



# Endorsed State Legislation

2006

## **Preface**

State legislators across the country are enacting bills that help food retailers thrive and compete in today's dynamic economy. The Food Marketing Institute (FMI) is in a unique position to review a broad cross-section of these bills, which affect its 2,300 members and their subsidiaries.

With the assistance of state association executives and members, FMI has compiled a grouping of bills/laws that represent good legislative solutions for food retailers and wholesalers, as well as their customers, in the United States and around the world. FMI is endorsing this legislation as representative of some of the best ideas and solutions being put forth by legislators across the country.

FMI recognizes that some of the provisions included in these bills/laws are more desirable than others. While FMI is endorsing each of these bills/laws individually, it is the overall intent of the bill/law that FMI overwhelmingly supports. The Institute recognizes that every state is different, and it may not always be appropriate for a bill to be used in its entirety.

FMI applauds the efforts of the authors of these bills and challenges legislators in other states to craft similar legislation.

## **Criteria for FMI Endorsed Legislation**

- **Viable**: The legislation must have a high likelihood of success in the state legislative process.
- **Innovative**: The legislation must be unique in its approach to addressing industry issues.
- **Applicable**: The legislation must affect a wide range of food retailers.
- **Notable**: The legislation must address an issue area of consequence to the food industry.
- **Deliberate**: The legislation must address issues that affect the food industry.
- **Sustainable**: The legislation must have implications that are relevant for other states--exempting certain state legislative idiosyncrasies.

## **About FMI:**

The Food Marketing Institute (FMI) is a non-profit association that conducts programs in research, education, industry relations and public affairs on behalf of its 2,300 members and their subsidiaries. On an ongoing basis, FMI works with state association executives and members to provide information that will assist them in educating state legislators on industry's issues and concerns. FMI members operate approximately 26,000 retail food stores with combined annual

sales of \$340 billion – three quarters of all retail food store sales in the United States. FMI’s retail membership is composed of large multi-state chains, regional companies and independent grocery stores.

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# Alcohol

## Massachusetts

**BILL NUMBER:** HB 4619

**SUBJECT:** Alcohol Sales

**DATE STAMP:** Initiative Petition, January 6, 2006

**HYPERLINK:** <http://www.mass.gov/legis/bills/house/ht04pdf/ht04619.pdf>

### **BILL TEXT:**

AN INITIATIVE PETITION.

Pursuant to Article XLVIII of the Amendments to the Constitution of the Commonwealth, as amended, the undersigned qualified voters of the Commonwealth, ten in number at least, hereby petition for the enactment into law of the following measure:

AN ACT TO INCREASE CONSUMER CONVENIENCE AND CHOICE BY PERMITTING FOOD STORES TO SELL WINE.

Be it enacted by the People, and by their authority, as follows:

Chapter one hundred and thirty-eight of the General Laws is hereby amended by inserting the following section:

Section 15B. An additional class of licenses allowing the sale of wine at food stores is hereby created. These licenses shall be known as "wine at food store licenses" and may be issued at the discretion of local licensing authorities following the procedures set forth in section fifteen A of this chapter. For purposes of this section "food store" shall mean a grocery store, shop, supermarket, warehouse-type seller, club, outlet, or other seller, which sells at retail food for consumption off the seller's premises either alone or in combination with grocery items or other nondurable items typically found in a grocery store, provided such items are sold to individuals for their own personal, family, or household use; and provided further, that such food store must carry fresh or processed meat, poultry, dairy products, eggs, fresh fruit and produce, baked goods and baking ingredients, canned goods and dessert items.

Local licensing authorities may issue wine at food store licenses to individuals or business entities duly organized under the laws of the Commonwealth or any other state, provided the applicant is approved by the commission; and provided further that any individual applicant is twenty-one years of age or older and has not been convicted of a felony. No license holder

may hold more than ten percent of the total number of wine at food store licenses this section authorizes local authorities to issue throughout the commonwealth, but wine at food store licenses shall not be considered in applying any limits on the number of licenses this chapter otherwise authorizes applicants to hold or local licensing authorities to issue. Irrespective of the number of other licenses issued under this chapter by a city or town's licensing authorities, the local licensing authorities in any city or town are authorized, in their discretion, to issue up to five wine at food store licenses and, in any city or town with more than five thousand residents, to issue one additional such license for each additional population unit of five thousand or any fraction thereof residing in that city or town. Holders of such licenses may sell wine alone or in combination with any other item or items they offer for sale.

Except as expressly provided in this section, the provisions of law applicable to the issuance, renewal, suspension, and termination of licenses issued pursuant to section fifteen and the regulation of and operation by such license holders shall apply to wine at food store licenses and license holders. The amount of any initial or renewal fee for such a license shall be determined by the local licensing authorities issuing or renewing that license.

## Tennessee

**BILL NUMBER:** SB 3316

**SUBJECT:** Alcohol Sales to Minors

**DATE STAMP:** Signed by Governor Bredesen, June 5, 2006

**HYPERLINK:**

<http://www.legislature.state.tn.us/bills/currentga/Chapter/PC0864.pdf>

### **BILL TEXT:**

AN ACT to amend Tennessee Code Annotated, Title 39, Chapter 15, Part 4 and Title 57, Chapter 5, relative to sale of beer for off-the-premises consumption.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 57, Chapter 5, is amended by adding Sections 2 through 10 of this act as a new, appropriately designated part.

SECTION 2. This part shall be known and may be cited as the "Tennessee Responsible Vendor Act of 2006".

SECTION 3. It is the intent of the legislature through the provisions of this part:

- (1) To eliminate the sale of beer for off-the-premises consumption to, and consumption of beer by, under aged persons;
- (2) To reduce intoxication and to reduce accidents, injuries, and deaths in the state which are related to intoxication; and
- (3) To encourage vendors to be prudent in their selling practices of beer and to restrict or reduce the sanctions that may be imposed in administrative proceedings by the department and local beer boards against those vendors who comply with responsible practices in accordance with this part.

SECTION 4. As used in this part, unless the context otherwise requires:

- (1) "Beer" has the same meaning as such word is defined in §57-5-101(b).
- (1) "Department" means the department of agriculture; and
- (2) "Vendor" means a person who has been issued a permit to sell beer for off-the-premises consumption.

SECTION 5. The department of agriculture shall establish or cause to be established a responsible vendors program designed to encourage vendors and their employees and customers to treat beer in a responsible manner. The program must include, without limitation, comprehensive instruction on the prevention of the sale of beer to persons not of legal age.

SECTION 6. (a) A vendor who seeks to qualify as a responsible vendor must provide to the department, pursuant to procedures adopted by the department, evidence of compliance with the requirements of this part. Upon satisfactory proof that the vendor has complied with such requirements, the department shall certify the vendor as a responsible vendor. Certification as a responsible vendor shall be renewed annually.

(b) The department shall adopt rules and regulations for monitoring compliance by certified vendors and for revoking or suspending a vendor's certification for noncompliance with this section. The department is hereby authorized to utilize non-law enforcement personnel to monitor and enforce compliance with this part.

SECTION 7. In order to qualify for certification, the vendor shall comply with the following requirements:

(1) Provide a course of instruction for its employees approved by the department which shall include subjects dealing with beer as follows:

(A) Laws regarding the sale of beer for off-the-premises consumption;  
(B) Methods of recognizing and dealing with underage customers; and  
(C) The development of specific procedures for refusing to sell beer to underage customers; for assisting employees in dealing with underage customers; and for dealing with intoxicated customers;

(2) (A) Require each employee who is authorized to sell beer in the normal course of the employee's employment to complete the employee training course set out in subdivision (1) within thirty (30) days of commencing employment;

(B) Each employee must complete the training and receive a certificate of completion issued by the employer, in accordance with rules promulgated by the department; no employee shall be authorized to sell beer unless the employee has completed the training and has been issued the certificate; such certificate shall be displayed in a visible place behind the counter; and

(C) In addition to receiving the certificate of completion, the employee shall be issued a card that the employee shall keep on the employee's person when acting in the employee's capacity as a sales clerk at a business where beer is sold;

(3) Require all such trained employees to attend additional meetings at least semiannually or such other schedule of meetings as may be approved by the department, which meetings shall include the dissemination of existing and new information covering the applicable subjects specified in this section and explaining the vendor's policies and procedures relating to those subjects;

(4) Maintain employment records of the training of its employees required by this section; and

(5) Post signs on the vendor's premises informing customers of the vendor's policy against selling beer to underaged persons. Such signs shall be not less than 8-1/2" x 11" and contain the following language: STATE LAW REQUIRES IDENTIFICATION FOR THE SALE OF BEER.

SECTION 8. (a) If probable cause exists that an employee sold beer to a minor in violation of §57-5-301(a) and a law enforcement officer cites the employee for such a violation, the law enforcement officer shall take the employee's card at the time the citation is issued and notify the employer that such action was taken.

(b) The card shall be forwarded to the department by the law enforcement officer and the department shall schedule a hearing within ten (10) days of receiving the card from the law enforcement officer to determine whether the person's certificate shall be revoked.

(c) If the employee pleads guilty to, or is found guilty of, violating §57-5-301(a), or if, following a hearing, the department determines that the employee's certificate should be revoked, such person shall not be eligible for a period of one (1) year following the conviction or such decision by the department to reapply for training with any employer to sell beer.

SECTION 9. (a) The permit of a vendor certified as a responsible vendor under this part may not be suspended or revoked by a county legislative body or committee or board created by a county legislative body for an employee's illegal sale of beer to a person who is not of lawful drinking age if the employee had completed the applicable training prescribed by this part prior to committing such violation, unless the vendor had knowledge of the violation or should have known about such violation, or participated in or committed such violation. No vendor may use as a defense to decertification the fact that the vendor was absent from the premises at the time of noncompliance with this section.

(b) The department shall consider certification by a vendor in the responsible vendors program in mitigation of administrative penalties or fines for an employee's illegal sale of beer to a person who is not of lawful drinking age.

SECTION 10. (a) There is hereby imposed on each vendor who has been issued a permit to sell beer for off-the-premises consumption, and applies for certification as a responsible vendor, a fee of thirty-five dollars (\$35.00) payable upon the issuance or renewal of such certification. In addition, at the time of the issuance or renewal of such certification each such vendor shall pay twenty-five dollars (\$25.00) for each store location, owned or operated by such vendor, which sells beer for off-the-premise consumption.

(b) Such fees shall be deposited by the department in a special agency account in the state general fund to be known as the "responsible vendor certification fund," hereinafter referred to in this part as the "fund."

(c) Any fund balance remaining unexpended at the end of a fiscal year in the fund shall be carried forward into the subsequent fiscal year and shall continue to be preserved for the administration of the vendor certification program.

(d) Interest accruing on investments and deposits of the fund shall be carried forward into the subsequent fiscal year.

(e) Moneys in the fund shall be invested by the state treasurer in accordance with the provisions of §9-4-603. The fund shall be administered by the commissioner of agriculture.

(f) Moneys in the fund shall only be expended and obligated in accordance with appropriations made by the general assembly for the purposes as provided in this part.

SECTION 11. Tennessee Code Annotated, Section 57-5-108(a)(2)(A), is amended by deleting the first sentence in its entirety, by substituting instead the following language, and by designating the remaining language as subdivision (iii):

(i) A city, Class A county, or Class B county, or any committee, board, or commission created by such governmental bodies, shall not, pursuant to Section 8(a), revoke or suspend the permit of a vendor for an employee's illegal sale of beer to a minor if the permit or license holder and the employee making the sale have complied with the requirements of Section 8 as a certified participant under this part, but may impose on such vendor a civil penalty not to exceed one thousand dollars (\$1,000) for each offense of making or permitting to be made any sales to minors or for any other offense.

(ii) Provided that the prohibition of subdivision(a)(2)(A)(i) concerning the revocation or suspension of the vendor's permit shall not apply to any vendor who is not a certified participant under this part or to a participating vendor if the vendor or employee making a sale to a minor fail to comply with the requirements of Section 8.

With respects to such permit or license holders, such committee board or commission may, at the time it imposes a revocation or suspension, offer the permit or license holder the alternative of paying a civil penalty not to exceed twenty five hundred dollars (\$2,500) for each offense of making or permitting to be made any sales to minors, or a civil penalty not to exceed one thousand dollars (\$1,000) for any other offense.

SECTION 12. Tennessee Code Annotated, Section 57-5-301(a)(1), is amended by adding the following language after the first sentence.

Prior to making a sale of beer for off-the-premises consumption, the adult consumer must present to the permit holder or any employee thereof a valid, government-issued document, or other form of identification deemed acceptable to the permit holder, which includes the photograph and birth date of the adult consumer attempting to make such purchase of beer. The permit holder or employee shall make a determination from the information presented whether the purchaser is an adult. In addition to the prohibition of making a sale to a minor, no sale of beer for off-the-premises consumption shall be made to a person who does not present such a document or other form of identification to the permit holder or any employee thereof.

