

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

SENATE BILL 766
RATIFIED BILL

AN ACT TO INCREASE THE PENALTIES FOR ORGANIZED RETAIL THEFT, TO PROVIDE ADDITIONAL PENALTIES FOR DAMAGE TO PROPERTY OR ASSAULT OF A PERSON DURING THE COMMISSION OF ORGANIZED RETAIL THEFT, TO PROVIDE ADDITIONAL RECOVERY TO RETAIL ESTABLISHMENTS FOR LOSS DUE TO ORGANIZED RETAIL THEFT, AND TO REGULATE HIGH-VOLUME THIRD-PARTY SELLERS OPERATING ON ONLINE MARKETPLACES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-86.6 reads as rewritten:

"§ 14-86.6. Organized retail theft.

(a) Offense. – A person ~~is guilty of a Class H felony~~ commits the offense of organized retail theft if the person does ~~either any~~ of the following:

- (1) ~~Conspires with another person to commit theft of retail property from retail establishments, with a value exceeding one thousand five hundred dollars (\$1,500) aggregated over a 90-day period, establishments~~ with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.
- (2) Receives or possesses any retail property that has been taken or stolen in violation of subdivision (1) of this subsection while knowing or having reasonable grounds to believe the property is stolen.

(a1) ~~A person is guilty of a Class G felony if the person does either of the following:~~

- ~~(1) Conspires with another person to commit theft of retail property from one or more retail establishments, with a value exceeding twenty thousand dollars (\$20,000) aggregated over a 90-day period, with the intent to sell that retail property for monetary or other gain, and who takes or causes that retail property to be placed in the control of a retail property fence or other person in exchange for consideration.~~
- ~~(2)~~(3) Conspires 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 effectuate the transfer or sale of property stolen from a merchant in violation of this section.

(a2) Punishments. – The following classifications apply to the offense of organized retail theft:

- (1) An offense when the retail property has a value exceeding one thousand five hundred dollars (\$1,500) aggregated over a 90-day period is a Class H felony.
- (2) An offense when the retail property has a value exceeding twenty thousand dollars (\$20,000) aggregated over a 90-day period is a Class G felony.
- (3) An offense when the retail property has a value exceeding fifty thousand dollars (\$50,000) aggregated over a 90-day period is a Class F felony.



(4) An offense when the retail property has a value exceeding one hundred thousand dollars (\$100,000) aggregated over a 90-day period is a Class C felony.

(b) ~~Any~~ Forfeiture. – Except as otherwise provided in G.S. 14-86.1, any interest a person has acquired or maintained in violation of this section shall be subject to forfeiture pursuant to the procedures for forfeiture set out in G.S. 18B-504.

(c) Multiple Thefts. – Thefts of retail property occurring in more than one county may be aggregated into an alleged violation of this section. Each county where a part of the charged offense occurs has concurrent venue as described in G.S. 15A-132."

SECTION 2. Article 16A of Chapter 14 of the General Statutes is amended by adding a new section to read:

"§ 14-86.7. Damage to property during organized retail theft; assault during organized retail theft.

(a) Damage to Property During Organized Retail Theft. – A person commits the offense of damage to property during organized retail theft if the person conspires with another person to commit theft of retail property from a retail establishment with a value exceeding one thousand dollars (\$1,000) and damages, destroys, or defaces real or personal property in excess of one thousand dollars (\$1,000).

(b) Assault During Organized Retail Theft. – A person commits the offense of assault during organized retail theft if the person conspires with another person to commit theft of retail property from a retail establishment with a value exceeding one thousand dollars (\$1,000) and commits an act of assault and battery against an employee or independent contractor of the retail establishment or a law enforcement officer in the commission of the theft of retail property.

(c) Punishment. – A violation of this section is a Class A1 misdemeanor."

