

BILL ANALYSIS

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H.B. 2482
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Criminal Justice
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Organized Retail Crime (ORC) is the orchestrated scheme to convert stolen goods to cash. It can generally be described as professional burglars, boosters, cons, thieves, fences and resellers conspiring to steal and sell retail merchandise obtained from retail establishments by theft or deception.

The term “booster,” referring to a front line thief who steals with the intention of reselling the stolen goods, was created as a new definition. It is not uncommon for a booster group to work from city to city or across state lines taking several thousand dollars of goods a day. Boosters coordinate with “fences,” the first buyers of the stolen goods, who typically purchase the items for pennies on the dollar. Fences may sell the items outright at flea markets, convenience stores, or online or they repackage them for sale to higher level fences. Associated problems include negative economic impact, safety issues for unsuspecting consumers and employees, concern for the Federal Bureau of Investigation (FBI) and state law enforcement of potential links to other criminal enterprises, human trafficking, traditional street gangs, drugs, money laundering, identity theft, and credit card fraud.

There are many challenges on the road to combating organized retail theft. Lack of available resources to state and local police departments, who have the primary responsibility for investigating most retail crimes, is a huge hurdle. Sharing information between public and private enterprise is another.

United States Immigration and Customs Enforcement and the FBI realize that ORC is best combated through statutes that carry severe penalties; therefore, H.B. 2482 seeks to combat ORC in Texas.

H.B. 2482 targets the patterns of these crimes committed by corrupt enterprises by allowing the major players and ring leaders to be held accountable. This bill makes it a crime to receive the stolen goods; intentionally conduct, promote, or facilitate the corrupt activity; or be employed by or associated with the enterprise by engaging in the activity

These criminal groups are also particularly nimble—able to easily change their appearance, alter their method of operation, and particularly adept at circumventing security devices and procedures.

The large dollar losses typically occur through the fire exits, as criminals stage hundreds and sometimes thousands of dollars worth of high dollar merchandise, typically at the back of the store and have their accomplice drive around the building, either communicating with walkie-talkies or cell phones, and then break out the exit to the waiting vehicle, which takes 10 to 20 seconds to load the merchandise and escape undetected. A typical shoplift would be approximately \$200, where a theft committed through fire exits range from \$1,000 to \$6,000. The more time they have, typically the more they steal. Current law does not address the disabling of fire exit alarms. It only addresses setting off an alarm as a distraction, which is rarely the case. It does happen, however typically criminals cut the electrical wiring on fire exit devices, and/or punch out the speakers, with an awl, or similar tool, to the fire exit alarm, so it will not sound, and therefore allowing them to not be detected.

H.B. 2482 gives retailers, law enforcement and prosecutors the tools they need to help protect society from ORC.

H.B. 2482 amends current law relating to the prosecution of and punishment for certain offenses involving theft.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 31.01, Penal Code, by adding Subdivisions (11) through (14) to define "retail merchandise," "retail theft detector," "shielding or deactivation instrument," and "fire exit alarm."

SECTION 2. Amends Section 31.03(f), Penal Code, to provide that an offense described for purposes of punishment by Subsections (e)(1)-(e)(6) (providing, respectively, that an offense under this section is classified as either a Class C misdemeanor, Class B misdemeanor, Class A misdemeanor, state fail felony, a felony of the third degree, or felony of the second degree) is increased to the next higher category of offense if it is shown on the trial of the offense that during the commission of the offense, the actor intentionally, knowingly, or recklessly caused a fire exit alarm to sound or otherwise become activated, deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding, or used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector. Makes a nonsubstantive change.

SECTION 3. Amends Sections 31.16(b), (c), and (d), Penal Code, as follows:

(b) Provides that a person commits an offense if the person intentionally conducts, promotes, or facilitates an activity in which the person receives, possesses, conceals, stores, barter, sells, or disposes of stolen retail merchandise, or merchandise explicitly represented to the person as being stolen retail merchandise, rather than a total value of not less than \$1,500 of stolen retail merchandise or merchandise explicitly represented to the person as being stolen retail merchandise.

(c) Provides that an offense under this section is:

(1) a Class B misdemeanor if the total value of the merchandise involved in the activity is less than \$50;

(2) a Class A misdemeanor if the total value of the merchandise involved in the activity is \$50 or more but less than \$500;

(3) a state fail felony if the total value of the merchandise involved in the activity is \$500 or more but less than \$1,500, rather than \$1,500 or more but less than \$20,000;

(4) a felony of the third degree if the total value of the merchandise involved in the activity is \$1,500 or more but less than \$20,000, rather than \$20,000 or more but less than \$100,000;

(5) a felony of the second degree if the total value of the merchandise involved in the activity is \$20,000 or more but less than \$100,000, rather than \$100,000 or more but less than \$200,000; or

(6) a felony of the first degree if the total value of the merchandise involved in the activity is \$100,000 or more, rather than \$200,000 or more.

Makes nonsubstantive changes.

(d) Provides that an offense described for purposes of punishment by Subsections (c)(1)-(5) is increased to the next higher category of offense if it is shown on the trial of the offense that:

(1) the person organized, supervised, financed, or managed one or more other persons engaged in an activity described by Subsection (b); or

(2) during the commission of the offense, a person engaged in an activity described by Subsection (b) intentionally, knowingly, or recklessly:

(A) caused a fire exit alarm to sound or otherwise become activated;

(B) deactivated or otherwise prevented a fire exit alarm or retail theft detector from sounding; or

(C) used a shielding or deactivation instrument to prevent or attempt to prevent detection of the offense by a retail theft detector.

SECTION 4. Repealers: Sections 31.15(a) (defining "retail theft detector" and "shielding or deactivation instrument"), 31.16(a) (defining "retail merchandise"), and 31.16(e) (providing that, for the purposes of punishment, an offense under this section or an offense described by Section 31.03(e)(1) or (2) is increased to the next highest category of offense if it is shown at the trial of the offense that the defendant, with the intent that a distraction from the commission of the offense be created, intentionally, knowingly, or recklessly caused an alarm to sound or otherwise become activated during the commission of the offense), Penal Code.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2011.