~~Indicates Matter Stricken~~

Indicates New Matter

COMMITTEE REPORT

May 29, 2013

**H. 3602**

Introduced by Reps. Weeks, Cobb‑Hunter, Clemmons, Pope, Kennedy, M.S. McLeod, Tallon, Murphy, Crosby, McCoy, Dillard, Long, Bowen, Munnerlyn, Sellers, Limehouse, Brannon, Gilliard, Bales, Barfield, Bowers, Branham, G.A. Brown, R.L. Brown, Daning, Delleney, Edge, Funderburk, Henderson, Horne, Howard, Huggins, Jefferson, Loftis, Lowe, W.J. McLeod, Merrill, D.C. Moss, Norman, Powers Norrell, Quinn, Sandifer, Simrill, G.M. Smith, Spires, Taylor, Wells, Whipper, Wood, Newton, Riley, Anderson and Erickson

S. Printed 5/29/13--S. [SEC 5/30/13 5:18 PM]

Read the first time April 23, 2013.

**THE COMMITTEE ON JUDICIARY**

To whom was referred a Bill (H. 3602) to amend the Code of Laws of South Carolina, 1976, by adding Section 16‑13‑131 so as to create an offense relating to stealing goods or merchandise from, etc., respectfully

**REPORT:**

That they have duly and carefully considered the same and recommend that the same do pass with amendment:

Amend the bill, as and if amended, page 2, by striking SECTION 1 in its entirety and inserting:

/ SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

“Section 16‑13‑131. (A) It is unlawful for a person to create or conspire with another person to create a product code for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(B) It is unlawful for a person to commit or conspire with another person to commit larceny against a merchant by affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(C) A person who violates this section:

(1) 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; and

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than ten years, or both.” /

Amend the bill further, as and if amended, pages 2-3, by striking SECTION 2 in its entirety and inserting:

/ SECTION 2. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

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

(1) ‘Retail property’ means a new article, product, commodity, item, or component intended to be sold in retail commerce.

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

(3) ‘Theft’ means to take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) ‘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 establishment, 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;

(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) 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 is subject to forfeiture pursuant to the procedures for forfeiture as provided in Section 44‑53‑530.

(E) A person who violates this section:

(1) 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; and

(2) for a second or subsequent offense, is guilty of a felony and, upon conviction, must be fined not more than ten thousand dollars or imprisoned for not more than twenty years, or both.” /

Amend the bill further, as and if amended, page 6, by striking lines 9-12, and inserting:

/ ~~(F)~~(H) Upon full satisfaction of a judgment entered ~~under~~ pursuant to this section, the judgment creditor must record the satisfaction on the margin of the copy of the judgment on file in the civil judgment records of the court.

(I) Any funds resulting from the collection of a judgement for unpaid fines, costs, fees, surcharges, or assessments must be distributed in the same manner and proportion as fines, costs, fees, surcharges, or assessments are distributed as otherwise set forth by law.” /

Amend the bill further, as and if amended, by adding an appropriately numbered section to read:

/ SECTION \_\_. Section 16‑13‑180 of the 1976 Code is amended to read:

“Section 16‑13‑180. (A) It is unlawful for a person to buy, receive, or possess stolen goods, chattels, or other property if the person knows or has reason to believe the goods, chattels, or property is stolen. A person is guilty of this offense whether or not anyone is convicted of the property theft ~~of the property~~.

(B) It is unlawful for a person to knowingly receive or possess property from an agent of a law enforcement agency that was represented to the person by the same or other agent of the law enforcement agency as stolen. For purposes of this section, the person receiving or possessing the property need not know the person is receiving or has received the property from an agent of a law enforcement agency, and the property need not be actually stolen.

(C) A person who violates ~~the provisions of~~ this section is guilty of a:

(1) misdemeanor triable in magistrates court or municipal court, notwithstanding the provisions of Sections 22‑3‑540, 22‑3‑545, 22‑3‑550, and 14‑25‑65, if the value of the property is two thousand dollars or less. Upon conviction, the person must be fined not more than one thousand dollars~~,~~ or imprisoned not more than thirty days;

(2) ~~felony~~ misdemeanor, and, upon conviction, must be fined not less than one thousand dollars or imprisoned not more than ~~five~~ three years, if the value of the property is more than two thousand dollars but less than ten thousand dollars; or

(3) felony, and, upon conviction, must be fined not less than two thousand dollars or imprisoned not more than ten years, if the value of the property is ten thousand dollars or more.