SECTION 3. G.S. 14-86.1(a) reads as rewritten:

"(a) All conveyances, including vehicles, ~~watercraft~~ watercraft, or aircraft, used to unlawfully conceal, ~~convey~~ convey, or transport property in violation of G.S. 14-71, 14-71.1, or ~~14-71.2 or 14-71.2,~~ used by any person in the commission of armed or common-law robbery, ~~or~~ used in violation of G.S. 14-72.7, ~~or~~ used by any person in the commission of any larceny when the value of the property taken is more than two thousand dollars ~~(\$2,000) (\$2,000),~~ or used by any person in the commission of organized retail theft in violation of G.S. 14-86.6 shall be subject to forfeiture as provided herein, except that:

- (1) No conveyance used by any person as a common carrier in the transaction of the business of the common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in custody or control of such conveyance was a consenting party or privy to a violation that may subject the conveyance to forfeiture under this section;
- (2) No conveyance shall be forfeited under the provisions of this section by reason of any act or omission committed or omitted while such conveyance was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States, or any state;
- (3) No conveyance shall be forfeited pursuant to this section unless the violation involved is a felony;
- (4) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party who neither had knowledge of nor consented to the act or omission;
- (5) No conveyance shall be forfeited under the provisions of this section unless the owner knew or had reason to believe the vehicle was being used in the commission of any violation that may subject the conveyance to forfeiture under this section;

- (6) The trial judge in the criminal proceeding which may subject the conveyance to forfeiture may order the seized conveyance returned to the owner if he finds forfeiture inappropriate. If the conveyance is not returned to the owner the procedures provided in subsection (e) shall apply.

As used in this section concerning a violation of G.S. 14-72.7, the term "conveyance" includes any "instrumentality" as defined in that section."

SECTION 4. G.S. 15-11.1 is amended by adding a new subsection to read:

"(b2) Notwithstanding subsections (a), (b), and (b1) of this section or any other provision of law, if the property seized is retail property or other property that is evidence of a violation of Article 16, Article 16A, or Article 18 of Chapter 14 of the General Statutes, or a violation of G.S. 14-100, upon request of the lawful owner or a person, firm, or corporation entitled to possession or upon his own determination, the district attorney may make application to the court for an order authorizing the return of the property to the lawful owner or person, firm, or corporation entitled to possession prior to any trial of the offenses for which the property was seized as evidence. Upon application to the court, the district attorney shall notify the defendant of the request for return of the property and provide the defendant 10 business days to inspect and photograph the property. The court, after notice to all parties, including the defendant, and after hearing, shall order any or all of the property returned to the lawful owner or a person, firm, or corporation entitled to possession if the court finds all of the following:

- (1) The defendant has been given notice and an opportunity to inspect and photograph the property prior to the hearing.
- (2) Photographs or other identification or analyses made of the property will provide sufficient evidence at the time of trial.
- (3) The introduction of such substitute evidence is not likely to substantially prejudice the rights of the defendant in the criminal trial.
- (4) There is satisfactory evidence of ownership.

Photographs or other identification or analyses made of any property returned pursuant to this subsection shall be presumed admissible in lieu of the actual property at any subsequent criminal trial for violation of Article 16, Article 16A, or Article 18 of Chapter 14 of the General Statutes, or violation of G.S. 14-100. Any property returned pursuant to this subsection does not need to be made available for evidence at the time of trial and may be sold or disposed of in any lawful manner by the lawful owner or person, firm, or corporation entitled to possession."

SECTION 5. G.S. 1-538.2 reads as rewritten:

"§ 1-538.2. Civil liability for larceny, shoplifting, theft by employee, organized retail theft, embezzlement, and obtaining property by false pretense.~~pretense, and other offenses.~~

(a) Any person, other than an unemancipated minor, who commits an act that is punishable under G.S. 14-72, 14-72.1, 14-72.11, 14-74, 14-86.6, 14-86.7, 14-90, or 14-100 is liable for civil damages to the owner of the property. In any action brought by the owner of the property, the owner is entitled to recover the value of the goods or merchandise, if the goods or merchandise have been destroyed, or any loss of value to the goods or merchandise, if the goods or merchandise were recovered, or the amount of any money lost by reason of the theft or embezzlement or fraud of an employee. The owner of the property is also entitled to recover for loss to real or personal property caused in the commission of the act. In addition to the above, the owner of the property is entitled to recover any consequential damages, and punitive damages, together with reasonable attorneys' fees. The total ~~compensatory and consequential~~ damages awarded to a plaintiff against a defendant under this section shall not be less than one hundred fifty dollars (\$150.00) and shall not exceed ~~one thousand dollars (\$1,000), three thousand dollars (\$3,000)~~ except an act punishable under ~~G.S. 14-74 or G.S. 14-90~~ G.S. 14-74, 14-86.6, 14-86.7, or 14-90 shall have no maximum limit under this section.

