

HOUSE BILL NO. 378

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-THIRD LEGISLATURE - SECOND SESSION

BY REPRESENTATIVE FIELDS

Introduced: 2/20/24

Referred: Labor and Commerce, Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 "An Act relating to theft; relating to organized retail theft; establishing a statewide
2 marketplace facilitator sales tax; establishing the organized retail theft fund in the
3 general fund; and providing for an effective date."

4 **BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF ALASKA:**

5 * **Section 1.** AS 11.46.100 is amended to read:

6 **Sec. 11.46.100. Theft defined.** A person commits theft if, under
7 circumstances not amounting to organized retail theft as defined in AS 11.46.221,

8 (1) with intent to deprive another of property or to appropriate property
9 of another to oneself or a third person, the person obtains the property of another;

10 (2) the person commits theft of lost or mislaid property under
11 AS 11.46.160;

12 (3) the person commits theft by deception under AS 11.46.180;

13 (4) the person commits theft by receiving under AS 11.46.190;

14 (5) the person commits theft of services under AS 11.46.200; or

1 (6) the person commits theft by failure to make required disposition of
2 funds received or held under AS 11.46.210.

3 * **Sec. 2.** AS 11.46.120(a) is amended to read:

4 (a) A person commits the crime of theft in the first degree if, **under**
5 **circumstances not amounting to organized retail theft as defined in AS 11.46.221,**
6 the person commits theft as defined in AS 11.46.100 and the value of the property or
7 services is \$25,000 or more.

8 * **Sec. 3.** AS 11.46.130(a) is amended to read:

9 (a) A person commits the crime of theft in the second degree if, **under**
10 **circumstances not amounting to organized retail theft as defined in AS 11.46.221,**
11 the person commits theft as defined in AS 11.46.100 and

12 (1) the value of the property or services is \$750 or more but less than
13 \$25,000;

14 (2) the property is a firearm or explosive;

15 (3) the property is taken from the person of another;

16 (4) the property is taken from a vessel and is vessel safety or survival
17 equipment;

18 (5) the property is taken from an aircraft and the property is aircraft
19 safety or survival equipment;

20 (6) the value of the property is \$250 or more but less than \$750 and,
21 within the preceding five years, the person has been convicted and sentenced on two
22 or more separate occasions in this or another jurisdiction of

23 (A) an offense under AS 11.46.120, or an offense under
24 another law or ordinance with similar elements;

25 (B) a crime set out in this subsection or an offense under
26 another law or ordinance with similar elements;

27 (C) an offense under AS 11.46.140(a)(1), or an offense under
28 another law or ordinance with similar elements; or

29 (D) an offense under AS 11.46.220(c)(1) or (c)(2)(A), or an
30 offense under another law or ordinance with similar elements; or

31 (7) the property is an access device or identification document.

1 * **Sec. 4.** AS 11.46.140(a) is amended to read:

2 (a) A person commits the crime of theft in the third degree if, **under**
 3 **circumstances not amounting to organized retail theft as defined in AS 11.46.221,**
 4 the person commits theft as defined in AS 11.46.100 and

5 (1) the value of the property or services is \$250 or more but less than
 6 \$750; or

7 (2) [REPEALED]

8 (3) [REPEALED]

9 (4) the value of the property is less than \$250 and, within the preceding
 10 five years, the person has been convicted and sentenced on three or more separate
 11 occasions in this or another jurisdiction of theft or concealment of merchandise, or an
 12 offense under another law or ordinance with similar elements.

13 * **Sec. 5.** AS 11.46.150(a) is amended to read:

14 (a) A person commits the crime of theft in the fourth degree if, **under**
 15 **circumstances not amounting to organized retail theft as defined in AS 11.46.221,**
 16 the person commits theft as defined in AS 11.46.100 and the value of the property or
 17 services is less than \$250.

18 * **Sec. 6.** AS 11.46.180(a) is amended to read:

19 (a) A person commits theft by deception if, **under circumstances not**
 20 **amounting to organized retail theft as defined in AS 11.46.221,** with intent to
 21 deprive another of property or to appropriate property of another to oneself or a third
 22 person, the person obtains the property of another by deception.

23 * **Sec. 7.** AS 11.46.220(a) is amended to read:

24 (a) A person commits the crime of concealment of merchandise if, **under**
 25 **circumstances not amounting to organized retail theft as defined in AS 11.46.221,**
 26 without authority the person knowingly conceals on or about the person the
 27 merchandise of a commercial establishment, not purchased by the person, while still
 28 upon the premises of the commercial establishment, with intent to deprive the owner
 29 of the merchandise or with intent to appropriate the merchandise.