SECTION 13. Tennessee Code Annotated, Section 39-15-413, is amended by adding the following language as a new subsection as follows:

(d)(1) No prosecution for the violation of any statute prohibiting the sale of beer for off-the-premises consumption to a person under twenty-one (21) years of age, shall be commenced if such prosecution is based upon the use of a person under twenty-one (21) years of age as authorized by this section unless such person obtains the name of the permit holder or the employee of the permit holder from whom the beer was purchased or attempted to be purchased. In addition, within five (5) days of the date such action occurred, the law enforcement officer shall notify the permit holder in writing either by mail or hand delivery indicating:

(A) That an action recently occurred in which a person under twenty-one (21) years of age was used to purchase or attempt to purchase beer for off-the-premises consumption;

(B) The date and location of the action;

(C) The name of the permit holder or the employee from whom the beer was purchased or attempted to be purchased; and

(D) Whether the person was successful in making the purchase.

(2) If such person under twenty-one (21) years of age was unsuccessful in making such a purchase, no further actions otherwise authorized by this section to use a person under twenty-one (21) years of age to purchase or attempt to purchase beer for off-the-premises consumption may occur at such location for at least a ninety-day period following the issuance of such written notification.

SECTION 14. For the purpose of promulgating rules and regulations to effectuate the purposes of this act, this act shall take effect upon becoming a law, the public welfare requiring it. For all other purposes, this act shall take effect July 1, 2006, the public welfare requiring it.

## Texas

**BILL NUMBER:** HB 937

**SUBJECT:** Wine Tastings in Grocery Stores

**DATE STAMP:** Signed by Governor, May 27, 2005

**HYPERLINK:** <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=00937&VERSION=5&TYPE=B>

### **BILL TEXT:**

AN ACT relating to authorizing the sampling or tasting of certain alcoholic beverages.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 24, Alcoholic Beverage Code, is amended by adding Section 24.12 to read as follows:

Sec. 24.12. WINE SAMPLING. (a) The holder of a wine only package store permit may conduct free product samplings of wine on the permit holder's premises during regular business hours as provided by this section.

(b) An agent or employee of the holder of a wine only package store permit may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling.

(c) For the purposes of this code and any other law or ordinance:

(1) a wine only package store permit does not authorize the sale of alcoholic beverages for on-premise consumption; and

(2) none of the permit holder's income may be considered to be income from the sale of alcoholic beverages for on-premise consumption.

(d) Any wine used in a wine sampling under this section must be purchased from or provided by the retailer on whose premises the wine sampling is held.

(e) When a wine sampling under this section is held on the premises of a wine only package store permit located in an area which is wet for the sale of wine but which is not wet for the sale of higher alcohol content wines that may be sold under an unrestricted wine only package store permit, the only wines

that may be sampled are wines which may be legally sold by the wine only package store permittee as restricted under Section 251.81.

SECTION 2. Section 26.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 26.01. AUTHORIZED ACTIVITIES. (a) The holder of a wine and beer retailer's off-premise permit may sell for off-premises consumption only, but not for resale, wine, beer, and malt liquors containing alcohol in excess of one-half of one percent by volume but not more than 17 percent by volume.

(b) The holder of a wine and beer retailer's off-premise permit may conduct free product samplings of wine on the permit holder's premises during regular business hours as provided by Section 26.08.

SECTION 3. Chapter 26, Alcoholic Beverage Code, is amended by adding Section 26.08 to read as follows:

Sec. 26.08. WINE SAMPLING. (a) An employee of the holder of a wine and beer retailer's off-premise permit may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling.

(b) For purposes of this code and any other law or ordinance:

(1) a wine and beer retailer's off-premise permit does not authorize the sale of alcoholic beverages for on-premises consumption; and

(2) none of the permit holder's income may be considered to be income from the sale of alcoholic beverages for on-premises consumption.

(c) Any wine used in a wine sampling under this section must be purchased from or provided by the retailer on whose premises the wine sampling is held. This section does not authorize the holder of a wine and beer retailer's off-premise permit to withdraw or purchase wine from the holder of a wholesaler's permit or provide wine for a sampling on a retailer's premises that is not purchased from the retailer. The amount of wine purchased from the retailer may not exceed the amount of wine used in the sampling.

SECTION 4. Section 37.01, Alcoholic Beverage Code, is amended to read as follows:

Sec. 37.01. AUTHORIZED ACTIVITIES. (a) The holder of a nonresident seller's permit may:

(1) solicit and take orders for liquor from permittees authorized to import liquor into this state; and

(2) ship liquor into this state, or cause it to be shipped into this state, in consummation of sales made to permittees authorized to import liquor into the state.

(b) The holder of a nonresident seller's permit who owns a winery outside of the state may conduct wine samplings, including wine tastings, at a retailer's premises. An employee of the winery may open, touch, or pour wine, make a presentation, or answer questions at a wine sampling.

(c) Any wine used in a wine sampling under this section must be purchased from the retailer on whose premises the wine sampling is held. This section does not authorize the holder of a nonresident seller's permit or manufacturer's agent's permit to withdraw or purchase wine from the holder of a wholesaler's permit or provide wine for a sampling on a retailer's premises that is not purchased from the retailer. The amount of wine purchased from the retailer may not exceed the amount of wine used in the sampling.

SECTION 5. Section 52.01, Alcoholic Beverage Code, is amended by amending Subsection (l) and adding Subsection (m) to read as follows:

(l) Except as provided by Subsection (m) or elsewhere in this code, a [A] person other than the permittee or the permittee's agent or employee may not dispense or participate in the dispensing of alcoholic beverages under this chapter.

(m) The holder of a nonresident seller's or manufacturer's agent's permit or that permit holder's agent or employee may participate in and conduct product tastings of alcoholic beverages at a retailer's premises and may open, touch, or pour alcoholic beverages, make a presentation, or answer questions at the tasting. Any alcoholic beverage tasted under this subsection must be purchased from the package store permit holder on whose premises the tasting is held. The permit holder may not require the purchase of more alcoholic beverages than are necessary for the tasting. This section does not authorize the holder of a nonresident seller's or manufacturer's agent's permit to withdraw or purchase an alcoholic beverage from the holder of a wholesaler's permit or provide an alcoholic beverage for tasting on a retailer's premises that is not purchased from the retailer.

SECTION 6. This Act takes effect September 1, 2005.

## Texas

**BILL NUMBER:** SB 1471

**SUBJECT:** Sweepstakes Promotions for Beer & Wine Retailers

**DATE STAMP:** Signed by Governor, May 27, 2005

**HYPERLINK:** <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=01471&VERSION=5&TYPE=B>

### **BILL TEXT:**

AN ACT relating to the regulation of certain promotional activities conducted by alcoholic beverage permit and license holders.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subsections (d) and (e), Section 102.07, Alcoholic Beverage Code, are amended to read as follows:

(d) A permittee covered under Subsection (a) [~~of this section~~] may offer prizes, premiums, or gifts to a consumer [~~if the offer is national in scope and legally offered and conducted in 30 states or more~~]. The use of rebates or coupons redeemable by the public for the purchase of alcoholic beverages is prohibited. The holder of a winery permit may furnish to a retailer without cost recipes, recipe books, book matches, cocktail napkins, or other advertising items showing the name of the winery furnishing the items or the brand name of the product advertised if the individual cost of the items does not exceed \$1.

(e) A permittee covered under Subsection (a) [~~of this section~~] may conduct a sweepstakes promotion [~~if the promotion is part of a nationally conducted promotional activity legally offered and conducted at the same time in 30 or more states~~]. A purchase or entry fee may not be required of any person to enter a sweepstakes event authorized under this subsection. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

SECTION 2. Section 108.061, Alcoholic Beverage Code, is amended to read as follows:

Sec. 108.061. [~~NATIONALLY CONDUCTED~~] SWEEPSTAKES PROMOTIONS AUTHORIZED. Notwithstanding the prohibition against prizes given to a consumer in Section 108.06 [~~of this code~~] and subject to the rules of the commission, a manufacturer or nonresident manufacturer may offer a prize to a

consumer if the offer is a part of a [~~nationally conducted~~] promotional sweepstakes activity [~~legally offered and conducted at the same time period in 30 or more states~~]. A purchase or entry fee may not be required of any person to enter in a sweepstakes authorized under this section. A person affiliated with the alcoholic beverage industry may not receive a prize from a sweepstakes promotion.

SECTION 3. This Act takes effect September 1, 2005.

# Charitable Donations

## Alabama

**BILL NUMBER:** HB 397

**SUBJECT:** Charitable Donations

**DATE STAMP:** Signed by Governor, April 25, 2006

**HYPERLINK:** <http://alisdb.legislature.state.al.us/acas/ACASLogin.asp>

### **BILL TEXT:**

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. This act shall be known and may be cited as the Inventory Reduction for Charitable Purposes Relief Act of 2006.

Section 2. Section 40-23-1, Code of Alabama 1975, is amended to read as follows:

"§40-23-1.

"(a) For the purpose of this division, the following terms shall have the respective meanings ascribed by this section:

"(1) PERSON or COMPANY. Used interchangeably, includes any individual, firm, copartnership, association, corporation, receiver, trustee, or any other group or combination acting as a unit and the plural as well as the singular number, unless the intention to give a more limited meaning is disclosed by the context.

"(2) DEPARTMENT. The Department of Revenue of the State of Alabama. the State of Alabama.

"(3) COMMISSIONER. The Commissioner of Revenue of the State of Alabama."

(4) TAX YEAR or TAXABLE YEAR. The calendar year.

"(5) SALE or SALES. Installment and credit sales and the exchange of properties as well as the sale thereof for money, every closed transaction constituting a sale. Provided, however, a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller's agent to the purchaser or purchaser's agent, and for the purpose of determining transfer of title, a common carrier or the U. S. Postal Service shall be deemed to be the agent of the seller, regardless of any F.O.B. point and regardless of who selects the method of transportation, and regardless of by whom or the method by which freight, postage, or other transportation charge is paid. Provided further that, where billed as a separate item to and paid by the purchaser, the freight, postage, or other transportation charge paid to a common carrier or the U.S. Postal Service is not a part of the selling price.

"(6) GROSS PROCEEDS OF SALES. The value proceeding or accruing from the sale of tangible personal property, and including the proceeds from the

sale of any property handled on consignment by the taxpayer, including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included within the sales price of the property sold, or any other expenses whatsoever, and without any deductions on account of losses; provided, that cash discounts allowed and taken on sales shall not be included, and "gross proceeds of sales" shall not include the sale price of property returned by customers when the full sales price thereof is refunded either in cash or by credit. The term "gross proceeds of sale" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from business or stock and so used or consumed with respect to which property the tax has been paid because of previous withdrawal, use, or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same, and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products.

"In the case of the retail sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as defined herein, or in connection with satellite television services, at a price below cost, "gross proceeds of sale" shall only include the stated sales price thereof and shall not include any sales commission or rebate received by the seller as a result of the sale. As used herein, the term "commercial mobile services" shall have the same meaning as that term has in 47 U.S.C. Sections 153(n) and 332(d), as in effect from time to time.

"(7) TAXPAYER. Any person liable for taxes hereunder.

"(8) GROSS RECEIPTS. The value proceeding or accruing from the sale of tangible personal property, including merchandise and commodities of any kind and character, all receipts actual and accrued, by reason of any business engaged in, not including, however, interest, discounts, rentals of real estate or royalties, and without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included in the sales price of the property sold, or any other expenses whatsoever and without any deductions on account of losses.

The term "gross receipts" shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn or used from the business or stock and used or consumed in connection with a business, and shall also mean and include the reasonable and fair market value of any tangible personal property previously purchased at wholesale which is withdrawn from the business or stock and used or consumed by any person so withdrawing the same, except property which has been previously withdrawn from business or stock and so used or consumed and with respect to which property the tax has been paid because of previous withdrawal, use, or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in subdivision (9) and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same, and except refinery, residue, or fuel gas, whether in a liquid or gaseous state, that has been generated by, or is otherwise a by-product of, a petroleum-refining process, which gas is then utilized in the process to generate heat or is otherwise utilized in the distillation or refining of petroleum products.

"(9) WHOLESALE SALE or SALE AT WHOLESALE. Any one of the following:

"a. A sale of tangible personal property by wholesalers to licensed retail merchants, jobbers, dealers, or other wholesalers for resale and does not include a sale by wholesalers to users or consumers, not for resale.

"b. A sale of tangible personal property or products, including iron ore, and including the furnished container and label of such property or products, to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which the manufacturer or compounder manufactures or compounds for sale, whether or not such tangible personal property or product used in manufacturing or compounding a finished product is used with the intent that it becomes a component of the finished product; provided, however, that it is the intent of this section that no sale of capital equipment, machinery, tools, or product shall be included in the term "wholesale sale." The term "capital equipment, machinery, tools, or product" shall mean property that is subject to depreciation allowances for Alabama income tax purposes.

"c. A sale of containers intended for one-time use only, and the labels thereof, when containers are sold without contents to persons who sell or furnish containers along with the contents placed therein for sale by persons.

