

# HB3774



## 98TH GENERAL ASSEMBLY

### State of Illinois

2013 and 2014

**HB3774**

by Rep. Michael J. Zalewski

#### SYNOPSIS AS INTRODUCED:

720 ILCS 5/16-25

730 ILCS 5/5-5-6

from Ch. 38, par. 1005-5-6

Amends the Criminal Code of 2012 and the Unified Code of Corrections. Increases the threshold amounts for enhanced penalties for retail theft (from over \$300 to over \$500). Provides that a person sentenced for retail theft of property the full retail value of which does not exceed \$500 shall be required to make full restitution to the merchant.

LRB098 15213 RLC 50202 b

A BILL FOR

1 AN ACT concerning criminal law.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Criminal Code of 2012 is amended by changing  
5 Section 16-25 as follows:

6 (720 ILCS 5/16-25)

7 Sec. 16-25. Retail theft.

8 (a) A person commits retail theft when he or she knowingly:

9 (1) Takes possession of, carries away, transfers or  
10 causes to be carried away or transferred any merchandise  
11 displayed, held, stored or offered for sale in a retail  
12 mercantile establishment with the intention of retaining  
13 such merchandise or with the intention of depriving the  
14 merchant permanently of the possession, use or benefit of  
15 such merchandise without paying the full retail value of  
16 such merchandise; or

17 (2) Alters, transfers, or removes any label, price tag,  
18 marking, indicia of value or any other markings which aid  
19 in determining value affixed to any merchandise displayed,  
20 held, stored or offered for sale in a retail mercantile  
21 establishment and attempts to purchase such merchandise at  
22 less than the full retail value with the intention of  
23 depriving the merchant of the full retail value of such

1 merchandise; or

2 (3) Transfers any merchandise displayed, held, stored  
3 or offered for sale in a retail mercantile establishment  
4 from the container in or on which such merchandise is  
5 displayed to any other container with the intention of  
6 depriving the merchant of the full retail value of such  
7 merchandise; or

8 (4) Under-rings with the intention of depriving the  
9 merchant of the full retail value of the merchandise; or

10 (5) Removes a shopping cart from the premises of a  
11 retail mercantile establishment without the consent of the  
12 merchant given at the time of such removal with the  
13 intention of depriving the merchant permanently of the  
14 possession, use or benefit of such cart; or

15 (6) Represents to a merchant that he, she, or another  
16 is the lawful owner of property, knowing that such  
17 representation is false, and conveys or attempts to convey  
18 that property to a merchant who is the owner of the  
19 property in exchange for money, merchandise credit or other  
20 property of the merchant; or

21 (7) Uses or possesses any theft detection shielding  
22 device or theft detection device remover with the intention  
23 of using such device to deprive the merchant permanently of  
24 the possession, use or benefit of any merchandise  
25 displayed, held, stored or offered for sale in a retail  
26 mercantile establishment without paying the full retail

1 value of such merchandise; or

2 (8) Obtains or exerts unauthorized control over  
3 property of the owner and thereby intends to deprive the  
4 owner permanently of the use or benefit of the property  
5 when a lessee of the personal property of another fails to  
6 return it to the owner, or if the lessee fails to pay the  
7 full retail value of such property to the lessor in  
8 satisfaction of any contractual provision requiring such,  
9 within 10 days after written demand from the owner for its  
10 return. A notice in writing, given after the expiration of  
11 the leasing agreement, by registered mail, to the lessee at  
12 the address given by the lessee and shown on the leasing  
13 agreement shall constitute proper demand.

14 (b) Theft by emergency exit. A person commits theft by  
15 emergency exit when he or she commits a retail theft as defined  
16 in subdivisions (a)(1) through (a)(8) of this Section and to  
17 facilitate the theft he or she leaves the retail mercantile  
18 establishment by use of a designated emergency exit.

19 (c) Permissive inference. If any person:

20 (1) conceals upon his or her person or among his or her  
21 belongings unpurchased merchandise displayed, held, stored  
22 or offered for sale in a retail mercantile establishment;  
23 and

24 (2) removes that merchandise beyond the last known  
25 station for receiving payments for that merchandise in that  
26 retail mercantile establishment,

1 then the trier of fact may infer that the person possessed,  
2 carried away or transferred such merchandise with the intention  
3 of retaining it or with the intention of depriving the merchant  
4 permanently of the possession, use or benefit of such  
5 merchandise without paying the full retail value of such  
6 merchandise.