30 * **Sec. 8.** AS 11.46 is amended by adding new sections to read:

31 **Sec. 11.46.221. Organized retail theft defined.** A person commits organized

1 retail theft if, in the state, as part of a coordinated plan to deprive a retailer of
 2 merchandise on two or more occasions or as part of a coordinated plan to deprive
 3 multiple retailers of merchandise over a one-year period, a person, with one or more
 4 conspirators,

5 (1) takes possession of merchandise with the intent to convert the
 6 merchandise without paying for the merchandise;

7 (2) conceals merchandise with the intent to convert the merchandise
 8 without paying for the merchandise;

9 (3) alters a label or a price tag, or marks the merchandise with the
 10 intent of depriving a retailer of all or some of the value of the merchandise; or

11 (4) transfers merchandise from a container in or on which the
 12 merchandise is displayed to another container with the intent of depriving the retailer
 13 of all or some of the value of the merchandise.

14 **Sec. 11.46.222. Consolidation of organized retail theft offenses: pleading**
 15 **and proof.** (a) Each instance of conduct defined as organized retail theft under
 16 AS 11.46.221 constitutes organized retail theft in the first, second, third, fourth, or
 17 fifth degree.

18 (b) An accusation of organized retail theft is sufficient if the accusation alleges
 19 that the defendant committed organized retail theft of property or services of the
 20 nature or value required for the commission of the crime charged without designating
 21 the particular way or manner in which the organized retail theft was committed.

22 (c) Proof that the defendant engaged in conduct constituting organized retail
 23 theft as defined in AS 11.46.221 is sufficient to support a conviction based on any
 24 indictment, information, or complaint for organized retail theft.

25 **Sec. 11.46.223. Organized retail theft in the first degree.** (a) A person
 26 commits the crime of organized retail theft in the first degree if a person commits
 27 organized retail theft as defined in AS 11.46.221 and the aggregate value of the
 28 merchandise taken, concealed, altered, or transferred is \$20,000 or more.

29 (b) Organized retail theft in the first degree is a class A felony.

30 **Sec. 11.46.224. Organized retail theft in the second degree.** (a) A person
 31 commits the crime of organized retail theft in the second degree if a person commits

1 organized retail theft as defined in AS 11.46.221 and the aggregate value of the
2 merchandise taken, concealed, altered, or transferred is \$2,500 or more but less than
3 \$20,000.

4 (b) Organized retail theft in the second degree is a class B felony.

5 **Sec. 11.46.225. Organized retail theft in the third degree.** (a) A person
6 commits the crime of organized retail theft in the third degree if a person commits
7 organized retail theft as defined in AS 11.46.221 and the aggregate value of the
8 merchandise taken, concealed, altered, or transferred is \$500 or more but less than
9 \$2,500.

10 (b) Organized retail theft in the third degree is a class C felony.

11 **Sec. 11.46.226. Organized retail theft in the fourth degree.** (a) A person
12 commits the crime of organized retail theft in the fourth degree if a person commits
13 organized retail theft as defined in AS 11.46.221 and the aggregate value of the
14 merchandise taken, concealed, altered, or transferred is more than \$250 but less than
15 \$500.

16 (b) Organized retail theft in the fourth degree is a class A misdemeanor.

17 **Sec. 11.46.227. Organized retail theft in the fifth degree.** (a) A person
18 commits the crime of organized retail theft in the fifth degree if a person commits
19 organized retail theft as defined in AS 11.46.221 and the aggregate value of the
20 merchandise taken, concealed, altered, or transferred is \$250 or less.

21 (b) Organized retail theft in the fifth degree is a class B misdemeanor.

22 **Sec. 11.46.229. Definitions.** In AS 11.46.221 - 11.46.227,

23 (1) "aggregate value" means the total value of merchandise taken,
24 concealed, altered, or transferred from any retailer over the course of one calendar
25 year;

26 (2) "retailer" means a person or business that sells goods to the public
27 for use or consumption rather than for resale.

28 * **Sec. 9.** AS 11.46.980(e) is amended to read:

29 (e) **Except for an offense under AS 11.46.221 - 11.46.227, in** [IN]
30 determining the degree or classification of a crime under this chapter, if the combined
31 value of the property or services taken from one or more persons or commercial

1 establishments within a period of 180 days is \$750 or more but less than \$25,000, the
2 value may be aggregated.

3 * **Sec. 10.** AS 43 is amended by adding a new chapter to read:

4 **Chapter 72. Marketplace Facilitator Sales Tax.**

5 **Sec. 43.72.010. Levy of sales tax.** (a) A sales tax of two percent is levied on
6 the annual gross sales of the sale of property or services delivered in the state by a
7 marketplace facilitator.

8 **Sec. 43.72.020. Collection of sales tax by marketplace facilitators; physical**
9 **presence.** (a) The tax described in AS 43.72.010 is imposed on the marketplace
10 facilitator. The marketplace facilitator shall collect the tax and pay the tax to the
11 department. A marketplace facilitator shall apply the tax to the sales price.