"d. A sale of pallets intended for one-time use only when pallets are sold without contents to persons who sell or furnish pallets along with the contents placed thereon for sale by persons.

"e. A sale to a manufacturer or compounder, of crowns, caps, and tops intended for one-time use employed and used upon the containers in which a manufacturer or compounder markets his products.

"f. A sale of containers to persons engaged in selling or otherwise supplying or furnishing baby chicks to growers thereof where containers are used for the delivery of chicks or a sale of containers for use in the delivery of eggs by the producer thereof to the distributor or packer of eggs even though containers used for delivery of baby chicks or eggs may be recovered for reuse.

"g. A sale of bagging and ties used in preparing cotton for market.

"h. A sale to meat packers, manufacturers, compounders, or processors of meat products of all casings used in molding or forming wieners and Vienna sausages even though casings may be recovered for reuse.

"i. A sale of commercial fish feed including concentrates, supplements, and other feed ingredients when substances are used as ingredients in mixing and preparing feed for fish raised to be sold on a commercial basis.

"j. A sale of tangible personal property to any person engaging in the business of leasing or renting tangible personal property to others, if tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the privilege or license tax levied in Article 4 of Chapter 12 of this title against any person engaging in the business of leasing or renting tangible personal property to others.

"k. A purchase or withdrawal of parts or materials from stock by any person licensed under this division where parts or materials are used in repairing or reconditioning the tangible personal property of a licensed person, which tangible personal property is a part of the stock of goods of a licensed person, offered for sale by him, and not for use or consumption of a licensed person.

"(10) SALE AT RETAIL or RETAIL SALE. All sales of tangible personal property except those above defined as wholesale sales. The quantities of goods sold or prices at which sold are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold. Sales of building materials, fixtures, or other equipment to a manufacturer or builder of modular buildings for use in manufacturing, building, or equipping a modular building ultimately becoming a part of real estate situated in the State of Alabama are retail sales, and the use, sale, or resale of building shall not be subject to the tax. Sales of tangible personal property to undertakers and morticians are retail sales and subject to the tax at the time of purchase, but are not subject to the tax on resale to the consumer. Sales of tangible personal property or products to manufacturers, quarry operators, mine operators, or compounders, which are used or consumed by them in manufacturing, mining, quarrying, or compounding and do not become an ingredient or component part of the tangible personal property manufactured or compounded as provided in

subdivision (9) are retail sales. The term "sale at retail" or "retail sale" shall also mean and include the withdrawal, use, or consumption of any tangible personal property by any one who purchases same at wholesale, except property which has been previously withdrawn from the business or stock and so used or consumed and with respect to which property tax has been paid because of previous withdrawal, use, or consumption, except property which enters into and becomes an ingredient or component part of tangible personal property or products manufactured or compounded for sale as provided in subdivision (9) and not for the personal and private use or consumption of any person so withdrawing, using, or consuming the same; and wholesale purchaser shall report and pay the taxes thereon. In the case of the sale of equipment, accessories, fixtures, and other similar tangible personal property used in connection with the sale of commercial mobile services as defined in subdivision (6) above, or in connection with satellite television services, at a price below cost, the term "sale at retail" and "retail sale" shall include those sales, and those sales shall not also be taxable as a withdrawal, use, or consumption of such tangible personal property.

"(11) BUSINESS. All activities engaged in, or caused to be engaged in, with the object of gain, profit, benefit, or advantage, either direct or indirect, and not excepting subactivities producing marketable commodities used or consumed in the main business activity, each of which subactivities shall be considered business engaged in, taxable in the class in which it falls.

"(12) AUTOMOTIVE VEHICLE. A power shovel, dragline, crawler, crawler crane, ditcher, or any similar machine which is self-propelled, in addition to self-propelled machines which are used primarily as instruments of conveyance.

"(13) PREPAID TELEPHONE CALLING CARD. A sale of a prepaid telephone calling card or a prepaid authorization number, or both, shall be deemed the sale of tangible personal property subject to the tax imposed on the sale of tangible personal property pursuant to this chapter.

"(b) The use within this state of tangible personal property by the manufacturer thereof, as building materials in the performance of a construction contract, shall, for the purposes of this division, be considered as a retail sale thereof by manufacturer, who shall also be construed as the ultimate consumer of materials or property, and who shall be required to report transaction and pay the sales tax thereon, based upon the reasonable and fair market price thereof at the time and place where same are used or consumed by him or it. Where the contractor is the manufacturer or compounder of ready-mix concrete or asphalt plant mix used in the performance of a contract, whether the ready-mix concrete or asphalt plant mix is manufactured or compounded at the job site or at a fixed or permanent plant location, the tax applies only to the cost of the ingredients that become a component part of the ready-mix concrete or the asphalt plant

mix. The provisions of this subsection shall not apply to any tangible personal property which is specifically exempted from the tax levied in this division.

"(c) The sale of lumber by a lumber manufacturer to a trucker for resale is a sale at wholesale as sales are defined herein where the trucker is either a licensed dealer in lumber or, if a resident of Alabama, has registered with the Department of Revenue, and has received therefrom a certificate of registration or, if a nonresident of this state purchasing lumber for resale outside the State of Alabama, has furnished to the lumber manufacturer his name, address and the vehicle license number of the truck in which the lumber is to be transported, which name, address, and vehicle license number shall be shown on the sales invoice rendered by the lumber manufacturer. The certificate provided for herein shall be valid for the calendar year of its issuance and may be renewed from year to year on application to the Department of Revenue on or before January 31 of each succeeding year; provided, that if not renewed the certificate shall become invalid for the purpose of this division on February 1.

"(d) The dispensing or transferring of ophthalmic materials, including lenses, frames, eyeglasses, contact lenses, and other therapeutic optic devices, to a patient by a licensed ophthalmologist, as a part of his or her professional service, shall not, for purposes of this division, be deemed or considered to constitute a sale, subject to the state sales tax. The licensed ophthalmologist shall be considered the ultimate consumer of the ophthalmic materials and shall have no responsibility or duty pursuant to this division for the collection of the state sales tax. The sale of the ophthalmic materials to a licensed ophthalmologist by a supplier thereof shall be considered a retail sale subject to the state sales tax, and the supplier shall be responsible for collecting sales tax from the licensed ophthalmologist. In no event shall the providing of professional services in connection with the dispensing or transferring of ophthalmic materials by a licensed ophthalmologist or optometrist be considered a sale subject to the state sales tax. All transfers of ophthalmic materials by opticians or optometrists shall be considered retail sales subject to the state sales tax. The term supplier shall include but not be limited to optical laboratories, ophthalmic material wholesalers, or anyone selling ophthalmic materials to ophthalmologists.

"(e) Notwithstanding the above, the withdrawal, use, or consumption of a manufactured product by the manufacturer thereof in quality control testing performed by employees or independent contractors of the taxpayer, for purposes of this division, shall not be deemed or considered to constitute a transaction subject to sales tax, nor shall a gift by the manufacturer of a manufactured product, withdrawn from the manufacturer's inventory, to an entity listed in 26 U.S.C. Sections 170(b) or (c), be considered a transaction subject to sales tax.

"(f) Notwithstanding the foregoing, a gift by a retailer of a product or products where the aggregate retail value of any single gift is equal to or less than ten thousand dollars (\$10,000), withdrawn from the retailer's inventory, to

an entity listed in 26 U.S.C. Sections 170(b) or (c) shall not be deemed or considered to constitute a transaction subject to sales and use tax."

Section 3. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.

# Commonsense Consumption

## Idaho

**BILL NUMBER:** HB 590

**SUBJECT:** Commonsense Consumption

**DATE STAMP:** Signed by Governor, April 2, 2004

**HYPERLINK:** <http://www3.state.id.us/oasis/2004/H0590.html>

### **BILL TEXT:**

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Title 39, Idaho Code, be, and the same is hereby amended by the addition thereto of a NEW CHAPTER, to be known and designated as Chapter 87, Title 39, Idaho Code, and to read as follows:

### CHAPTER 87 IDAHO COMMONSENSE CONSUMPTION ACT

39-8701. SHORT TITLE. This chapter shall be known and may be cited as the "Idaho Commonsense Consumption Act."

39-8702. PREVENTION OF FRIVOLOUS LAWSUITS. Except as provided in section 39-8703, Idaho Code, a manufacturer, packer, distributor, carrier, holder, seller, marketer or advertiser of a food, as defined in section 39-8704, Idaho Code, or an association of one (1) or more of such entities, shall not be subject to civil liability arising under any Idaho law for any claim, as defined in section 39-8704, Idaho Code, arising out of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption of food.

39-8703. EXEMPTION. Notwithstanding section 39-8702, Idaho Code, civil liability shall not be precluded where the claim of weight gain, obesity, a health condition associated with weight gain or obesity, or any other generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption of food is based on:

(1) A material violation of an adulteration or misbranding provision set forth by statute, rule or regulation in Idaho or the United States provided the claimed injury was proximately caused by such violation; or

(2) Any other material violation of federal or state law applicable to manufacturing, marketing, distribution, advertising, labeling or the sale of food, provided such violation is knowing and willful, as defined in section 39-8704,

Idaho Code, and provided further that the claimed injury was proximately caused by such violation.

39-8704. DEFINITIONS. As used in this chapter:

(1) "Claim" means any claim by or on behalf of a natural person as well as any derivative or other claim arising therefrom asserted by or on behalf of any other person.

(2) "Food" means:

(a) Articles used for food or drink for persons or other animals;

(b) Chewing gum; and

(c) Articles used for components of any other such article.

(3) "Generally known obesity-related condition allegedly caused by or allegedly likely to result from long-term consumption" means an obesity-related condition generally known to result or to likely result from the cumulative effect of consumption and not from a single instance of consumption.

(4) "Knowing and willful violation" means:

(a) The conduct constituting the violation was committed with the intent to deceive or injure consumers or with actual knowledge that such conduct was injurious to consumers; and

(b) The conduct constituting the violation was not required by any law, regulation, order or rule of the United States, the state of Idaho, or any political subdivision thereof.

(5) "Person" means any individual, partnership, corporation, firm, association, governmental subdivision or agency, public or private organization or other legal entity.

39-8705. PLEADING REQUIREMENTS. (1) In any action exempted pursuant to section 39-8703(1), Idaho Code, the complaint initiating such action shall state with particularity the following:

(a) The statute, rule, regulation or other law of Idaho or the United States that was allegedly violated;

(b) The facts that are alleged to constitute a material violation of such law; and

(c) The facts that are alleged to demonstrate that such violation proximately caused actual injury to the plaintiff.

(2) In any action exempted pursuant to section 39-8703(2), Idaho Code, the complaint initiating such action shall state with particularity facts sufficient to support a reasonable inference that the violation was done with the intent to deceive or injure consumers or with actual knowledge that such violation was injurious to consumers.

39-8706. STAY PENDING MOTION TO DISMISS. In any action exempted pursuant to section 39-8703, Idaho Code, all discovery and other proceedings

shall be stayed during the pendency of any motion to dismiss unless the court finds upon the motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party. During the pendency of any stay of discovery, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the complaint shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of such party and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party.

SECTION 2. The provisions of this act shall apply to all covered claims pending on the effective date of this act and to all claims filed thereafter, regardless of when the claim arose.

## Texas

**BILL NUMBER:** HB 107

**SUBJECT:** Commonsense Consumption

**DATE STAMP:** Signed by Governor, June 18, 2005

**HYPERLINK:** <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=H&BILLTYPE=B&BILLSUFFIX=00107&VERSION=5&TYPE=B>

### **BILL TEXT:**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 6, Civil Practice and Remedies Code, is amended by adding Chapter 138 to read as follows:

#### CHAPTER 138. PERSONAL RESPONSIBILITY FOR FOOD CONSUMPTION

Sec. 138.001. DEFINITIONS. In this chapter:

(1) "Agricultural commodity" has the meaning assigned by Section 41.002, Agriculture Code.

(2) "Agricultural producer" means any producer of an agricultural commodity.

(3) "Food" has the definition assigned by Section 431.002, Health and Safety Code. "Food" does not include:

(A) a cosmetic, as defined by Section 321(i) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321 (i));

(B) a drug, as defined by Section 321(g) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(g)), whether prescription or over-the-counter; or

(C) a dietary supplement, as defined by Section 321(ff) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. Section 321(ff)).

(4) "Livestock" has the meaning assigned by Section 1.003, Agriculture Code.

(5) "Livestock producer" means any producer of livestock.

(6) "Manufacturer" means a person lawfully engaged, in the regular course of the person's trade or business, in manufacturing a food.

(7) "Seller" means a person lawfully engaged, in the regular course of the person's trade or business, in marketing, distributing, advertising, or selling a food.

(8) "State" includes each state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands and any other territory or possession of the United States and any political subdivision of any of those places.

(9) "Trade association" means any association or business organization, whether or not incorporated under federal or state law, that is not operated for profit and two or more members of which are manufacturers, marketers, distributors, advertisers, or sellers of a food.

