



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
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This fiscal impact statement is produced in compliance with the South Carolina Code of Laws and House and Senate rules. The focus of the analysis is on governmental expenditure and revenue impacts and may not provide a comprehensive summary of the legislation.

Bill Number: H. 4187 Introduced on March 28, 2023
Author: J.E. Johnson
Subject: Organized Retail Crime
Requestor: House Judiciary
RFA Analyst(s): Gardner
Impact Date: January 24, 2024

Fiscal Impact Summary

This bill adds the unlawful acquisition of merchandise credit to retail theft offenses, expands the existing penalty schedule for retail theft such that first offense penalties are now felony offenses that are based on the value of the theft, modifies the penalty for a second or subsequent offense of retail theft, and creates a new offense for organized retail theft of an aggravated nature and establishes and associated penalty schedule.

This bill will have no expenditure impact on Judicial. The implementation of the bill may result in an increase in general sessions court caseloads, which Judicial anticipated can be managed using existing staff and appropriations.

Also, the Commission on Prosecution Coordination and Commission on Indigent Defense anticipate this bill will have no expenditure impact. Both agencies anticipate being able to manage the increase in workload with existing staff and within existing appropriations. However, if this bill results in a significant increase in the workload, the agencies will request an increase in General Fund appropriations.

This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was \$37,758, of which, \$34,570 was state funded. However, if this bill results in a significant increase in inmate population, Corrections will request an increase in General Fund appropriations.

Additionally, this bill will have no expenditure impact for Probation, Parole & Pardon as the department reports the bill requires the department to perform activities that will be conducted in the normal course of agency business.

The Revenue and Fiscal Affairs Office (RFA) anticipates that this bill may result in an increase in local expenditures due to a potential increase in the local jail population resulting from the newly created misdemeanor punishable by imprisonment or a fine, or both. However, as the number of such offenses that might occur in a given year is unknown, the potential increase in the local jail population and local expenditure is undetermined.

As this bill creates new offenses, this may result in an increase of General Fund, Other Funds and local fine revenue. However, as the number of such offenses and the resulting fines and fees that might occur in a given year is unknown, the revenue impact is undetermined.

Explanation of Fiscal Impact

Introduced on March 28, 2023

State Expenditure

This bill provides that the following offenses are unlawful felony offenses for retail theft:

- Committing theft of merchandise credit from a retail establishment in a value exceeding \$2,000 over a 90-day period when the offender has the intent to sell, barter, take, or cause the credit to be placed in the control of a retail property fence or other person for consideration; and
- Conspiring with another person to commit theft of merchandise credit from a retail establishment in a value exceeding \$2,000, aggregated over a 90-day period, when the offender intends to sell, barter, or exchange the credit for monetary or other gain; place the credit in the control of a retail property fence or other person in exchange for consideration; or illegally or fraudulently obtain confidential data or consumer personally identifiable information for the purpose of converting it into financial gain.

The bill also provides that any property, funds, or interest a person has acquired or maintained in violation of these provisions are subject to forfeiture and modifies the penalty schedules for retail theft as follows:

PENALTY SCHEDULE FOR THEFT OF RETAIL PROPERTY OR MERCHANDISE CREDIT	
<i>Current – First Offense, Misdemeanor</i>	Fine of ≤\$5,000 or imprisonment for ≤3 years, or both, regardless of amount of theft
<i>New – First Offense, Felony</i>	
If value of retail property or merchandise credit is >\$2,000 but <\$10,000	Fine of ≤\$5,000 or imprisonment for ≤3 years, or both
If value of retail property or merchandise credit is >\$20,000 but <\$50,000	Fine of ≤\$10,000 or imprisonment for ≤5 years, or both
If value of retail property or merchandise credit is >\$50,000 but <\$100,000	Fine of ≤\$20,000 or imprisonment for ≤10 years, or both
If value of retail property or merchandise credit is >\$100,000	Fine of ≤\$50,000 or imprisonment for ≤20 years, or both
<i>Current – Second Offense or Subsequent Offense, Felony</i>	Fine of ≤\$10,000 or imprisonment for ≤20 years, or both, regardless of amount of theft
<i>New – Second Offense or Subsequent Offense, Felony</i>	Fine of ≤\$50,000 or imprisonment for ≤20 years, or both, regardless of amount of theft

The bill also provides that organized retail crime is a lesser offense of organized retail crime of an aggravated nature. It also defines organized retail crime of an aggravated nature as consisting of the following, if committed during the act of organized retail crime:

- Damaging real or personal property in excess of \$1,000;
- Assaulting an employee or independent contractor of an establishment;
- Assaulting a law enforcement officer;
- Removing, destroying, or deactivating an antishoplifting or inventory control device;
- Stealing infant formula costing more than \$100;
- Using an emergency exit to remove retail property if the value of the property is more than \$200; or
- Exchanging property for cash, a gift card, a merchandise credit, or other item of value while knowing or having reasonable grounds to believe the property exchanged is stolen.

Persons convicted of felony organized retail theft of an aggravated nature must pay a fine of not more than \$50,000 or be imprisoned for not more than 20 years, or both, regardless of the value of the retail property.

Judicial. Judicial reports that implementation of the bill may result in an increase in general sessions court caseloads, which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for Judicial.

Commission on Prosecution Coordination. The Commission reports that implementation of the bill may result in an increase in work which can be managed using existing staff and appropriations. Therefore, the bill will result in no expenditure impact for the Commission.

Commission on Indigent Defense. This bill creates new offenses, which could result in an increase in the number cases handled by the Commission on Indigent Defense. The agency indicates that if this bill results in a significant increase in the workload, the agency will request an increase in General Fund appropriations.

Department of Corrections. This bill may result in an increase in the number of inmates housed by the Department of Corrections. However, no data are available to estimate the increase in the number of inmates that may be housed by Corrections. According to Corrections, in FY 2022-23, the annual total cost per inmate was \$37,758, of which \$34,570 was state funded. However, as the potential increase in incarcerations is unknown, any expenditure impact for Corrections is undetermined. Corrections indicates that if this bill results in a significant increase in the inmate population, the agency will request an increase in General Fund appropriations.

Department of Probation, Parole & Pardon. The department reports the bill requires Probation, Parole & Pardon to perform activities that will be conducted in the normal course of agency business. As a result, this bill does not have an expenditure impact.

State Revenue

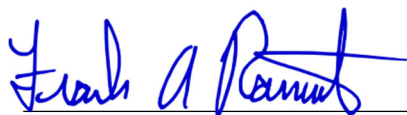
This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, the RFA anticipates this bill may result in an undetermined impact to General Fund and Other Funds revenue due to the increase in fines and fees collections in court.

Local Expenditure

RFA anticipates that this bill may result in an increase in local expenditures due to a potential increase in the local jail population resulting from the newly created felony punishable by imprisonment or a fine, or both. However, as the number of such offenses that might occur in a given year is unknown, the potential increase in the local jail population and local expenditure is undetermined.

Local Revenue

This bill may result in an increase in the fines and fees collected in court. Court fines and fees are distributed to the General Fund, Other Funds, and local funds. Therefore, RFA anticipates this bill may result in an undetermined impact to local revenue due to the increase in fines and fees collections in court.



Frank A. Rainwater, Executive Director