7 To "conceal" merchandise means that, although there may be  
8 some notice of its presence, that merchandise is not visible  
9 through ordinary observation.

10 (d) Venue. Multiple thefts committed by the same person as  
11 part of a continuing course of conduct in different  
12 jurisdictions that have been aggregated in one jurisdiction may  
13 be prosecuted in any jurisdiction in which one or more of the  
14 thefts occurred.

15 (e) For the purposes of this Section, "theft detection  
16 shielding device" means any laminated or coated bag or device  
17 designed and intended to shield merchandise from detection by  
18 an electronic or magnetic theft alarm sensor.

19 (f) Sentence.

20 (1) A violation of any of subdivisions (a)(1) through  
21 (a)(6) and (a)(8) of this Section, the full retail value of  
22 which does not exceed \$500 ~~\$300~~ for property other than  
23 motor fuel or \$150 for motor fuel, is a Class A  
24 misdemeanor. A violation of subdivision (a)(7) of this  
25 Section is a Class A misdemeanor for a first offense and a  
26 Class 4 felony for a second or subsequent offense. Theft by

1 emergency exit of property, the full retail value of which  
2 does not exceed \$500 ~~\$300~~, is a Class 4 felony.

3 (2) A person who has been convicted of retail theft of  
4 property under any of subdivisions (a)(1) through (a)(6)  
5 and (a)(8) of this Section, the full retail value of which  
6 does not exceed \$500 ~~\$300~~ for property other than motor  
7 fuel or \$150 for motor fuel, and who has 2 or more prior  
8 convictions ~~been previously convicted~~ of any type of theft,  
9 robbery, armed robbery, burglary, residential burglary,  
10 possession of burglary tools, home invasion, unlawful use  
11 of a credit card, or forgery is guilty of a Class 4 felony.  
12 A person who has been convicted of theft by emergency exit  
13 of property, the full retail value of which does not exceed  
14 \$500 ~~\$300~~, and who has 2 or more prior convictions ~~been~~  
15 ~~previously convicted~~ of any type of theft, robbery, armed  
16 robbery, burglary, residential burglary, possession of  
17 burglary tools, home invasion, unlawful use of a credit  
18 card, or forgery is guilty of a Class 3 felony.

19 (3) Any retail theft of property under any of  
20 subdivisions (a)(1) through (a)(6) and (a)(8) of this  
21 Section, the full retail value of which exceeds \$500 ~~\$300~~  
22 for property other than motor fuel or \$150 for motor fuel  
23 in a single transaction, or in separate transactions  
24 committed by the same person as part of a continuing course  
25 of conduct from one or more mercantile establishments over  
26 a period of one year, is a Class 3 felony. Theft by

1 emergency exit of property, the full retail value of which  
2 exceeds \$500 ~~\$300~~ in a single transaction, or in separate  
3 transactions committed by the same person as part of a  
4 continuing course of conduct from one or more mercantile  
5 establishments over a period of one year, is a Class 2  
6 felony. When a charge of retail theft of property or theft  
7 by emergency exit of property, the full value of which  
8 exceeds \$500 ~~\$300~~, is brought, the value of the property  
9 involved is an element of the offense to be resolved by the  
10 trier of fact as either exceeding or not exceeding \$500  
11 ~~\$300~~.

12 (4) A person sentenced under subdivision (f)(1) or  
13 (f)(2) of this Section for theft of property the full  
14 retail value of which does not exceed \$500 shall be  
15 required to make full restitution to the merchant.

16 (Source: P.A. 97-597, eff. 1-1-12.)

17 Section 10. The Unified Code of Corrections is amended by  
18 changing Section 5-5-6 as follows:

19 (730 ILCS 5/5-5-6) (from Ch. 38, par. 1005-5-6)

20 Sec. 5-5-6. In all convictions for offenses in violation of  
21 the Criminal Code of 1961 or the Criminal Code of 2012 or of  
22 Section 11-501 of the Illinois Vehicle Code in which the person  
23 received any injury to his or her person or damage to his or  
24 her real or personal property as a result of the criminal act