Sec. 138.002. CIVIL ACTION PROHIBITED. (a) Except as otherwise provided by this section, a manufacturer, seller, trade association, livestock producer, or agricultural producer is not liable under any law of this state for any claim arising out of weight gain or obesity, a health condition associated with weight gain or obesity, or any other generally known condition allegedly caused by or allegedly likely to result from the long-term consumption of food, including:

(1) an action brought by a person other than the individual on whose weight gain, obesity, or health condition the action is based; and

(2) any derivative action brought by or on behalf of any individual or any representative, spouse, parent, child, or other relative of any individual.

(b) This section does not prohibit a person from bringing:

(1) an action in which:

(A) a manufacturer or seller of a food knowingly and wilfully violates a federal or state statute applicable to the manufacturing, marketing, distribution, advertisement, labeling, or sale of the food; and

(B) the violation is a proximate cause of injury related to an individual's weight gain or obesity or any health condition associated with an individual's weight gain or obesity;

or

(2) an action brought:

(A) under Chapter 431, Health and Safety Code; or

(B) by the attorney general under Section 17.47, Business & Commerce Code.

(c) This section does not create a cause of action.

Sec. 138.003. PLEADINGS. In an action described in Section 138.002(b)(1), the initiating petition must state with particularity:

(1) the federal and state statutes allegedly violated; and

(2) the facts that are alleged to have proximately caused the injury claimed.

Sec. 138.004. STAY. (a) For an action described by Section 138.002(b), all discovery and other proceedings are stayed during the pendency of any motion to dismiss unless the court finds on motion of any party that particularized discovery is necessary to preserve evidence or to prevent undue prejudice to that party.

(b) During the pendency of any stay of discovery, unless otherwise ordered by the court, any party to the action with actual notice of the allegations contained in the petition shall treat all documents, data compilations, including electronically recorded or stored data, and tangible objects that are in the custody or control of the person and that are relevant to the allegations, as if they were the subject of a continuing request for production of documents from an opposing party under the applicable rules of civil procedure.

(c) A party aggrieved by the wilful failure of an opposing party to comply with this section may apply to the court for an order awarding appropriate sanctions.

SECTION 2. A court shall immediately dismiss any pending action under its jurisdiction that:

(1) was filed on or after June 1, 2005; and

(2) under Chapter 138, Civil Practice and Remedies Code, as added by this Act, could not be brought before the court.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

# Credit Card Transactions

## Kentucky

**BILL NUMBER:** HB 592

**SUBJECT:** Credit Card Transactions

**DATE STAMP:** Recommitted to House Committee on Appropriations and Revenue, March 15, 2006

**HYPERLINK:** <http://www.lrc.ky.gov/RECORD/06RS/HB592/bill.doc>

**BILL TEXT:**

AN ACT relating to credit card transactions.

Be it enacted by the General Assembly of the Commonwealth of Kentucky:

SECTION 1. A NEW SECTION OF KRS CHAPTER 367 IS CREATED TO READ AS FOLLOWS:

(1) "Credit card" means any instrument or device, whether known as a credit card, credit plate, credit number or by any other name, issued by an issuer for the use of the cardholder in obtaining money, goods, services or anything else of value on credit.

(2) Discount rates, transaction charges, interchange rates, or any other charges or fees charged to merchants or deducted from credit card sales for processing credit card transactions where the charges or fees are a percentage multiplied by the gross dollar amount of a credit card transaction shall be based on the dollar amount of the credit card sale excluding any taxes on the sale. In no event shall such fees or charges be applied to the tax portion of any credit card sales.

(3) A violation of this section shall be deemed an unfair, false, misleading, or deceptive act or practice in the conduct of trade or commerce in violation of KRS 367.170. All of the remedies, powers, and duties delegated to the Attorney General by KRS 367.190 to 367.300 and penalties pertaining to acts and practices declared unlawful under KRS 367.170 shall be applied to acts and practices in violation of this section.

# Lottery

## Texas

**BILL NUMBER:** SB 442

**SUBJECT:** Legal Protection for Lottery Retailers

**DATE STAMP:** Signed by Governor, June 17, 2005

**HYPERLINK:** <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00442&VERSION=5&TYPE=B>

### **BILL TEXT:**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 466, Government Code, is amended by adding Section 466.161 to read as follows:

Sec. 466.161. IMMUNITY; CIVIL ACTIONS. (a) A sales agent acting in good faith is immune from civil liability for an act or omission within the course and scope of the agent's license under this chapter.

(b) This section does not waive any immunity of the commission or this state.

(c) This section does not create a cause of action against this state, the commission, a commission employee, or a sales agent.

(d) The immunity provided by Subsection (a) does not apply to a cause of action for personal injury or wrongful death.

SECTION 2. Section 466.161, Government Code, as added by this Act, applies only to a civil action filed on or after the effective date of this Act. A civil action filed before the effective date of this Act is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 3. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

# Retail Theft

## Colorado

**BILL NUMBER:** HB 1380

**SUBJECT:** Retail Theft / Flea Markets

**DATE STAMP:** Signed by Governor Bill Owens, May 26, 2006

**HYPERLINK:**

[http://www.leg.state.co.us/Clics2006A/csl.nsf/fsbillcont3/C1A8C16167E73C5787257125007E8FBA?Open&file=1380\\_enr.pdf](http://www.leg.state.co.us/Clics2006A/csl.nsf/fsbillcont3/C1A8C16167E73C5787257125007E8FBA?Open&file=1380_enr.pdf)

**BILL TEXT:**

*Be it enacted by the General Assembly of the State of Colorado:*

**SECTION 1.** Article 13 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**18-13-114.5. Proof of ownership required - penalty - definitions.**

(1) A PERSON WHO IS A SECONDHAND DEALER OR A DEALER AND RETAILER OF NEW GOODS AND WHO SELLS GOODS AT A FLEA MARKET OR SIMILAR FACILITY SHALL NOT SELL OR OFFER FOR SALE ANY OF THE FOLLOWING PROPERTY ITEMS WITHOUT PROOF OF OWNERSHIP:

- (a) BABY FOOD OF A TYPE USUALLY CONSUMED BY CHILDREN UNDER THREE YEARS OF AGE;
- (b) COSMETICS;
- (c) DEVICES;
- (d) DRUGS;
- (e) INFANT FORMULA;
- (f) BATTERIES; OR
- (g) RAZOR BLADES.

(2) A PERSON REQUIRED TO HAVE PROOF OF OWNERSHIP UNDER SUBSECTION (1) OF THIS SECTION SHALL MAKE SUCH PROOF OF OWNERSHIP AVAILABLE TO ANY PEACE OFFICER FOR INSPECTION AT ANY REASONABLE TIME.

(3) FOR PURPOSES OF THIS SECTION:

(a) "COSMETIC" MEANS AN ARTICLE, OR ITS COMPONENTS, INTENDED TO BE RUBBED, Poured, SPRINKLED, OR SPRAYED ON, INTRODUCED INTO, OR OTHERWISE APPLIED TO, THE HUMAN BODY, OR ANY PART OF THE HUMAN BODY, FOR CLEANSING, BEAUTIFYING,

PROMOTING ATTRACTIVENESS, OR ALTERING APPEARANCE.  
"COSMETIC" DOES NOT INCLUDE SOAP.

(b) "DEVICE" MEANS AN INSTRUMENT, APPARATUS, IMPLEMENT, MACHINE, CONTRIVANCE, IMPLANT, IN VITRO REAGENT, OR OTHER SIMILAR OR RELATED ARTICLE, INCLUDING A COMPONENT, PART, OR ACCESSORY, THAT IS:

(I) RECOGNIZED IN THE OFFICIAL NATIONAL FORMULARY OR THE UNITED STATES PHARMACOPOEIA, OR ANY SUPPLEMENT TO THEM;

(II) INTENDED FOR USE IN THE DIAGNOSIS OF DISEASE OR OTHER CONDITION, OR IN THE CURE, MITIGATION, TREATMENT, OR PREVENTION OF DISEASE IN HUMANS OR ANIMALS; OR

(III) INTENDED TO AFFECT THE STRUCTURE OR ANY FUNCTION OF THE BODY OF HUMANS OR ANIMALS AND THAT DOES NOT ACHIEVE ANY OF ITS PRINCIPAL INTENDED PURPOSES THROUGH CHEMICAL ACTION WITHIN OR ON THE BODY OF HUMANS OR ANIMALS AND THAT IS NOT DEPENDENT UPON BEING METABOLIZED FOR THE ACHIEVEMENT OF ANY OF ITS PRINCIPAL INTENDED PURPOSES.

(c) "DRUG" MEANS:

(I) ANY ARTICLE RECOGNIZED IN AN OFFICIAL COMPENDIUM OF DRUGS;

(II) AN ARTICLE USED OR INTENDED FOR USE IN THE DIAGNOSIS, CURE, MITIGATION, TREATMENT, OR PREVENTION OF DISEASE IN HUMANS OR ANIMALS;

(III) AN ARTICLE, OTHER THAN FOOD, THAT IS USED OR INTENDED TO AFFECT THE STRUCTURE OR ANY FUNCTION OF THE BODY OF HUMANS OR ANIMALS; OR

(IV) AN ARTICLE INTENDED FOR USE AS A COMPONENT OF AN ARTICLE SPECIFIED IN SUBPARAGRAPH (I), (II), OR (III) OF THIS PARAGRAPH (c).

(d) "INFANT FORMULA" MEANS A FOOD THAT PURPORTS TO BE OR IS REPRESENTED FOR SPECIAL DIETARY USE SOLELY AS A FOOD FOR INFANTS BY REASON OF ITS SIMULATION OF HUMAN MILK OR ITS

SUITABILITY AS A COMPLETE OR PARTIAL SUBSTITUTE FOR HUMAN MILK.

(e) "PROOF OF OWNERSHIP" SHALL INCLUDE:

(I) THE NAME, ADDRESS, TELEPHONE NUMBER, AND SIGNATURE OF THE SELLER OR THE SELLER'S AUTHORIZED REPRESENTATIVE;

(II) THE NAME AND ADDRESS OF THE BUYER OR CONSIGNEE IF NOT SOLD; AND

(III) A DESCRIPTION AND QUANTITY OF THE PRODUCT.

(4) A VIOLATION OF THIS SECTION IS A CLASS 3 MISDEMEANOR.

**SECTION 2.** Part 4 of article 4 of title 18, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

**18-4-411.5. Interagency task force on organized retail theft - legislative declaration - repeal.** (1) THE GENERAL ASSEMBLY FINDS AND DECLARES THAT IT IS NECESSARY AND IN THE BEST INTERESTS OF THE CITIZENS OF COLORADO TO:

(a) FACILITATE COLORADO'S COMMUNICATION WITH THE FEDERAL ORGANIZED RETAIL THEFT TASK FORCE CREATED WITHIN THE FEDERAL BUREAU OF INVESTIGATION;

(b) SECURE FUNDING, IF MADE AVAILABLE BY THE FEDERAL GOVERNMENT, TO COLORADO'S LAW ENFORCEMENT AGENCIES THAT COMBAT ORGANIZED RETAIL THEFT; AND

(c) INVOLVE THE GENERAL ASSEMBLY, LAW ENFORCEMENT AGENCIES, DISTRICT ATTORNEYS, AND RETAIL BUSINESSES IN COLORADO IN DETERMINING THE MOST APPROPRIATE STRATEGIES TO HELP DETER AND REDUCE ORGANIZED RETAIL THEFT.

(2) THERE IS HEREBY CREATED AN INTERAGENCY TASK FORCE ON ORGANIZED RETAIL THEFT, REFERRED TO IN THIS SECTION AS THE "TASK FORCE". THE TASK FORCE SHALL MEET REGULARLY TO INVESTIGATE METHODS OF EFFECTIVELY PREVENTING ORGANIZED RETAIL THEFT AND DEVELOP RECOMMENDATIONS FOR THE STATE OF

COLORADO REGARDING THE ENHANCEMENT OF LAW ENFORCEMENT EFFORTS AND EDUCATION CONCERNING ORGANIZED RETAIL THEFT.

(3) (a) THE TASK FORCE SHALL CONSIST OF NINE MEMBERS TO BE APPOINTED AS FOLLOWS:

(I) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF COUNTY SHERIFFS TO BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES;

(II) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF CHIEFS OF POLICE TO BE APPOINTED BY THE PRESIDENT OF THE SENATE;

(III) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION THAT REPRESENTS COLORADO'S ELECTED COUNTY COMMISSIONERS TO BE APPOINTED BY THE GOVERNOR;

(IV) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION THAT REPRESENTS COLORADO'S ELECTED CITY COUNCIL PERSONS TO BE APPOINTED BY THE GOVERNOR;

(V) A REPRESENTATIVE OF A STATEWIDE ORGANIZATION OF DISTRICT ATTORNEYS TO BE APPOINTED BY THE PRESIDENT OF THE SENATE; AND

(VI) FOUR PERSONS ACTIVELY ENGAGED IN RETAIL BUSINESS IN COLORADO, TWO OF WHOM SHALL BE APPOINTED BY THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, ONE OF WHOM SHALL BE APPOINTED BY THE PRESIDENT OF THE SENATE, AND ONE OF WHOM SHALL BE APPOINTED BY THE GOVERNOR.