~~(C)~~(D) For ~~the~~ purposes of this section, the receipt of multiple items in a single transaction or event constitutes a single offense.

(E) 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 whether the violation is a misdemeanor or felony as provided in subsection (C).” /

Renumber sections to conform.

Amend title to conform.

C. BRADLEY HUTTO for Committee.

**STATEMENT OF ESTIMATED FISCAL IMPACT**

ESTIMATED FISCAL IMPACT ON GENERAL FUND EXPENDITURES:

A Cost to the General Fund (See Below)

ESTIMATED FISCAL IMPACT ON FEDERAL & OTHER FUND EXPENDITURES:

A Cost of Federal and/or Other Funds (See Below)

**EXPLANATION OF IMPACT:**

Department of Corrections

The department indicates that this bill will have a fiscal impact on the General Fund of the State due to the new and potentially longer sentences that can be assigned to offenders who are charged under these new guidelines. Unfortunately due to the lack of empirical data, the agency is unable to provide an estimate of what the overall impact would be to the agency.

Judicial Department

The department indicates that this bill will have a minimal impact on the General Fund of the State, which the agency can absorb at their current level of funding.

The Department of Probation, Parole and Pardon Services

The department indicates that this bill will have no fiscal impact on the General Fund of the State, or on federal and/or other funds.

**LOCAL GOVERNMENT:**

Pursuant to Section 2-7-76 of the Code of Laws of South Carolina, 1976, the State Budget Division has surveyed members of the FIST Network. The responses will be forwarded upon receipt.

*Approved By:*

Brenda Hart

Office of State Budget

**A** **BILL**

TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING SECTION 16‑13‑131 SO AS TO CREATE AN OFFENSE RELATING TO STEALING GOODS OR MERCHANDISE FROM A MERCHANT BY AFFIXING A PRODUCT CODE AND TO PROVIDE A PENALTY; BY ADDING SECTION 16‑13‑135 SO AS TO DEFINE NECESSARY TERMS, CREATE AN OFFENSE RELATING TO RETAIL THEFT, AND TO PROVIDE A PENALTY; TO AMEND SECTION 16‑13‑440, RELATING TO THE USE OF A FALSE OR FICTITIOUS NAME OR ADDRESS TO OBTAIN A REFUND FROM A BUSINESS ESTABLISHMENT FOR MERCHANDISE, SO AS TO INCLUDE USING A FALSE OR ALTERED IDENTIFICATION CARD TO COMMIT CERTAIN RETAIL THEFT OFFENSES; TO AMEND SECTION 16‑13‑180, AS AMENDED, RELATING TO RECEIVING STOLEN GOODS, SO AS TO INCLUDE RECEIVING OR POSSESSING STOLEN GOODS WHEN THE PERSON IS ON NOTICE BY LAW ENFORCEMENT THAT THE GOODS ARE STOLEN; TO AMEND SECTION 17‑25‑323, RELATING TO DEFAULT ON COURT‑ORDERED PAYMENTS INCLUDING RESTITUTION BY PERSONS ON PROBATION OR PAROLE AND CIVIL JUDGMENTS AND LIENS, SO AS TO INCLUDE DEFENDANTS WHO DEFAULT ON THE VARIOUS MAGISTRATES COURT OR MUNICIPAL COURT‑ORDERED PAYMENTS INCLUDING RESTITUTION IN THE PURVIEW OF THE STATUTE AND TO PROVIDE THAT A FILING FEE OR OTHER FEE MAY NOT BE REQUIRED WHEN SEEKING A CIVIL JUDGMENT; TO AMEND SECTION 14‑25‑65, AS AMENDED, RELATING TO PENALTIES THE MAGISTRATES COURT MAY IMPOSE, RESTITUTION, AND CONTEMPT, SO AS TO ALLOW A MAGISTRATE TO CONVERT CERTAIN UNPAID COURT‑ORDERED PAYMENTS TO A CIVIL JUDGMENT; AND TO AMEND SECTION 22‑3‑550, AS AMENDED, RELATING TO THE JURISDICTION OF THE MAGISTRATES COURT OVER MINOR OFFENSES, RESTITUTION, AND CONTEMPT, SO AS TO ALLOW A MAGISTRATE TO CONVERT CERTAIN UNPAID COURT‑ORDERED PAYMENTS TO A CIVIL JUDGMENT AND TO INCLUDE VIOLATIONS OF SECTIONS 16‑13‑180 AND 16‑13‑440 IN THOSE OFFENSES FOR WHICH A MAGISTRATE HAS THE POWER TO SENTENCE A PERSON TO CONSECUTIVE TERMS OF IMPRISONMENT TOTALING MORE THAN NINETY DAYS.