(b) The parent or legal guardian, having the care, custody and control of an unemancipated minor who commits an act punishable under G.S. 14-72, 14-72.1, 14-72.11, 14-74, 14-86.6, 14-86.7, 14-90, or 14-100, is civilly liable to the owner of the property obtained by the act if such parent or legal guardian knew or should have known of the propensity of the child to commit such an act; and had the opportunity and ability to control the child, and made no reasonable effort to correct or restrain the child. In an action brought against the parent or legal guardian by the owner, the owner is entitled to recover the amounts specified in subsection (a) except punitive damages. The total ~~compensatory and~~ consequential damages awarded to a plaintiff against the parent or legal guardian shall not be less than one hundred fifty dollars (\$150.00) and shall not exceed ~~one thousand dollars (\$1,000)~~ three thousand dollars (\$3,000).

(c) An action may be brought under this section regardless of whether a criminal action is brought or a criminal conviction is obtained for the act alleged in the civil action.

(c1) For the purposes of this section, consequential damages shall include, but shall not be limited to:

- (1) The salary paid to any employee for investigation, reporting, testifying, or any other time related to the investigation or prosecution for any violation under subsection (a) of this section; and
- (2) Any costs, such as mileage, postage, stationery, or telephone expenses that were incurred as a result of the violation.

~~(c2) The owner of the property may seek payment for damages under subsections (a) and (b) of this section prior to filing a civil action, by sending the violator a demand letter. If such a letter is sent, it shall be substantially similar to the following:~~

~~"Our records show that on (date), you unlawfully took possession of property from (store name/owner of the property), located in (city, state), without the consent of (store name/owner of the property), without paying for the property, and with the intent of converting the property to your own use. In accordance with G.S. 1-538.2, we are authorized to demand that you pay damages of one hundred fifty dollars (\$150.00).~~

~~In the event you fail to comply with our demand for one hundred fifty dollars (\$150.00) within 15 days from the date of your receipt of the notice, you may be held civilly liable for an amount not less than one hundred fifty dollars (\$150.00) and not more than one thousand dollars (\$1,000) in a civil action against you to recover the penalties and damages authorized by law, which include court costs and attorneys' fees. If you pay the one hundred fifty dollars (\$150.00), (store name/owner of the property) will have no further civil remedy against you arising from the events occurring on (date).~~

~~If you are the parent or legal guardian of an unemancipated minor who unlawfully took possession of property as set out above, you can be held liable if you knew or should have known of the propensity of the child to commit the act complained of, and you had the opportunity and ability to control the child and you made no reasonable effort to correct or restrain the child.~~

~~If you believe you have received this notice in error, please contact (name) immediately.~~

~~YOU HAVE A RIGHT TO CONTEST YOUR LIABILITY IN COURT."~~

~~(c3) The owner of the property sending the demand letter required by this section shall have qualified privilege from any civil liability resulting therefrom provided that there is no excessive publication and that the owner acted in good faith and without malice.~~

~~(c4) If the recipient of a notice pursuant to subsection (c2) of this section pays the demanded one hundred fifty dollars (\$150.00) within 15 days of the recipient's receipt of the notice, the owner of the property shall have no further civil remedy against that violator for the incident described in the notice.~~

(d) Nothing contained in this act shall prohibit recovery upon any other theory in the law."

SECTION 6. Chapter 66 of the General Statutes is amended by adding a new Article to read:

"Article 50.

"Regulation of High-Volume Third-Party Sellers Operating on Online Marketplaces.

"§ 66-490. Purpose.

The General Assembly recognizes that many of its citizens rely heavily on the purchase of goods through online commerce. In order to protect the citizens of North Carolina from purchasing counterfeit or stolen goods from certain high-volume third-party sellers selling these goods through online marketplaces, the General Assembly finds it necessary to require online marketplaces to collect and maintain identifying information for high-volume third-party sellers.

"§ 66-491. Definitions.