(b) MEMBERS OF THE TASK FORCE SHALL NOT BE COMPENSATED OR REIMBURSED FOR THEIR EXPENSES INCURRED IN ATTENDING MEETINGS OF THE TASK FORCE.

(4) THE PRESIDENT OF THE SENATE, THE SPEAKER OF THE HOUSE OF REPRESENTATIVES, AND THE GOVERNOR SHALL JOINTLY AGREE ON AND SELECT A CHAIRPERSON FROM THE APPOINTED PERSONS DESCRIBED IN SUBSECTION (3) OF THIS SECTION, AND SUCH CHAIRPERSON SHALL CALL THE FIRST MEETING OF THE TASK FORCE.

(5) THE TASK FORCE SHALL REPORT ITS FINDINGS AND RECOMMENDATIONS TO THE JUDICIARY COMMITTEES OF THE HOUSE OF REPRESENTATIVES AND THE SENATE, OR ANY SUCCESSOR COMMITTEES, ON OR BEFORE JANUARY 31, 2007.

(6) THIS SECTION IS REPEALED, EFFECTIVE FEBRUARY 1, 2007.

**SECTION 3. Effective date - applicability.** This act shall take effect July 1, 2006, and shall apply to offenses committed on or after said date.

**SECTION 4. Safety clause.** The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

## New Jersey

**BILL NUMBER:** SB 273

**SUBJECT:** Retail Theft

**DATE STAMP:** Sent to Governor, June 22, 2006

**HYPERLINK:** [http://www.njleg.state.nj.us/2006/Bills/S0500/273\\_I1.HTM](http://www.njleg.state.nj.us/2006/Bills/S0500/273_I1.HTM)

### **BILL TEXT:**

An Act concerning organized retail theft, amending N.J.S.2C:20-11 and supplementing chapter 20 of Title 2C of the New Jersey Statutes.

Be It Enacted by the Senate and General Assembly of the State of New Jersey:

1. N.J.S.2C:20-11 is amended to read as follows:

a. Definitions. The following definitions apply to this section:

(1) "Shopping cart" means those push carts of the type or types which are commonly provided by grocery stores, drug stores or other retail mercantile establishments for the use of the public in transporting commodities in stores and markets and, incidentally, from the stores to a place outside the store;

(2) "Store or other retail mercantile establishment" means a place where merchandise is displayed, held, stored or sold or offered to the public for sale;

(3) "Merchandise" means any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof;

(4) "Merchant" means any owner or operator of any store or other retail mercantile establishment, or any agent, servant, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or proprietor;

(5) "Person" means any individual or individuals, including an agent, servant or employee of a merchant where the facts of the situation so require;

(6) "Conceal" means to conceal merchandise so that, although there may be some notice of its presence, it is not visible through ordinary observation;

(7) "Full retail value" means the merchant's stated or advertised price of the merchandise;

(8) "Premises of a store or retail mercantile establishment" means and includes but is not limited to, the retail mercantile establishment; any common use areas in shopping centers and all parking areas set aside by a merchant or on behalf of a merchant for the parking of vehicles for the convenience of the patrons of such retail mercantile establishment;

(9) "Under-ring" means to cause the cash register or other sale recording device to reflect less than the full retail value of the merchandise;

(10) "Antishoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any antishoplifting or inventory control device;

(11) "Organized retail theft enterprise" means any association of two or more persons who engage in the conduct of or are associated for the purpose of effectuating the transfer or sale of shoplifted merchandise.

b. Shoplifting. Shoplifting shall consist of any one or more of the following acts:

(1) For any person purposely to take possession of, carry away, transfer or cause to be carried away or transferred, any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the possession, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the full retail value thereof.

(2) For any person purposely to conceal upon his person or otherwise any merchandise offered for sale by any store or other retail mercantile establishment with the intention of depriving the merchant of the processes, use or benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof.

(3) For any person purposely to alter, transfer or remove any label, price tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile establishment and to attempt to purchase such merchandise personally or in consort with another at less than the full retail value with the intention of depriving the merchant of all or some part of the value thereof.

(4) For any person purposely to transfer any merchandise displayed, held, stored or offered for sale by any store or other retail merchandise establishment

from the container in or on which the same shall be displayed to any other container with intent to deprive the merchant of all or some part of the retail value thereof.

(5) For any person purposely to under-ring with the intention of depriving the merchant of the full retail value thereof.

(6) For any person purposely to remove a shopping cart from the premises of a store or other retail mercantile establishment without the consent of the merchant given at the time of such removal with the intention of permanently depriving the merchant of the possession, use or benefit of such cart.

c. Gradation. (1) Shoplifting constitutes a crime of the second degree under subsection b. of this section if the full retail value of the merchandise is ~~[\$75,000.00]~~ \$75,000 or more, or the offense is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full retail value of the merchandise is \$1,000 or more.

(2) Shoplifting constitutes a crime of the third degree under subsection b. of this section if the full retail value of the merchandise exceeds ~~[\$500.00]~~ \$500 but is less than ~~[\$75,000.00]~~ \$75,000, or the offense is committed in furtherance of or in conjunction with an organized retail theft enterprise and the full retail value of the merchandise is less than \$1,000.

(3) Shoplifting constitutes a crime of the fourth degree under subsection b. of this section if the full retail value of the merchandise is at least \$200.00 but does not exceed \$500.00.

(4) Shoplifting is a disorderly persons offense under subsection b. of this section if the full retail value of the merchandise is less than \$200.00.

The value of the merchandise involved in a violation of this section may be aggregated in determining the grade of the offense where the acts or conduct constituting a violation were committed pursuant to one scheme or course of conduct, whether from the same person or several persons, or were committed in furtherance of or in conjunction with an organized retail theft enterprise.

Additionally, notwithstanding the term of imprisonment provided in N.J.S.2C:43-6 or 2C:43-8, any person convicted of a shoplifting offense shall be sentenced to perform community service as follows: for a first offense, at least ten days of community service; for a second offense, at least 15 days of community service; and for a third or subsequent offense, a maximum of 25 days of community service and any person convicted of a third or subsequent

shoplifting offense shall serve a minimum term of imprisonment of not less than 90 days.

d. Presumptions. Any person purposely concealing unpurchased merchandise of any store or other retail mercantile establishment, either on the premises or outside the premises of such store or other retail mercantile establishment, shall be prima facie presumed to have so concealed such merchandise with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof, and the finding of such merchandise concealed upon the person or among the belongings of such person shall be prima facie evidence of purposeful concealment; and if such person conceals, or causes to be concealed, such merchandise upon the person or among the belongings of another, the finding of the same shall also be prima facie evidence of willful concealment on the part of the person so concealing such merchandise.

e. A law enforcement officer, or a special officer, or a merchant, who has probable cause for believing that a person has willfully concealed unpurchased merchandise and that he can recover the merchandise by taking the person into custody, may, for the purpose of attempting to effect recovery thereof, take the person into custody and detain him in a reasonable manner for not more than a reasonable time, and the taking into custody by a law enforcement officer or special officer or merchant shall not render such person criminally or civilly liable in any manner or to any extent whatsoever.

Any law enforcement officer may arrest without warrant any person he has probable cause for believing has committed the offense of shoplifting as defined in this section.

A merchant who causes the arrest of a person for shoplifting, as provided for in this section, shall not be criminally or civilly liable in any manner or to any extent whatsoever where the merchant has probable cause for believing that the person arrested committed the offense of shoplifting.

f. Any person who possesses or uses any antishoplifting or inventory control device countermeasure within any store or other retail mercantile establishment is guilty of a disorderly persons offense.

(cf: P.L.2000, c.16, s.1)

2. (New section) A person is a leader of an organized retail theft enterprise if he conspires with others as an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of conduct to effectuate the transfer or

sale of shoplifted merchandise. Leader of organized retail theft enterprise is a crime of the second degree. Notwithstanding the provisions of subsection a. of N.J.S.2C:43-3, the court may impose a fine not to exceed \$250,000 or five times the retail value of the merchandise seized at the time of the arrest, whichever is greater.

Notwithstanding the provisions of N.J.S.2C:1-8, a conviction of leader of organized retail theft enterprise shall not merge with the conviction for any offense which is the object of the conspiracy. Nothing contained in this section shall prohibit the court from imposing an extended term pursuant to N.J.S.2C:43-7; nor shall this section be construed in any way to preclude or limit the prosecution or conviction of any person for conspiracy under N.J.S.2C:5-2, or any prosecution or conviction for any other offense.

It shall not be necessary in any prosecution under this section for the State to prove that any intended profit was actually realized. The trier of fact may infer that a particular scheme or course of conduct was undertaken for profit from all of the attending circumstances, including but not limited to the number of persons involved in the scheme or course of conduct, the actor's net worth and his expenditures in relation to his legitimate sources of income, the amount of merchandise involved, or the amount of cash or currency involved.

It shall not be a defense to a prosecution under this section that any shoplifted merchandise was brought into or transported in this State solely for ultimate distribution in another jurisdiction; nor shall it be a defense that any profit was intended to be made in another jurisdiction.

3. This act shall take effect immediately.

## Washington

**BILL NUMBER:** HB 2704

**SUBJECT:** Retail Theft

**DATE STAMP:** Signed by the Governor, March 28, 2006

**HYPERLINK:** <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/Session%20Law%202006/2704.SL.pdf>

### **BILL TEXT:**

AN ACT Relating to organized retail theft; amending RCW 9A.56.010; reenacting and amending RCW 9A.82.010 and 9.94A.515; adding new sections to chapter 9A.56 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:  
NEW SECTION.

**Sec. 1.** A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of theft with the intent to resell if he or she commits theft of property with a value of at least two hundred fifty dollars from a mercantile establishment with the intent to resell the property for monetary or other gain.

(2) The person is guilty of theft with the intent to resell in the first degree if the property has a value of one thousand five hundred dollars or more. Theft with the intent to resell in the first degree is a class B felony.

(3) The person is guilty of theft with the intent to resell in the second degree if the property has a value of at least two hundred fifty dollars, but less than one thousand five hundred dollars. Theft with the intent to resell in the second degree is a class C felony.

(4) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the theft with the intent to resell involved. Theft committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

NEW SECTION.

**Sec. 2.** A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person is guilty of organized retail theft if he or she:

(a) Commits theft of property with a value of at least two hundred fifty dollars from a mercantile establishment with an accomplice; or

(b) Possesses stolen property, as defined in RCW 9A.56.140, with a value of at least two hundred fifty dollars from a mercantile establishment with an accomplice.

(2) A person is guilty of organized retail theft in the first degree if the property stolen or possessed has a value of one thousand five hundred dollars or more. Organized retail theft in the first degree is a class B felony.

(3) A person is guilty of organized retail theft in the second degree if the property stolen or possessed has a value of at least two hundred fifty dollars, but less than one thousand five hundred dollars. Organized retail theft in the second degree is a class C felony.

(4) For purposes of this section, a series of thefts committed by the same person from one or more mercantile establishments over a period of one hundred eighty days may be aggregated in one count and the sum of the value of all the property shall be the value considered in determining the degree of the organized retail theft involved.

Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

NEW SECTION.

**Sec. 3.** A new section is added to chapter 9A.56 RCW to read as follows:

(1) A person commits retail theft with extenuating circumstances if he or she commits theft of property from a mercantile establishment with one of the following extenuating circumstances:

(a) To facilitate the theft, the person leaves the mercantile establishment through a designated emergency exit;

(b) The person was, at the time of the theft, in possession of an item, article, implement, or device designed to overcome security systems including, but not limited to, lined bags or tag removers; or

(c) The person committed theft at three or more separate and distinct mercantile establishments within a one hundred eighty-day period.

(2) A person is guilty of retail theft with extenuating circumstances in the first degree if the theft involved constitutes theft in the first degree. Retail theft with extenuating circumstances in the first degree is a class B felony.

(3) A person is guilty of retail theft with extenuating circumstances in the second degree if the theft involved constitutes theft in the second degree. Retail theft with extenuating circumstances in the second degree is a class C felony.

(4) A person is guilty of retail theft with extenuating circumstances in the third degree if the theft involved constitutes theft in the third degree. Retail theft with extenuating circumstances in the third degree is a class C felony.