12 (b) The marketplace facilitator is not required to remit taxes to the department
13 unless, in the previous calendar year, the

14 (1) marketplace facilitator's gross sales revenue from the sale of
15 property or services delivered in the state met or exceeded \$100,000; or

16 (2) marketplace facilitator made 200 or more separate sales of property
17 or services delivered in the state.

18 (c) A marketplace facilitator shall register with the department if it satisfies
19 the conditions of (b)(1) or (2) of this section.

20 (d) A marketplace facilitator who does not have a physical presence in the
21 state is subject to the provisions of this chapter and shall remit the sales tax levied
22 under AS 43.72.010 if the marketplace facilitator satisfies one of the requirements
23 under (b) of this section and conducts sales through an online marketplace and
24 delivery is located within the state.

25 **Sec. 43.72.030. Returns; payment.** A marketplace facilitator responsible for
26 collecting the sales tax due under AS 43.72.020 shall file a return on a form or in a
27 format prescribed by the department and pay the tax to the department.

28 **Sec. 43.72.040. Organized retail theft fund.** (a) The organized retail theft
29 fund is established in the general fund. The legislature may appropriate the tax
30 collected under AS 43.72.010 to the organized retail theft fund. The legislature may
31 appropriate money in the fund to law enforcement agencies to investigate and

1 prosecute organized retail theft under AS 11.46.221 - 11.46.227 and related fraud and
2 property crimes.

3 (b) The fund is not a dedicated fund. Money in the fund does not lapse and
4 remains available for appropriation in successive fiscal years.

5 **Sec. 43.72.900. Definitions.** In this chapter,

6 (1) "law enforcement agency" means a public agency that performs as
7 one of its principal functions an activity relating to crime prevention, control, or
8 reduction or relating to the enforcement of criminal law; "law enforcement agency"
9 does not include a court;

10 (2) "marketplace facilitator" means a person who contracts with a
11 third-party seller to facilitate the sale of the third-party seller's property, product, or
12 services through a physical retail location or online marketplace operated by the
13 person, and engages

14 (A) directly or indirectly with one or more affiliated persons by

15 (i) transmitting or otherwise communicating the offer or
16 acceptance between the buyer and the third-party seller;

17 (ii) owning or operating the electronic, physical, or
18 technological infrastructure that brings the buyer and the third-party
19 seller together;

20 (iii) providing a virtual currency that buyers are allowed
21 or required to use to purchase products from the third-party seller; or

22 (iv) software development or research and development
23 activities related to any of the activities described in (i) - (iii) of this
24 subparagraph, if such activities are directly related to a physical or
25 electronic marketplace operated by the person or an affiliated person;
26 and

27 (B) in one or more of the following activities with respect to
28 the third-party seller's product:

29 (i) payment processing services;

30 (ii) fulfillment or storage services;

31 (iii) listing products for sale;

1 (iv) setting prices;

2 (v) branding sales as the marketplace facilitator;

3 (vi) taking orders;

4 (vii) advertising or promotion; or

5 (viii) providing customer service or accepting or
6 assisting with returns or exchanges;

7 (3) "online marketplace" means a consumer-directed, electronically
8 based or electronically accessed platform that

9 (A) allows, facilitates, or enables third-party sellers to sell,
10 purchase, pay for, store, ship, or deliver a consumer product;

11 (B) is used by one or more third-party sellers; and

12 (C) has a contractual or similar relationship with consumers
13 that governs consumer use of the platform to purchase consumer products;

14 (4) "resident" means a natural person domiciled in the state;

15 (5) "third-party seller" means a person who sells, offers to sell, or
16 contracts to sell a consumer product through an online marketplace; "third-party
17 seller" does not include a person who operates an online marketplace or has an
18 ongoing contractual relationship with an online marketplace to provide manufacturing,
19 distribution, wholesaling, or fulfillment of consumer product orders for the online
20 marketplace.

21 * **Sec. 11.** The uncodified law of the State of Alaska is amended by adding a new section to
22 read:

23 APPLICABILITY. AS 43.72.010, added by sec. 10 of this Act, applies to the taxation
24 of goods purchased on or after the effective date of sec. 10 of this Act.

25 * **Sec. 12.** The uncodified law of the State of Alaska is amended by adding a new section to
26 read:

27 TRANSITION: REGULATIONS. The Department of Revenue may adopt regulations
28 to implement this Act. The regulations take effect under AS 44.62 (Administrative Procedure
29 Act), but not before the effective date of the law implemented by the regulation.

30 * **Sec. 13.** Section 12 of this Act takes effect immediately under AS 01.10.070(c).