The following definitions apply in this Article:

- (1) Consumer product. – Any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes, including any property intended to be attached to or installed in real property without regard to whether it has been attached or installed.
- (2) High-volume third-party seller. – A participant in an online marketplace that meets all of the following criteria:
 - a. Is a third-party seller.
 - b. Has, in any continuous 12-month period during the previous 24 months, entered into 200 or more separate sales or transactions of new or unused consumer products through the online marketplace to consumers in this State.
 - c. Has an aggregate total of five thousand dollars (\$5,000) or more in gross revenues for the sales or transactions described in sub-subdivision b. of this subdivision.
 - d. Payment for the sales was processed by the online marketplace or through a third party.
- (3) Online marketplace. – Any person or entity that operates a consumer-directed, electronically based or accessed platform that meets all of the following criteria:
 - a. Includes features that allow for, facilitate, or enable third-party sellers to engage in the sale, purchase, payment, storage, shipment, or delivery of a consumer product within this State.
 - b. Is used by one or more third-party sellers to engage in the sale, purchase, payment, storage, shipment, or delivery of a consumer product within this State.
 - c. Has a contractual or similar relationship with consumers governing consumer use of the platform to purchase consumer products.
- (4) Seller. – A person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace's platform.
- (5) Third-party seller. – Any seller, independent of an online marketplace, that sells, offers to sell, or contracts to sell a consumer good in this State through an online marketplace. With respect to an online marketplace, a third-party seller does not include either of the following:
 - a. A seller that operates the online marketplace platform.
 - b. A business entity that meets all of the following requirements:
 1. Makes available to the general public the entity's name, business address, and working contact information.

2. Has an ongoing contractual relationship with the online marketplace to provide the online marketplace with the manufacture, distribution, wholesaling, or fulfillment of shipments of consumer products.
 3. Provides to the online marketplace the identity information required under subsection (a) of G.S. 66-492 that has been verified in accordance with subsection (d) of G.S. 66-492.
- (6) Verify. – To confirm information and documents provided to an online marketplace pursuant to this Article through the use of one or more methods that enable an online marketplace to reliably determine that the information and documents provided are valid, correspond to the seller or an individual acting on the seller's behalf, are not misappropriated, and are not falsified.

"§ 66-492. Verification of high-volume third-party seller information by online marketplace.

(a) No more than 10 days after a seller becomes a high-volume third-party seller on an online marketplace platform, the online marketplace shall require the high-volume third-party seller to provide all of the following information:

- (1) A bank account number or, if the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller. This information may be provided by the high-volume third-party seller to the online marketplace or to a third party contracted by the online marketplace to maintain the required information; provided, however, that the online marketplace ensures that it can obtain the required information from the third party on demand.
 - (2) Contact information for the high-volume third-party seller, including one of the following:
 - a. If the high-volume third-party seller is an individual, the individual's name.
 - b. If the high-volume third-party seller is not an individual, one of the following:
 1. A copy of a valid government-issued identification for an individual acting on behalf of the seller that includes the individual's name.
 2. A copy of a valid government-issued record or tax document that includes the business name and physical address of the seller.
 - (3) A business tax identification number, or if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number.
 - (4) A current email address and telephone number for the high-volume third-party seller.
- (b) An online marketplace shall do all of the following:
- (1) Periodically, but not less than annually, notify each high-volume third-party seller on its platform of the requirement to keep current the information required pursuant to subsection (a) of this section.
 - (2) Require each high-volume third-party seller on its platform to, no later than 10 days after receiving the notice issued pursuant to subdivision (1) of this subsection, electronically certify one of the following statements regarding the information required pursuant to subsection (a) of this section:
 - a. That the information previously provided is current and correct.
 - b. That any changes to the required information have been provided.

(c) If an online marketplace provides notice to a high-volume third-party seller as required by this section and the seller does not provide the information or certification required within 10 days of the issuance of the notice, the online marketplace shall immediately suspend any future sales activity of that seller until the seller provides the required information or certification.

(d) Within 10 days of receipt of any information and documents collected pursuant to subsection (a) of this section or any changes to information or documents submitted pursuant to subsection (b) of this section, an online marketplace shall verify the information and documents received.

(e) If a high-volume third-party seller provides a copy of a valid government issued tax document, any information contained within that document shall be presumed to be verified as of the date the document was issued.

"§ 66-493. Disclosure of high-volume third-party seller information to consumers.