**Sec. 4.** RCW 9A.56.010 and 2002 c 97 s 1 are each amended to read as follows:

The following definitions are applicable in this chapter unless the context otherwise requires:

(1) "Access device" means any card, plate, code, account number, or other means of account access that can be used alone or in conjunction with another access device to obtain money, goods, services, or anything else of value, or that can be used to initiate a transfer of funds, other than a transfer originated solely by paper instrument;

(2) "Appropriate lost or misdelivered property or services" means obtaining or exerting control over the property or services of another which the actor knows to have been lost or mislaid, or to have been delivered under a mistake as to identity of the recipient or as to the nature or amount of the property;

(3) "Beverage crate" means a plastic or metal box-like container used by a manufacturer or distributor in the transportation or distribution of individually packaged beverages to retail outlets, and affixed with language stating "property of . . . .," "owned by . . . .," or other markings or words identifying ownership;

(4) "By color or aid of deception" means that the deception operated to bring about the obtaining of the property or services; it is not necessary that deception be the sole means of obtaining the property or services;

(5) "Deception" occurs when an actor knowingly:

(a) Creates or confirms another's false impression which the actor knows to be false; or

(b) Fails to correct another's impression which the actor previously has created or confirmed; or

(c) Prevents another from acquiring information material to the disposition of the property involved; or

(d) Transfers or encumbers property without disclosing a lien, adverse claim, or other legal impediment to the enjoyment of the property, whether that impediment is or is not valid, or is or is not a matter of official record; or

(e) Promises performance which the actor does not intend to perform or knows will not be performed.

(6) "Deprive" in addition to its common meaning means to make unauthorized use or an unauthorized copy of records, information, data, trade secrets, or computer programs;

(7) "Merchandise pallet" means a wood or plastic carrier designed and manufactured as an item on which products can be placed before or during transport to retail outlets, manufacturers, or contractors, and affixed with language stating "property of . . .," "owned by . . .," or other markings or words identifying ownership;

(8) "Obtain control over" in addition to its common meaning, means:

(a) In relation to property, to bring about a transfer or purported transfer to the obtainer or another of a legally recognized interest in the property; or

(b) In relation to labor or service, to secure performance thereof for the benefits of the obtainer or another;

(9) "Owner" means a person, other than the actor, who has possession of or any other interest in the property or services involved, and without whose consent the actor has no authority to exert control over the property or services;

(10) "Parking area" means a parking lot or other property provided by retailers for use by a customer for parking an automobile or other vehicle;

(11) "Receive" includes, but is not limited to, acquiring title, possession, control, or a security interest, or any other interest in the property;

(12) "Services" includes, but is not limited to, labor, professional services, transportation services, electronic computer services, the supplying of hotel accommodations, restaurant services, entertainment, the supplying of equipment for use, and the supplying of commodities of a public utility nature such as gas, electricity, steam, and water;

(13) "Shopping cart" means a basket mounted on wheels or similar container generally used in a retail establishment by a customer for the purpose of transporting goods of any kind;

(14) "Stolen" means obtained by theft, robbery, or extortion;

(15) "Subscription television service" means cable or encrypted video and related audio and data services intended for viewing on a home television by authorized members of the public only, who have agreed to pay a fee for the service. Subscription services include but are not limited to those video services presently delivered by coaxial cable, fiber optic cable, terrestrial microwave, television broadcast, and satellite transmission;

(16) "Telecommunication device" means (a) any type of instrument, device, machine, or equipment that is capable of transmitting or receiving telephonic or electronic communications; or (b) any part of such an instrument, device, machine, or equipment, or any computer circuit, computer chip, electronic mechanism, or other component, that is capable of facilitating the transmission or reception of telephonic or electronic communications;

(17) "Telecommunication service" includes any service other than subscription television service provided for a charge or compensation to facilitate the transmission, transfer, or reception of a telephonic communication or an electronic communication;

(18) Value.

(a) "Value" means the market value of the property or services at the time and in the approximate area of the criminal act.

(b) Whether or not they have been issued or delivered, written instruments, except those having a readily ascertained market value, shall be evaluated as follows:

(i) The value of an instrument constituting an evidence of debt, such as a check, draft, or promissory note, shall be deemed the amount due or collectible thereon or thereby, that figure ordinarily being the face amount of the indebtedness less any portion thereof which has been satisfied;

(ii) The value of a ticket or equivalent instrument which evidences a right to receive transportation, entertainment, or other service shall be deemed the price stated thereon, if any; and if no price is stated thereon, the value shall be deemed the price of such ticket or equivalent instrument which the issuer charged the general public;

(iii) The value of any other instrument that creates, releases, discharges, or otherwise affects any valuable legal right, privilege, or obligation shall be deemed the greatest amount of economic loss which the owner of the instrument might reasonably suffer by virtue of the loss of the instrument.

(c) Except as provided in sections 1(4) and 2(4) of this act, whenever any series of transactions which constitute theft, would, when considered separately, constitute theft in the third degree because of value, and said series of transactions are a part of a criminal episode or a common scheme or plan, then the transactions may be aggregated in one count and the sum of the value of all said transactions shall be the value considered in determining the degree of theft involved.

For purposes of this subsection, "criminal episode" means a series of thefts committed by the same person from one or more mercantile establishments on three or more occasions within a five-day period.

(d) Whenever any person is charged with possessing stolen property and such person has unlawfully in his possession at the same time the stolen property of more than one person, then the stolen property possessed may be aggregated in one count and the sum of the value of all said stolen property shall be the value considered in determining the degree of theft involved. Thefts committed by the same person in different counties that have been aggregated in one county may be prosecuted in any county in which one of the thefts occurred.

(e) Property or services having value that cannot be ascertained pursuant to the standards set forth above shall be deemed to be of a value not exceeding two hundred and fifty dollars;

(19) "Wrongfully obtains" or "exerts unauthorized control" means:

(a) To take the property or services of another;

(b) Having any property or services in one's possession, custody or control as bailee, factor, lessee, pledgee, renter, servant, attorney, agent, employee, trustee, executor, administrator, guardian, or officer of any person, estate, association, or corporation, or as a public officer, or person authorized by agreement or competent authority to take or hold such possession, custody, or control, to secrete, withhold, or appropriate the same to his or her own use or to the use of any person other than the true owner or person entitled thereto; or

(c) Having any property or services in one's possession, custody, or control as partner, to secrete, withhold, or appropriate the same to his or her use or to the use of any person other than the true owner or person entitled thereto, where the use is unauthorized by the partnership agreement.

**Sec. 5.** RCW 9A.82.010 and 2003 c 119 s 6, 2003 c 113 s 3, and 2003 20 c 53 s 85 are each reenacted and amended to read as follows:

Unless the context requires the contrary, the definitions in this section apply throughout this chapter.

(1)(a) "Beneficial interest" means:

(i) The interest of a person as a beneficiary under a trust established under Title 11 RCW in which the trustee for the trust holds legal or record title to real property;

(ii) The interest of a person as a beneficiary under any other trust arrangement under which a trustee holds legal or record title to real property for the benefit of the beneficiary; or

(iii) The interest of a person under any other form of express fiduciary arrangement under which one person holds legal or record title to real property for the benefit of the other person.

(b) "Beneficial interest" does not include the interest of a stockholder in a corporation or the interest of a partner in a general partnership or limited partnership.

(c) A beneficial interest is considered to be located where the real property owned by the trustee is located.

(2) "Control" means the possession of a sufficient interest to permit substantial direction over the affairs of an enterprise.

(3) "Creditor" means a person making an extension of credit or a person claiming by, under, or through a person making an extension of credit.

(4) "Criminal profiteering" means any act, including any anticipatory or completed offense, committed for financial gain, that is chargeable or indictable under the laws of the state in which the act occurred and, if the act occurred in a state other than this state, would be chargeable or indictable under the laws of this state had the act occurred in this state and punishable as a felony and by imprisonment for more than one year, regardless of whether the act is charged or indicted, as any of the following:

(a) Murder, as defined in RCW 9A.32.030 and 9A.32.050;

(b) Robbery, as defined in RCW 9A.56.200 and 9A.56.210;

(c) Kidnapping, as defined in RCW 9A.40.020 and 9A.40.030;

(d) Forgery, as defined in RCW 9A.60.020 and 9A.60.030;

(e) Theft, as defined in RCW 9A.56.030, 9A.56.040, 9A.56.060, 9A.56.080, and 9A.56.083;

(f) Unlawful sale of subscription television services, as defined in RCW 9A.56.230;

(g) Theft of telecommunication services or unlawful manufacture of a telecommunication device, as defined in RCW 9A.56.262 and 9A.56.264;

- (h) Child selling or child buying, as defined in RCW 9A.64.030;
- (i) Bribery, as defined in RCW 9A.68.010, 9A.68.020, 9A.68.040, and 9A.68.050;
- (j) Gambling, as defined in RCW 9.46.220 and 9.46.215 and 9.46.217;
- (k) Extortion, as defined in RCW 9A.56.120 and 9A.56.130;
- (l) Unlawful production of payment instruments, unlawful possession of payment instruments, unlawful possession of a personal identification device, unlawful possession of fictitious identification, or unlawful possession of instruments of financial fraud, as defined in RCW 9A.56.320;
- (m) Extortionate extension of credit, as defined in RCW 9A.82.020;
- (n) Advancing money for use in an extortionate extension of credit, as defined in RCW 9A.82.030;
- (o) Collection of an extortionate extension of credit, as defined in RCW 9A.82.040;
- (p) Collection of an unlawful debt, as defined in RCW 9A.82.045;
- (q) Delivery or manufacture of controlled substances or possession with intent to deliver or manufacture controlled substances under chapter 69.50 RCW;
- (r) Trafficking in stolen property, as defined in RCW 9A.82.050;
- (s) Leading organized crime, as defined in RCW 9A.82.060;
- (t) Money laundering, as defined in RCW 9A.83.020;
- (u) Obstructing criminal investigations or prosecutions in violation of RCW 9A.72.090, 9A.72.100, 9A.72.110, 9A.72.120, 9A.72.130, 9A.76.070, or 9A.76.180;
- (v) Fraud in the purchase or sale of securities, as defined in RCW 21.20.010;
- (w) Promoting pornography, as defined in RCW 9.68.140;
- (x) Sexual exploitation of children, as defined in RCW 9.68A.040, 9.68A.050, and 9.68A.060;
- (y) Promoting prostitution, as defined in RCW 9A.88.070 and 17 9A.88.080;
- (z) Arson, as defined in RCW 9A.48.020 and 9A.48.030;
- (aa) Assault, as defined in RCW 9A.36.011 and 9A.36.021;
- (bb) Assault of a child, as defined in RCW 9A.36.120 and 9A.36.130;
- (cc) A pattern of equity skimming, as defined in RCW 61.34.020;
- (dd) Commercial telephone solicitation in violation of RCW 19.158.040(1);
- (ee) Trafficking in insurance claims, as defined in RCW 48.30A.015;
- (ff) Unlawful practice of law, as defined in RCW 2.48.180;
- (gg) Commercial bribery, as defined in RCW 9A.68.060;
- (hh) Health care false claims, as defined in RCW 48.80.030;
- (ii) Unlicensed practice of a profession or business, as defined in RCW 18.130.190(7);
- (jj) Improperly obtaining financial information, as defined in RCW 9.35.010;

- (kk) Identity theft, as defined in RCW 9.35.020;
- (ll) Unlawful shipment of cigarettes in violation of RCW 70.155.105(6) (a) or (b); ((or))
- (mm) Unlawful shipment of cigarettes in violation of RCW 82.24.110(2);
- (nn) Theft with the intent to resell, as defined in section 1 of this act; or
- (oo) Organized retail theft, as defined in section 2 of this act.

(5) "Dealer in property" means a person who buys and sells property as a business.

(6) "Debtor" means a person to whom an extension of credit is made or a person who guarantees the repayment of an extension of credit or in any manner undertakes to indemnify the creditor against loss resulting from the failure of a person to whom an extension is made to repay the same.

(7) "Documentary material" means any book, paper, document, writing, drawing, graph, chart, photograph, phonograph record, magnetic tape, computer printout, other data compilation from which information can be obtained or from which information can be translated into usable form, or other tangible item.

(8) "Enterprise" includes any individual, sole proprietorship, partnership, corporation, business trust, or other profit or nonprofit legal entity, and includes any union, association, or group of individuals associated in fact although not a legal entity, and both illicit and licit enterprises and governmental and nongovernmental entities.

(9) "Extortionate extension of credit" means an extension of credit with respect to which it is the understanding of the creditor and the debtor at the time the extension is made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(10) "Extortionate means" means the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

(11) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or an agency of the United States.

(12) "Pattern of criminal profiteering activity" means engaging in at least three acts of criminal profiteering, one of which occurred after July 1, 1985, and the last of which occurred within five years, excluding any period of imprisonment, after

the commission of the earliest act of criminal profiteering. In order to constitute a pattern, the three acts must have the same or similar intent, results, accomplices, principals, victims, or methods of commission, or be otherwise interrelated by distinguishing characteristics including a nexus to the same enterprise, and must not be isolated events. However, in any civil proceedings brought pursuant to RCW 9A.82.100 by any person other than the attorney general or county prosecuting attorney in which one or more acts of fraud in the purchase or sale of securities are asserted as acts of criminal profiteering activity, it is a condition to civil liability under RCW 9A.82.100 that the defendant has been convicted in a criminal proceeding of fraud in the purchase or sale of securities under RCW 21.20.400 or under the laws of another state or of the United States requiring the same elements of proof, but such conviction need not relate to any act or acts asserted as acts of criminal profiteering activity in such civil action under 14 RCW 9A.82.100.