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

SECTION 1. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

“Section 16‑13‑131. (A) It is unlawful to commit larceny against a merchant by affixing a product code created for the purpose of fraudulently obtaining goods or merchandise from a merchant at less than its actual sale price.

(B) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than five years, or both.”

SECTION 2. Article 1, Chapter 13, Title 16 of the 1976 Code is amended by adding:

“Section 16‑13‑135. (A) As used in this section, the term:

(1) ‘Retail property’ means a new article, product, commodity, item, or component intended to be sold in retail commerce.

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

(3) ‘Theft’ means to take possession of, carry away, transfer, or cause to be carried away the retail property of another with the intent to steal the retail property.

(4) ‘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 any retail establishment, with a value exceeding two thousand dollars aggregated over a ninety‑day period, with the intent to sell that retail property for monetary or other gain, and sell, barter, take, or cause that retail property to be placed in the control of a retail property fence or other person in exchange for consideration;

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

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

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

(3) receive or possess 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 theft of the property.

(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) Interest a person has acquired or maintained in violation of this section is subject to forfeiture pursuant to the procedures for forfeiture as provided in Section 44‑53‑530.

(E) A person who violates the provisions of this section is guilty of a felony and, upon conviction, must be fined not more than five thousand dollars or imprisoned for not more than ten years, or both.”

SECTION 3. Section 16‑13‑440 of the 1976 Code is amended to read:

“Section 16‑13‑440. (A) It is unlawful for ~~any~~ a person to give a false or fictitious name or address, or to give the name or address of ~~any other~~ another person without that person’s approval, for the purpose of obtaining or attempting to obtain a refund from a business establishment for merchandise. ~~(B)~~ ~~Any~~ A person who violates the provisions of this subsection ~~(A) of this section~~ is guilty of a misdemeanor and, upon conviction, ~~shall~~ must be ~~punished by a fine~~ fined not ~~to exceed~~ more than two hundred dollars or ~~by imprisonment~~ imprisoned for ~~a term~~ not ~~to exceed~~ more than thirty days.

(B) It is unlawful for a person to obtain or attempt to obtain a refund in the form of cash, check, credit on a credit card, merchant gift card, or credit in any other form from a merchant using a motor vehicle driver’s license not issued to the person, a motor vehicle driver’s license containing false information, an altered motor vehicle driver’s license, an identification card containing false information, an altered identification card, or an identification card not issued to the person. A person who violates the provisions of this subsection:

(1) when the value is less than two thousand dollars, is guilty of a misdemeanor and, upon conviction, must be fined not more than two thousand five hundred dollars or imprisoned for not more than six months, or both;

(2) when the value is two thousand dollars or more, is guilty of a felony and, upon conviction, must be fined not more than five thousand five hundred dollars or imprisoned for not more than five years, or both; or

(3) regardless of the value involved, if the person has two or more prior convictions for a violation of this subsection, is guilty of a felony and, upon conviction, must be imprisoned for not more than ten years.”

SECTION 4. Section 17‑25‑323 of the 1976 Code is amended to read:

“Section 17‑25‑323. (A) The trial court retains jurisdiction of the case for the purpose of modifying the manner in which court‑ordered payments are made until paid in full, or until the defendant’s active sentence and probation or parole expires.

(B) When a defendant ~~has been~~ is placed on probation by the court or parole by the Board of Probation, Parole, and Pardon Services, and ordered to make restitution, and the defendant is in default in the payment of them or ~~of~~ any installment or ~~of~~ any criminal fines, surcharges, assessments, costs, and fees ordered, the court, before the defendant completes his period of probation or parole, on motion of the victim or the victim’s legal representative, the Attorney General, the solicitor, or a probation and parole agent, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The court must enter:

(1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

(2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney’s fees and cost ordered by the court.