1 of the defendant, the court shall order restitution as provided  
2 in this Section. In all other cases, except cases in which  
3 restitution is required under this Section, the court must at  
4 the sentence hearing determine whether restitution is an  
5 appropriate sentence to be imposed on each defendant convicted  
6 of an offense. If the court determines that an order directing  
7 the offender to make restitution is appropriate, the offender  
8 may be sentenced to make restitution. The court may consider  
9 restitution an appropriate sentence to be imposed on each  
10 defendant convicted of an offense in addition to a sentence of  
11 imprisonment. The sentence of the defendant to a term of  
12 imprisonment is not a mitigating factor that prevents the court  
13 from ordering the defendant to pay restitution. If the offender  
14 is sentenced to make restitution the Court shall determine the  
15 restitution as hereinafter set forth:

16 (a) At the sentence hearing, the court shall determine  
17 whether the property may be restored in kind to the  
18 possession of the owner or the person entitled to  
19 possession thereof; or whether the defendant is possessed  
20 of sufficient skill to repair and restore property damaged;  
21 or whether the defendant should be required to make  
22 restitution in cash, for out-of-pocket expenses, damages,  
23 losses, or injuries found to have been proximately caused  
24 by the conduct of the defendant or another for whom the  
25 defendant is legally accountable under the provisions of  
26 Article 5 of the Criminal Code of 1961 or the Criminal Code



1 of 2012.

2 (b) In fixing the amount of restitution to be paid in  
3 cash, the court shall allow credit for property returned in  
4 kind, for property damages ordered to be repaired by the  
5 defendant, and for property ordered to be restored by the  
6 defendant; and after granting the credit, the court shall  
7 assess the actual out-of-pocket expenses, losses, damages,  
8 and injuries suffered by the victim named in the charge and  
9 any other victims who may also have suffered out-of-pocket  
10 expenses, losses, damages, and injuries proximately caused  
11 by the same criminal conduct of the defendant, and  
12 insurance carriers who have indemnified the named victim or  
13 other victims for the out-of-pocket expenses, losses,  
14 damages, or injuries, provided that in no event shall  
15 restitution be ordered to be paid on account of pain and  
16 suffering. When a victim's out-of-pocket expenses have  
17 been paid pursuant to the Crime Victims Compensation Act,  
18 the court shall order restitution be paid to the  
19 compensation program. If a defendant is placed on  
20 supervision for, or convicted of, domestic battery, the  
21 defendant shall be required to pay restitution to any  
22 domestic violence shelter in which the victim and any other  
23 family or household members lived because of the domestic  
24 battery. The amount of the restitution shall equal the  
25 actual expenses of the domestic violence shelter in  
26 providing housing and any other services for the victim and

1 any other family or household members living at the  
2 shelter. If a defendant fails to pay restitution in the  
3 manner or within the time period specified by the court,  
4 the court may enter an order directing the sheriff to seize  
5 any real or personal property of a defendant to the extent  
6 necessary to satisfy the order of restitution and dispose  
7 of the property by public sale. All proceeds from such sale  
8 in excess of the amount of restitution plus court costs and  
9 the costs of the sheriff in conducting the sale shall be  
10 paid to the defendant. The defendant convicted of domestic  
11 battery, if a person under 18 years of age was present and  
12 witnessed the domestic battery of the victim, is liable to  
13 pay restitution for the cost of any counseling required for  
14 the child at the discretion of the court.

15 (c) In cases where more than one defendant is  
16 accountable for the same criminal conduct that results in  
17 out-of-pocket expenses, losses, damages, or injuries, each  
18 defendant shall be ordered to pay restitution in the amount  
19 of the total actual out-of-pocket expenses, losses,  
20 damages, or injuries to the victim proximately caused by  
21 the conduct of all of the defendants who are legally  
22 accountable for the offense.

23 (1) In no event shall the victim be entitled to  
24 recover restitution in excess of the actual  
25 out-of-pocket expenses, losses, damages, or injuries,  
26 proximately caused by the conduct of all of the

1 defendants.

2 (2) As between the defendants, the court may  
3 apportion the restitution that is payable in  
4 proportion to each co-defendant's culpability in the  
5 commission of the offense.

6 (3) In the absence of a specific order apportioning  
7 the restitution, each defendant shall bear his pro rata  
8 share of the restitution.

9 (4) As between the defendants, each defendant  
10 shall be entitled to a pro rata reduction in the total  
11 restitution required to be paid to the victim for  
12 amounts of restitution actually paid by co-defendants,  
13 and defendants who shall have paid more than their pro  
14 rata share shall be entitled to refunds to be computed  
15 by the court as additional amounts are paid by  
16 co-defendants.