(13) "Real property" means any real property or interest in real property, including but not limited to a land sale contract, lease, or mortgage of real property.

(14) "Records" means any book, paper, writing, record, computer program, or other material.

(15) "Repayment of an extension of credit" means the repayment, satisfaction, or discharge in whole or in part of a debt or claim, acknowledged or disputed, valid or invalid, resulting from or in connection with that extension of credit.

(16) "Stolen property" means property that has been obtained by theft, robbery, or extortion.

(17) "To collect an extension of credit" means to induce in any way a person to make repayment thereof.

(18) "To extend credit" means to make or renew a loan or to enter into an agreement, tacit or express, whereby the repayment or satisfaction of a debt or claim, whether acknowledged or disputed, valid or invalid, and however arising, may or shall be deferred.

(19) "Traffic" means to sell, transfer, distribute, dispense, or otherwise dispose of stolen property to another person, or to buy, receive, possess, or obtain control of stolen property, with intent to sell, transfer, distribute, dispense, or otherwise dispose of the property to another person.

(20)(a) "Trustee" means:

- (i) A person acting as a trustee under a trust established under Title 11 RCW in which the trustee holds legal or record title to real property;
- (ii) A person who holds legal or record title to real property in which another person has a beneficial interest; or
- (iii) A successor trustee to a person who is a trustee under (a)(i) or (ii) of this subsection.

- (b) "Trustee" does not mean a person appointed or acting as:
  - (i) A personal representative under Title 11 RCW;
  - (ii) A trustee of any testamentary trust;
  - (iii) A trustee of any indenture of trust under which a bond is issued; or
  - (iv) A trustee under a deed of trust.

(21) "Unlawful debt" means any money or other thing of value constituting principal or interest of a debt that is legally unenforceable in the state in full or in part because the debt was incurred or contracted:

- (a) In violation of any one of the following:
  - (i) Chapter 67.16 RCW relating to horse racing;
  - (ii) Chapter 9.46 RCW relating to gambling;

- (b) In a gambling activity in violation of federal law; or
- (c) In connection with the business of lending money or a thing of value at a rate that is at least twice the permitted rate under the applicable state or federal law relating to usury.

**Sec. 6.** RCW 9.94A.515 and 2005 c 458 s 2 and 2005 c 183 s 9 are each reenacted and amended to read as follows:

[FMI NOTE: ONLY APPLICABLE CRIMES ARE INCLUDED IN TABLE 2, OTHER CRIMES HAVE BEEN REMOVED. TO SEE THE COMPLETE LIST, CLICK ON THE BILL HYPERLINK PROVIDED ABOVE.]

## TABLE 2

### CRIMES INCLUDED WITHIN EACH SERIOUSNESS LEVEL

#### III

- Organized Retail Theft 1 (section 2(2) of this act)
- Theft with Extenuating Circumstances 1 (section 3 (2) of this act)

#### II

- Organized Retail Theft 2 (section 2(3) of this act)
- Theft with Extenuating Circumstances 2 (section 3(3) of this act)

Theft with the Intent to Resell 2 (section 1(3) of this act)

# Security Breach

## Idaho

**BILL NUMBER:** SB 1374

**SUBJECT:** Security Breach

**DATE STAMP:** Governor Signed, March 30, 2006

**HYPERLINK:** <http://www3.state.id.us/oasis/S1374.html>

### **BILL TEXT:**

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Part 1, Chapter 51, Title 28, Idaho Code, be, and the same is hereby amended by the addition thereto of NEW SECTIONS, to be known and designated as Sections 28-51-104, 28-51-105, 28-51-106 and 28-51-107, Idaho Code, and to read as follows:

28-51-104. DEFINITIONS. For purposes of sections 28-51-104 through 28-51-107, Idaho Code:

(1) "Agency" means any "public agency" as defined in section 9-337, Idaho Code.

(2) "Breach of the security of the system" means the illegal acquisition of unencrypted computerized data that materially compromises the security, confidentiality, or integrity of personal information for one (1) or more persons maintained by an agency, individual or a commercial entity. Good faith acquisition of personal information by an employee or agent of an agency, individual or a commercial entity for the purposes of the agency, individual or the commercial entity is not a breach of the security of the system, provided that the personal information is not used or subject to further unauthorized disclosure.

(3) "Commercial entity" includes corporation, business trust, estate, trust, partnership, limited partnership, limited liability partnership, limited liability company, association, organization, joint venture and any other legal entity, whether for profit or not-for-profit.

(4) "Notice" means:

(a) Written notice to the most recent address the agency, individual or commercial entity has in its records;

(b) Telephonic notice;

(c) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures set forth in 15 U.S.C. section 7001; or

(d) Substitute notice, if the agency, individual or the commercial entity required to provide notice demonstrates that the cost of providing notice will exceed twenty-five thousand dollars (\$25,000), or that the number of Idaho residents to be notified exceeds fifty thousand (50,000), or that the agency, individual or the commercial entity does not have sufficient contact information to provide notice. Substitute notice consists of all of the following:

- (i) E-mail notice if the agency, individual or the commercial entity has e-mail addresses for the affected Idaho residents; and
- (ii) Conspicuous posting of the notice on the website page of the agency, individual or the commercial entity if the agency, individual or the commercial entity maintains one; and
- (iii) Notice to major statewide media.

(5) "Personal information" means an Idaho resident's first name or first initial and last name in combination with any one (1) or more of the following data elements that relate to the resident, when either the name or the data elements are not encrypted:

- (a) Social security number;
- (b) Driver's license number or Idaho identification card number; or
- (c) Account number, or credit or debit card number, in combination with any required security code, access code, or password that would permit access to a resident's financial account.

The term "personal information" does not include publicly available information that is lawfully made available to the general public from federal, state, or local government records or widely distributed media.

(6) "Primary regulator" of a commercial entity or individual licensed or chartered by the United States is that commercial entity's or individual's primary federal regulator, the primary regulator of a commercial entity or individual licensed by the department of finance is the department of finance, the primary regulator of a commercial entity or individual licensed by the department of insurance is the department of insurance and, for all agencies and all other commercial entities or individuals, the primary regulator is the attorney general.

28-51-105. DISCLOSURE OF BREACH OF SECURITY OF COMPUTERIZED PERSONAL INFORMATION BY AN AGENCY, INDIVIDUAL OR A COMMERCIAL ENTITY. (1) An agency, individual or a commercial entity that conducts business in Idaho and that owns or licenses computerized data that includes personal information about a resident of Idaho shall, when it becomes aware of a breach of the security of the system, conduct in good faith a reasonable and prompt investigation to determine the likelihood that personal information has been or will be misused. If the investigation determines that the misuse of information about an Idaho resident has occurred or is reasonably likely to occur, the agency, individual or the commercial

entity shall give notice as soon as possible to possible and without unreasonable delay, consistent with the legitimate needs of law enforcement and consistent with any measures necessary to determine the scope of the breach, to identify the individuals affected, and to restore the reasonable integrity of the computerized data system.

(2) An agency, individual or a commercial entity that maintains computerized data that includes personal information that the agency, individual or the commercial entity does not own or license shall give notice to and cooperate with the owner or licensee of the information of any breach of the security of the system immediately following discovery of a breach, if misuse of personal information about an Idaho resident occurred or is reasonably likely to occur. Cooperation includes sharing with the owner or licensee information relevant to the breach.

(3) Notice required by this section may be delayed if a law enforcement agency advises the agency, individual or commercial entity that the notice will impede a criminal investigation. Notice required by this section must be made in good faith, without unreasonable delay and as soon as possible after the law enforcement agency advises the agency, individual or commercial entity that notification will no longer impede the investigation.

28-51-106. PROCEDURES DEEMED IN COMPLIANCE WITH SECURITY BREACH REQUIREMENTS. (1) An agency, individual or a commercial entity that maintains its own notice procedures as part of an information security policy for the treatment of personal information, and whose procedures are otherwise consistent with the timing requirements of section 28-51-105, Idaho Code, is deemed to be in compliance with the notice requirements of section 28-51-105, Idaho Code, if the agency, individual or the commercial entity notifies affected Idaho residents in accordance with its policies in the event of a breach of security of the system.

(2) An individual or a commercial entity that is regulated by state or federal law and that maintains procedures for a breach of the security of the system pursuant to the laws, rules, regulations, guidances, or guidelines established by its primary or functional state or federal regulator is deemed to be in compliance with section 28-51-105, Idaho Code, if the individual or the commercial entity complies with the maintained procedures when a breach of the security of the system occurs.

28-51-107. VIOLATIONS. In any case in which an agency's, commercial entity's or individual's primary regulator has reason to believe that an agency, individual or commercial entity subject to that primary regulator's jurisdiction under section 28-51-104(6), Idaho Code, has violated section 28-51-105, Idaho Code, by failing to give notice in accordance with that section, the primary regulator may bring a civil action to enforce compliance with that section and

enjoin that agency, individual or commercial entity from further violations. Any agency, individual or commercial entity that intentionally fails to give notice in accordance with section 28-51-105, Idaho Code, shall be subject to a fine of not more than twenty-five thousand dollars (\$25,000) per breach of the security of the system.

# Shopping Cart Theft

## Washington

**BILL NUMBER:** HB 2813

**SUBJECT:** Shopping Cart Theft

**DATE STAMP:** Substituted, February 1, 2006

**HYPERLINK:** <http://www.leg.wa.gov/pub/billinfo/2005-06/Pdf/Bills/House%20Bills/2813-S.pdf>

### **BILL TEXT:**

AN ACT Relating to shopping carts; amending RCW 4.24.220, 4.24.230, and 9A.56.270; adding a new section to chapter 9A.56 RCW; and prescribing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

Sec. 1. RCW 4.24.220 and 1967 c 76 s 3 are each amended to read as follows:

In any civil action brought by reason of any person having been detained on or in the immediate vicinity of the premises of a mercantile establishment for the purpose of investigation or questioning as to the ownership of any merchandise or shopping cart, it shall be a defense of such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer or by the owner of the mercantile establishment, his authorized employee or agent, and that such peace officer, owner, employee or agent had reasonable grounds to believe that the person so detained was committing or attempting to commit larceny or shoplifting on such premises of such merchandise or a violation of RCW 9A.56.270. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person has concealed possession of unpurchased merchandise of a mercantile establishment, and a "reasonable time" shall mean the time necessary to permit the person detained to make a statement or to refuse to make a statement, and the time necessary to examine employees and records of the mercantile establishment relative to the ownership of the merchandise.

Sec. 2. RCW 4.24.230 and 1994 c 9 s 1 are each amended to read as follows:

(1) An adult or emancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller, and with the intention of converting such goods, wares, or merchandise to his own

use without having paid the purchase price thereof shall be liable in addition to actual damages, for a penalty to the owner or seller in the amount of the retail value thereof not to exceed one thousand dollars, plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. A customer who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. A person who shall receive any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. A person who intentionally removes a shopping cart from the parking area of a retail establishment without the permission of the owner of the cart, is subject to liability under this section.

(2) The parent or legal guardian having the custody of an unemancipated minor who takes possession of any goods, wares, or merchandise displayed or offered for sale by any wholesale or retail store or other mercantile establishment without the consent of the owner or seller and with the intention of converting such goods, wares, or merchandise to his own use without having paid the purchase price thereof, shall be liable as a penalty to the owner or seller for the retail value of such goods, wares, or merchandise not to exceed five hundred dollars plus an additional penalty of not less than one hundred dollars nor more than two hundred dollars, plus all reasonable attorney's fees and court costs expended by the owner or seller. The parent or legal guardian having the custody of an unemancipated minor, who orders a meal in a restaurant or other eating establishment, receives at least a portion thereof, and then leaves without paying, is subject to liability under this section. The parent or legal guardian having the custody of an unemancipated minor, who receives any food, money, credit, lodging, or accommodation at any hotel, motel, boarding house, or lodging house, and then leaves without paying the proprietor, manager, or authorized employee thereof, is subject to liability under this section. For the purposes of this subsection, liability shall not be imposed upon any governmental entity, private agency, or foster parent assigned responsibility for the minor child pursuant to court order or action of the department of social and health services.

(3) Judgments and claims arising under this section may be assigned.

(4) A conviction for violation of chapter 9A.56 RCW shall not be a condition precedent to maintenance of a civil action authorized by this section.

(5) An owner or seller demanding payment of a penalty under subsection (1) or (2) of this section shall give written notice to the person or persons from whom the penalty is sought. The notice shall state:

"IMPORTANT NOTICE: The payment of any penalty demanded of you does not prevent criminal prosecution under a related criminal provision."

This notice shall be boldly and conspicuously displayed, in at least the same size type as is used in the demand, and shall be sent with the demand for payment of a penalty described in subsection (1) or (2) of this section.