(a) Except as provided in subsection (b) of this section, an online marketplace shall require any high-volume third-party seller with an aggregate total of twenty thousand dollars (\$20,000) or more in annual gross revenues on its platform to provide to the online marketplace and disclose to consumers in a clear and conspicuous manner all of the following identity information:

- (1) Full name of the high-volume third-party seller, including the seller's name or company name or the name by which the seller or company operates on the online marketplace.
- (2) Physical address of the seller.
- (3) Contact information for the seller that will allow for direct, unhindered communication with the seller by consumers of the online marketplace, including at least one of the following:
 - a. A current telephone number.
 - b. A current email address.
 - c. Other means of direct electronic messaging, which may be provided to the seller by the online marketplace; provided, however, that nothing in this sub-subdivision shall prohibit the online marketplace from preventing actual fraud, abuse, or spam through any communication method provided by the online marketplace.
- (4) Whether or not the high-volume third-party seller used a different seller to supply the product to the consumer upon purchase, and upon request of an authenticated purchaser, the information described in subdivisions (1) through (3) of this subsection for any seller that is different from the high-volume third-party seller listed on the product listing page prior to purchase. Any information required by this subdivision shall be provided on the product listing page, directly or via hyperlink to the consumer, or after the purchase is finalized in the order confirmation message or other document provided or communication made to a consumer and in the consumer's account transaction history.

(b) Upon the request of a high-volume third-party seller, an online marketplace may provide for partial disclosure of the identity information required under subsection (a) of this section under any of the following circumstances in the manner provided:

- (1) If the seller certifies that the seller does not have a business address and only has a residential street address, or has a combined business and residential address, the online marketplace shall do both of the following:
 - a. Disclose only the country and, if applicable, the city and state in which the seller resides.

b. Inform consumers that there is no business address available for the seller and that consumer inquiries should be submitted to the seller by telephone, email, or other means of electronic messaging provided to the seller by the online marketplace.

(2) If the seller is a business that has a physical address for product returns, the online marketplace shall disclose the seller's physical address for product returns.

(3) If the seller does not have a telephone number other than a personal telephone number, the online marketplace shall inform consumers that there is no telephone number available for the seller and that consumer inquiries should be submitted to the seller's email address or other means of electronic messaging provided to the seller by the online marketplace.

(c) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to the online marketplace in order to justify the provision of a partial disclosure of identity information pursuant to subsection (b) of this section, or that a high-volume third-party seller that has requested and received partial disclosure has not provided responsive answers within a reasonable period of time to consumer inquiries submitted to the seller by telephone, email, or other means of electronic messaging provided to the seller by the online marketplace, the online marketplace shall provide the seller with written or electronic notice of the allegation of false representation or failure to be responsive to consumers and the seller's opportunity to respond. No more than 10 days after the issuance of the notice, the online marketplace shall suspend any future sales activity of the seller unless the seller consents to the disclosure of the identity information required under subsection (a) of this section.

(d) If a high-volume third-party seller does not comply with the requirements to provide and disclose information under this section, the online marketplace shall provide the seller with written or electronic notice and an opportunity to provide or disclose the required information. If the seller does not provide or disclose the required information within 10 days of the issuance of the notice, the online marketplace shall immediately suspend any future sales activity of that seller until the seller complies with the requirements of this section.

(e) An online marketplace shall disclose to consumers in a clear and conspicuous manner on the product listing of any high-volume third-party seller a reporting mechanism that allows suspicious marketplace activity to be reported to the online marketplace by electronic and telephonic means.

"§ 66-494. Limitation on use of information; security of marketplace information.

(a) Information or documents collected solely to comply with the requirements of this Article shall not be used for any other purpose unless required by law.

(b) An online marketplace shall implement and maintain reasonable security procedures and practices, including administrative, physical, and technical safeguards, appropriate to the nature of the data and the purposes for which the data will be used, to protect the information or documents collected to comply with the requirements of this Article from unauthorized use, disclosure, access, destruction, or modification.

"§ 66-495. Enforcement.

(a) If the Attorney General has reason to believe that any online marketplace has violated or is violating this Article and the violation affects one or more residents of this State, the Attorney General may bring a civil action in any appropriate court to do any of the following:

(1) Enjoin further violation by the defendant.

(2) Enforce compliance with this Article.

(3) Obtain damages, restitution, or other compensation on behalf of the residents of this State.

(4) Obtain other remedies permitted under State law.

(b) Any violation of this Article shall also be a violation of Chapter 75 of the General Statutes; provided, however, that only public remedies as administered by the Attorney General shall be available under that Chapter for violations of this Article.

(c) Nothing in this Article shall be construed to prohibit any district attorney, law enforcement officer, official, or agency of this State from initiating or continuing any proceeding in a court against an online marketplace for failure to comply with any other civil law or a violation of a criminal law of this State."

SECTION 7. 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. The remainder of this act is effective when it becomes law.

In the General Assembly read three times and ratified this the 29th day of June, 2022.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2022