(C) When a defendant is ordered to make restitution by a magistrate or municipal court, and the defendant is in default in the payment of restitution or of any installment or any criminal fines, surcharges, assessments, costs, and fees ordered, the magistrate or municipal court, within one year of the imposition of the sentence, on motion of the victim or the victim’s legal representative, the Attorney General, the solicitor, or the prosecuting law enforcement agency, or upon its own motion, must hold a hearing to require the defendant to show cause why his default should not be treated as a civil judgment and a judgment lien attached. The magistrate or municipal court must enter:

(1) judgment in favor of the State for the unpaid balance, if any, of any fines, costs, fees, surcharges, or assessments imposed; and

(2) judgment in favor of each person entitled to restitution for the unpaid balance if any restitution is ordered plus reasonable attorney’s fees and cost ordered by the court.

Notwithstanding the provisions of Section 14‑25‑65, municipal courts shall have the authority and jurisdiction to convert unpaid restitution, fines, costs, fees, surcharges, and assessments to civil judgments.

The magistrate or municipal court, upon a conversion to a judgment, must transmit the judgment to the clerk of the circuit count in the county for entry pursuant to subsection (F). Judgments entered and docketed pursuant to this subsection must be handled in the same manner and have the same force and effect as judgments entered and docketed pursuant to Sections 22‑3‑300, 22‑3‑310, and 22‑3‑320.

(D) The judgments may be enforced as a civil judgment.

~~(D)~~(E) A judgment issued pursuant to this section has the force and effect of a final judgment and may be enforced by the judgment creditor in the same manner as any other civil judgment with enforcement to take place in the court of common pleas.

~~(E)~~(F) The clerk of the circuit court must enter a judgment issued pursuant to this section in the civil judgment records of the court. A judgment issued pursuant to this section is not effective until entry is made in the civil judgment records of the court as required ~~under~~ pursuant to this subsection.

(G) A filing or other fee may not be required for seeking or for the filing of a civil judgment obtained or issued pursuant to this section.

~~(F)~~(H) Upon full satisfaction of a judgment entered ~~under~~ pursuant to this section, the judgment creditor must record the satisfaction on the margin of the copy of the judgment on file in the civil judgment records of the court.”

SECTION 5. Section 14‑25‑65 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 14‑25‑65. (A) If a municipal judge finds a party guilty of violating a municipal ordinance or a state law within the jurisdiction of the court, he may impose a fine of not more than five hundred dollars or imprisonment for thirty days, or both. In addition, a municipal judge may order restitution in an amount not to exceed the civil jurisdictional amount of magistrates court provided in Section 22‑3‑10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

(B) A municipal judge may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17‑25‑323(C).”

SECTION 6. Section 22‑3‑550 of the 1976 Code, as last amended by Act 273 of 2010, is further amended to read:

“Section 22‑3‑550. (A) Magistrates have jurisdiction of all offenses which may be subject to the penalties of a fine or forfeiture not exceeding five hundred dollars, or imprisonment not exceeding thirty days, or both. In addition, a magistrate may order restitution in an amount not to exceed the civil jurisdictional amount provided in Section 22‑3‑10(2). In determining the amount of restitution, the judge shall determine and itemize the actual amount of damage or loss in the order. In addition, the judge may set an appropriate payment schedule.

A magistrate may hold a party in contempt for failure to pay the restitution ordered if the judge finds the party has the ability to pay. In addition, a magistrate may convert any unpaid restitution, fines, costs, fees, surcharges, and assessments to a civil judgment as provided in Section 17‑25‑323(C).

(B) However, a magistrate ~~shall~~ does not have the power to sentence ~~any~~ a person to consecutive terms of imprisonment totaling more than ninety days except for convictions resulting from violations of Chapter 11 ~~of~~, Title 34, pertaining to fraudulent checks, ~~or~~ violations of Section 16‑13‑110(B)(1), relating to shoplifting, violations of Section 16‑13‑180, relating to receiving stolen goods, or violations of Section 16‑13‑440, relating to defrauding merchants. Further, a magistrate must specify an amount of restitution in damages at the time of sentencing as an alternative to any imprisonment of more than ninety days which is lawfully imposed. The provisions of this subsection do not affect the transfer of criminal matters from the general sessions court made pursuant to Section 22‑3‑545.”

SECTION 7. 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 8. This act takes effect upon approval by the Governor.

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