17 (d) In instances where a defendant has more than one  
18 criminal charge pending against him in a single case, or  
19 more than one case, and the defendant stands convicted of  
20 one or more charges, a plea agreement negotiated by the  
21 State's Attorney and the defendants may require the  
22 defendant to make restitution to victims of charges that  
23 have been dismissed or which it is contemplated will be  
24 dismissed under the terms of the plea agreement, and under  
25 the agreement, the court may impose a sentence of  
26 restitution on the charge or charges of which the defendant

1 has been convicted that would require the defendant to make  
2 restitution to victims of other offenses as provided in the  
3 plea agreement.

4 (e) The court may require the defendant to apply the  
5 balance of the cash bond, after payment of court costs, and  
6 any fine that may be imposed to the payment of restitution.

7 (e-1) A person sentenced under subdivision (f)(1) or  
8 (f)(2) of Section 16-25 of the Criminal Code of 2012 for  
9 theft of property the full retail value of which does not  
10 exceed \$500 shall be required to make full restitution to  
11 the merchant. For purposes of this paragraph (e-1),  
12 "merchant" has the meaning ascribed to the term in Section  
13 16-0.1 of the Criminal Code of 2012.

14 (f) Taking into consideration the ability of the  
15 defendant to pay, including any real or personal property  
16 or any other assets of the defendant, the court shall  
17 determine whether restitution shall be paid in a single  
18 payment or in installments, and shall fix a period of time  
19 not in excess of 5 years, except for violations of Sections  
20 16-1.3 and 17-56 of the Criminal Code of 1961 or the  
21 Criminal Code of 2012, or the period of time specified in  
22 subsection (f-1), not including periods of incarceration,  
23 within which payment of restitution is to be paid in full.  
24 Complete restitution shall be paid in as short a time  
25 period as possible. However, if the court deems it  
26 necessary and in the best interest of the victim, the court

1           may extend beyond 5 years the period of time within which  
2           the payment of restitution is to be paid. If the defendant  
3           is ordered to pay restitution and the court orders that  
4           restitution is to be paid over a period greater than 6  
5           months, the court shall order that the defendant make  
6           monthly payments; the court may waive this requirement of  
7           monthly payments only if there is a specific finding of  
8           good cause for waiver.

9           (f-1) (1) In addition to any other penalty prescribed by  
10          law and any restitution ordered under this Section that did  
11          not include long-term physical health care costs, the court  
12          may, upon conviction of any misdemeanor or felony, order a  
13          defendant to pay restitution to a victim in accordance with  
14          the provisions of this subsection (f-1) if the victim has  
15          suffered physical injury as a result of the offense that is  
16          reasonably probable to require or has required long-term  
17          physical health care for more than 3 months. As used in  
18          this subsection (f-1) "long-term physical health care"  
19          includes mental health care.

20          (2) The victim's estimate of long-term physical health  
21          care costs may be made as part of a victim impact statement  
22          under Section 6 of the Rights of Crime Victims and  
23          Witnesses Act or made separately. The court shall enter the  
24          long-term physical health care restitution order at the  
25          time of sentencing. An order of restitution made under this  
26          subsection (f-1) shall fix a monthly amount to be paid by

1 the defendant for as long as long-term physical health care  
2 of the victim is required as a result of the offense. The  
3 order may exceed the length of any sentence imposed upon  
4 the defendant for the criminal activity. The court shall  
5 include as a special finding in the judgment of conviction  
6 its determination of the monthly cost of long-term physical  
7 health care.

8 (3) After a sentencing order has been entered, the  
9 court may from time to time, on the petition of either the  
10 defendant or the victim, or upon its own motion, enter an  
11 order for restitution for long-term physical care or modify  
12 the existing order for restitution for long-term physical  
13 care as to the amount of monthly payments. Any modification  
14 of the order shall be based only upon a substantial change  
15 of circumstances relating to the cost of long-term physical  
16 health care or the financial condition of either the  
17 defendant or the victim. The petition shall be filed as  
18 part of the original criminal docket.

19 (g) In addition to the sentences provided for in  
20 Sections 11-1.20, 11-1.30, 11-1.40, 11-1.50, 11-1.60,  
21 11-19.2, 11-20.1, 11-20.1B, 11-20.3, 12-13, 12-14,  
22 12-14.1, 12-15, and 12-16, and subdivision (a)(4) of  
23 Section 11-14.4, of the Criminal Code of 1961 or the  
24 Criminal Code of 2012, the court may order any person who  
25 is convicted of violating any of those Sections or who was  
26 charged with any of those offenses and which charge was

1 reduced to another charge as a result of a plea agreement  
2 under subsection (d) of this Section to meet all or any  
3 portion of the financial obligations of treatment,  
4 including but not limited to medical, psychiatric, or  
5 rehabilitative treatment or psychological counseling,  
6 prescribed for the victim or victims of the offense.

