. Assem., with SB 307 (HCS), 2000 Ga. Gen. Assem. The previous sentencing provision was not less than two years nor more than five years. *See* SB 307 (SCA), 2000 Ga. Gen. Assem.

18. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

19. Compare SB 307 (HCS), 2000 Ga. Gen. Assem., with SB 307 (HCSFA), 2000 Ga. Gen. Assem.

20. *See* SB 307 (HCSFA), 2000 Ga. Gen. Assem.; *see also* Richardson Interview, *supra* note 8. By adding the requirement that the property stolen must exceed \$300, uniformity is established with the rest of the Code section, and felony status is not placed on petty offenses simply because they involve the use of a fraudulent receipt or UPC code. *See id.*; *see also* House Audio, *supra* note 15.

21. *See* SB 307 (HCSFA), 2000 Ga. Gen. Assem.

22. *See id.*

23. *See id.*

24. *See* State of Georgia Final Composite Status Sheet, Mar. 22, 2000.

sent it to the Governor on April 6, 2000.<sup>25</sup> Governor Roy Barnes signed SB 307 into law on April 27, 2000.<sup>26</sup>

### *The Act*

The Act amends Code section 16-8-14 by inserting subsection (b)(3).<sup>27</sup> This subsection makes it a felony to shoplift from three separate retail stores within one county during a period of seven days when the value of the property of each individual theft exceeds \$100.<sup>28</sup> Punishment is imprisonment for not less than one nor more than ten years.<sup>29</sup>

The Act creates new Code section 16-8-17.<sup>30</sup> Code section 16-8-17(a)(1) makes it a felony to cheat or defraud a retailer, possess, use, utter, transfer, make, alter, counterfeit, or reproduce a retail sales receipt or a UPC label.<sup>31</sup> Punishment for such crime results in imprisonment for not less one year but not more than three years, or by a fine, or both.<sup>32</sup> Code section 16-8-17(a)(2) establishes three elements as grounds for a felony: (1) a person uses fraudulent UPC labels and receipts to shoplift, (2) in three separate establishments within one county during a period of seven days or less, and (3) each individual theft exceeds \$100.<sup>33</sup> Such an act is a felony and is punishable by imprisonment of not less than one year but no more than ten years.<sup>34</sup>

Code section 16-8-17(b) establishes another felony when the perpetrator possesses fifteen or more fraudulent retail sales or UPC labels or possesses a device with the purpose to manufacture fraudulent retail sales receipts or UPC labels.<sup>35</sup> The

25. *See id.*

26. *See* 2000 Ga. Laws 870, § 3, at 872.

27. *Compare* 1998 Ga. Laws 578, § 1, at 578-79 (formerly found at O.C.G.A. § 16-8-14 (1999)), *with* O.C.G.A. § 16-8-14(b)(3) (Supp. 2000).

28. *See* O.C.G.A. § 16-8-14(b)(3) (Supp. 2000).

29. *See id.*

30. *See id.* § 16-8-17.

31. *See id.* § 16-8-17(a)(1).

32. *See id.*

33. *See id.* § 16-8-17(a)(2).

34. *See id.*

35. *See id.* § 16-8-17(b). This section allows prosecution of those who create and sell the fraudulent UPC labels and sales receipts, yet do not actually steal the products. *See* McWilliams Interview, *supra* note 2.

punishment for such a crime is imprisonment for not less than one year but not more than ten years.<sup>36</sup>

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36. *See* O.C.G.A. § 16-8-17(b) (Supp. 2000).