7 The payments shall be made by the defendant to the  
8 clerk of the circuit court and transmitted by the clerk to  
9 the appropriate person or agency as directed by the court.  
10 Except as otherwise provided in subsection (f-1), the order  
11 may require such payments to be made for a period not to  
12 exceed 5 years after sentencing, not including periods of  
13 incarceration.

14 (h) The judge may enter an order of withholding to  
15 collect the amount of restitution owed in accordance with  
16 Part 8 of Article XII of the Code of Civil Procedure.

17 (i) A sentence of restitution may be modified or  
18 revoked by the court if the offender commits another  
19 offense, or the offender fails to make restitution as  
20 ordered by the court, but no sentence to make restitution  
21 shall be revoked unless the court shall find that the  
22 offender has had the financial ability to make restitution,  
23 and he has wilfully refused to do so. When the offender's  
24 ability to pay restitution was established at the time an  
25 order of restitution was entered or modified, or when the  
26 offender's ability to pay was based on the offender's

1 willingness to make restitution as part of a plea agreement  
2 made at the time the order of restitution was entered or  
3 modified, there is a rebuttable presumption that the facts  
4 and circumstances considered by the court at the hearing at  
5 which the order of restitution was entered or modified  
6 regarding the offender's ability or willingness to pay  
7 restitution have not materially changed. If the court shall  
8 find that the defendant has failed to make restitution and  
9 that the failure is not wilful, the court may impose an  
10 additional period of time within which to make restitution.  
11 The length of the additional period shall not be more than  
12 2 years. The court shall retain all of the incidents of the  
13 original sentence, including the authority to modify or  
14 enlarge the conditions, and to revoke or further modify the  
15 sentence if the conditions of payment are violated during  
16 the additional period.

17 (j) The procedure upon the filing of a Petition to  
18 Revoke a sentence to make restitution shall be the same as  
19 the procedures set forth in Section 5-6-4 of this Code  
20 governing violation, modification, or revocation of  
21 Probation, of Conditional Discharge, or of Supervision.

22 (k) Nothing contained in this Section shall preclude  
23 the right of any party to proceed in a civil action to  
24 recover for any damages incurred due to the criminal  
25 misconduct of the defendant.

26 (l) Restitution ordered under this Section shall not be



1 subject to disbursement by the circuit clerk under Section  
2 27.5 of the Clerks of Courts Act.

3 (m) A restitution order under this Section is a  
4 judgment lien in favor of the victim that:

5 (1) Attaches to the property of the person subject  
6 to the order;

7 (2) May be perfected in the same manner as provided  
8 in Part 3 of Article 9 of the Uniform Commercial Code;

9 (3) May be enforced to satisfy any payment that is  
10 delinquent under the restitution order by the person in  
11 whose favor the order is issued or the person's  
12 assignee; and

13 (4) Expires in the same manner as a judgment lien  
14 created in a civil proceeding.

15 When a restitution order is issued under this Section,  
16 the issuing court shall send a certified copy of the order  
17 to the clerk of the circuit court in the county where the  
18 charge was filed. Upon receiving the order, the clerk shall  
19 enter and index the order in the circuit court judgment  
20 docket.

21 (n) An order of restitution under this Section does not  
22 bar a civil action for:

23 (1) Damages that the court did not require the  
24 person to pay to the victim under the restitution order  
25 but arise from an injury or property damages that is  
26 the basis of restitution ordered by the court; and

1                   (2) Other damages suffered by the victim.

2           The restitution order is not discharged by the completion  
3 of the sentence imposed for the offense.

4           A restitution order under this Section is not discharged by  
5 the liquidation of a person's estate by a receiver. A  
6 restitution order under this Section may be enforced in the  
7 same manner as judgment liens are enforced under Article XII of  
8 the Code of Civil Procedure.

9           The provisions of Section 2-1303 of the Code of Civil  
10 Procedure, providing for interest on judgments, apply to  
11 judgments for restitution entered under this Section.

12           (Source: P.A. 96-290, eff. 8-11-09; 96-1551, eff. 7-1-11;  
13 97-482, eff. 1-1-12; 97-817, eff. 1-1-13; 97-1150, eff.  
14 1-25-13.)