Sec. 3. RCW 9A.56.270 and 1985 c 382 s 2 are each amended to read as follows:

(1) It is unlawful to do any of the following acts, if a shopping cart has a permanently affixed sign as provided in subsection (2) of this section:

(a) To intentionally remove a shopping cart from the parking area of a retail establishment ~~((with the intent to deprive the owner of the shopping cart the use of the cart))~~ without the permission of the owner of the shopping cart; or

(b) To be in possession of any shopping cart that has been removed from the parking area of a retail establishment when such possession is with the intent to deprive the owner of the shopping cart the use of the cart.

(2) This section shall apply only when a shopping cart:

(a) Has a sign permanently affixed to it that identifies the owner of the cart or the retailer, or both;

(b) notifies the public of the procedure to be utilized for authorized removal of the cart from the premises;

(c) notifies the public that the unauthorized removal of the cart from the premises or parking area of the retail establishment, or the unauthorized possession of the cart, is unlawful; and

(d) lists a telephone number or address for returning carts removed from the premises or parking area to the owner or retailer.

(3) Any person who violates any provision of this section is guilty of a misdemeanor.

NEW SECTION. Sec. 4. A new section is added to chapter 9A.56 RCW to read as follows:

(1) Any statute, ordinance, or rule enacted by a political subdivision of the state dealing with shopping carts that have been removed from the parking area of a retail establishment must meet the following criteria:

(a) Impoundment of a shopping cart may be allowed only if the cart is located off the premises of the retail establishment, and:

- (i) The retail establishment has been given notice of the cart's location and has not retrieved the cart within five days of the notice;
- (ii) The cart is in a location that is likely to impede emergency services. If a cart in a location that is likely to impede emergency services is impounded, the retail establishment must be given notice that the cart has been impounded; or
- (iii) The cart does not meet the requirements of RCW 9A.56.270(2).

(b) A retail establishment whose cart has been impounded may be charged a fee for impoundment costs not to exceed fifty dollars per cart. If the cart was impounded under (a)(ii) of this subsection, the fee may not be charged if the retail establishment retrieves the cart within five days of receiving notice that the cart has been impounded.

(c) An impounded cart may not be disposed of within at least thirty days of impoundment. A retail establishment whose cart has been disposed of may be charged a fee for disposal costs not to exceed fifty dollars per cart.

(d) Any notice provided to a retail establishment under this section must be documented.

(e) The notice requirements of this section may be satisfied utilizing a statewide telephone number designated for that purpose, if and when such a telephone number is ever established.

(2) The requirements of this section supersede and preempt any inconsistent ordinance or rule enacted by a political subdivision of the state before, on, or after the effective date of this act. A political subdivision of the state may not impose additional fees or requirements with respect to shopping carts except as allowed under this section.

# Tort Reform

## Idaho

**BILL NUMBER:** HB 92

**SUBJECT:** Tort Reform

**DATE STAMP:** Signed by Governor, March 26, 2003

**HYPERLINK:** <http://www3.state.id.us/oasis/2003/H0092.html>

### **BILL TEXT:**

Be It Enacted by the Legislature of the State of Idaho:

SECTION 1. That Section 6-803, Idaho Code, be, and the same is hereby amended to read as follows:

6-803. CONTRIBUTION AMONG JOINT TORTFEASORS --  
DECLARATION OF RIGHT -- EXCEPTION -- LIMITED JOINT AND  
SEVERAL LIABILITY. (1) The right of contribution exists among joint tortfeasors,  
but a joint tortfeasor is not entitled to a money judgment for contribution until he  
has by payment discharged the common liability or has paid more than his pro  
rata share thereof.

(2) A joint tortfeasor who enters into a settlement with the injured person  
is not entitled to recover contribution from another joint tortfeasor whose  
liability to the injured person is not extinguished by the settlement.

(3) The common law doctrine of joint and several liability is hereby  
limited to causes of action listed in subsections (5), ~~(6)~~ and ~~(7)~~ of this section. In  
any action in which the trier of fact attributes the percentage of negligence or  
comparative responsibility to persons listed on a special verdict, the court shall  
enter a separate judgment against each party whose negligence or comparative  
responsibility exceeds the negligence or comparative responsibility attributed to  
the person recovering. The negligence or comparative responsibility of each such  
party is to be compared individually to the negligence or comparative  
responsibility of the person recovering. Judgment against each such party shall  
be entered in an amount equal to each party's proportionate share of the total  
damages awarded.

(4) As used herein, "joint tortfeasor" means one (1) of two (2) or more  
persons jointly or severally liable in tort for the same injury to person or  
property, whether or not judgment has been recovered against all or some of  
them.

(5) A party shall be jointly and severally liable for the fault of another  
person or entity or for payment of the proportionate share of another party  
where they were acting in concert or when a person was acting as an agent or  
servant of another party. As used in this section, "acting in concert" means

pursuing a common plan or design which results in the commission of an intentional or reckless tortious act.

~~(6) Any cause of action arising out of a violation of any state or federal law or regulation relating to hazardous or toxic waste or substances or solid waste disposal sites.~~

~~(7) Any cause of action arising from the manufacture of any medical devices or pharmaceutical products.~~

SECTION 2. That Section 6-1603, Idaho Code, be, and the same is hereby amended to read as follows:

6-1603. LIMITATION ON NONECONOMIC DAMAGES. (1) In no action seeking damages for personal injury, including death, shall a judgment for noneconomic damages be entered for a claimant exceeding the maximum amount of ~~four~~ two hundred fifty thousand dollars (\$~~402~~50,000); provided, however, that beginning on July 1, ~~1988~~2004, and each July 1 thereafter, the cap on noneconomic damages established in this section shall increase or decrease in accordance with the percentage amount of increase or decrease by which the Idaho industrial commission adjusts the average annual wage as computed pursuant to section 72-409(2), Idaho Code.

(2) The limitation contained in this section applies to the sum of:

(a) noneconomic damages sustained by a claimant who incurred personal injury or who is asserting a wrongful death; (b) noneconomic damages sustained by a claimant, regardless of the number of persons responsible for the damages or the number of actions filed.

(3) If a case is tried to a jury, the jury shall not be informed of the limitation contained in subsection (1) of this section.

(4) The limitation of awards of noneconomic damages shall not apply to:

(a) Causes of action arising out of willful or reckless misconduct.  
(b) Causes of action arising out of an act or acts which the trier of fact finds beyond a reasonable doubt would constitute a felony under state or federal law.

SECTION 3. That Section 6-1604, Idaho Code, be, and the same is hereby amended to read as follows:

6-1604. LIMITATION ON PUNITIVE DAMAGES. (1) In any action seeking recovery of punitive damages, the claimant must prove, by a ~~preponderance of the~~ clear and convincing evidence, oppressive, fraudulent, ~~wanton~~, malicious or outrageous conduct by the party against whom the claim for punitive damages is asserted.

(2) In all civil actions in which punitive damages are permitted, no claim for damages shall be filed containing a prayer for relief seeking punitive

damages. However, a party may, pursuant to a pretrial motion and after hearing before the court, amend the pleadings to include a prayer for relief seeking punitive damages. The court shall allow the motion to amend the pleadings if, after weighing the evidence presented, the court concludes that, the moving party establishes has established at such hearing a reasonable likelihood of proving facts at trial sufficient to support an award of punitive damages. A prayer for relief added pursuant to this section shall not be barred by lapse of time under any applicable limitation on the time in which an action may be brought or claim asserted, if the time prescribed or limited had not expired when the original pleading was filed.

(3) No judgment for punitive damages shall exceed the greater of two hundred fifty thousand dollars (\$250,000) or an amount which is three (3) times the compensatory damages contained in such judgment. If a case is tried to a jury, the jury shall not be informed of this limitation. The limitations on noneconomic damages contained in ~~this act~~ section 6-1603, Idaho Code, are not applicable to punitive damages.

(4) Nothing in this section is intended to change the rules of evidence ~~or standards of proof~~ used by a trier of fact in finding punitive damages.

SECTION 4. That Section 13-202, Idaho Code, be, and the same is hereby amended to read as follows:

13-202. STAY OF PROCEEDINGS PENDING APPEAL. (1) Upon and after an appeal of a judgment or order of the district court in a civil action, the judgment or order appealed from, or any other order or proceeding in the action may be stayed by the district court or the supreme court as provided by rule of the supreme court.

(2) If a plaintiff in a civil action obtains a judgment for punitive damages, the supersedeas bond or cash deposit requirements shall be waived as to that portion of the punitive damages that exceeds one million dollars (\$1,000,000) if the party or parties found liable seek a stay of enforcement of the judgment during the appeal.

(3) If the plaintiff proves by a preponderance of the evidence that a party bringing an appeal, for whom the supersedeas bond or cash deposit requirement has been waived, is purposefully dissipating its assets or diverting assets outside the jurisdiction of the United States courts, waiver may be rescinded and the bond or cash deposit requirements may be reinstated for the full amount of the judgment.

(4) The supersedeas bond or cash deposit requirements may also be waived in any action for good cause shown as provided by rule of the supreme court.

SECTION 5. SEVERABILITY. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act.

SECTION 6. This act shall be in full force and effect on and after July 1, 2003. Sections 1 through 3 of this act shall apply to all causes of action which accrue thereafter. Section 4 of this act shall apply to all cases in which an appeal is filed thereafter.

## Missouri

**BILL NUMBER:** HB 393

**SUBJECT:** Tort Reform

**DATE STAMP:** Signed by Governor, March 29, 2005

**HYPERLINK:** <http://www.house.mo.gov/bills051/biltxt/truly/HB0393T.HTM>

### **BILL TEXT:**

[FMI NOTE: DUE TO THE LENGTH OF THE FULL BILL TEXT, THE STATE BILL SUMMARY IS BEING PROVIDED IN ITS PLACE. FULL TEXT CAN BE FOUND BY USING THE HYPERLINK ABOVE.]

### CCS SS SCS HCS HB 393 -- TORT REFORM

This bill changes the laws regarding claims for damages and their payment. In its main provisions, the bill:

- (1) Establishes venue in the county where the plaintiff was first injured by the wrongful acts or negligent conduct alleged in all tort actions in which the plaintiff was first injured in Missouri;
- (2) Establishes venue in all tort actions in which the plaintiff was first injured outside Missouri:
  - (a) For corporate defendants, in any county where the registered agent is located or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county of the plaintiff's principal place of residence on the date the plaintiff was first injured; and
  - (b) For individual defendants, in any county of the defendant's principal place of residence in Missouri or, if the plaintiff's principal place of residence was in Missouri when the plaintiff was first injured, in the county containing the plaintiff's principal place of residence on the date the plaintiff was first injured;
- (3) Specifies that in wrongful death actions the plaintiff is considered first injured where the decedent was first injured by the wrongful acts or negligent conduct alleged in the action;
- (4) Specifies that in a spouse's claim for loss of consortium the plaintiff claiming consortium is considered first injured where the other spouse was first injured by the wrongful act or negligent conduct alleged in the action;

- (5) Specifies that the court must transfer venue to the county unanimously chosen by the parties if all parties agree in writing to a change of venue. If parties are added after the date of the transfer and they do not consent to the transfer, the cause of action will be transferred to a county in which venue is otherwise appropriate;
- (6) Requires prejudgment interest to be calculated 90 days after the demand or offer is received by certified mail, return receipt requested. The demand or offer must be in writing and be accompanied by an affidavit from the claimant describing the nature of the claim and the damages claimed. For wrongful death, personal injury, and bodily injury claims, the demand letter must also list the medical providers of the claimant and include copies of all reasonably available medical bills, other medical information, and authorization to allow the other party to obtain employment and medical records. The demand must be left open for 90 days;
- (7) Specifies that claims for prejudgment and post-judgment interest in tort actions are calculated at an interest rate that is equal to the intended Federal Funds Rate plus 3% for prejudgment interest and 5% for post-judgment interest;
- (8) Allows parties to introduce evidence of the value of medical treatment rendered to a party that was reasonable, necessary, and a proximate result of the negligence of any party. There is a rebuttable presumption that the dollar amount necessary to satisfy the financial obligation to the health care provider represents the value of the treatment rendered. The court may determine, outside the hearing of the jury, the value of medical treatment rendered based on additional evidence;
- (9) Defines "punitive damage award" to include an award for punitive or exemplary damages as well as an award for aggravating circumstances;
- (10) Allows discovery of a defendant's assets only after the trial court finds that the plaintiff will have a submissible case for punitive damages;
- (11) Limits an award for punitive damages to the greater of \$500,000 or five times the net amount of the judgment awarded to the plaintiff against the defendant. The limits on punitive damages do not apply to certain causes of action relating to housing discrimination;
- (12) Allows joint and several liability if a defendant is found to be 51% or more at fault. The defendant is jointly and severally liable for the amount of the judgment rendered against the defendant. If a defendant is found to be less than 51% at fault, the defendant is only responsible for the percentage of the judgment

he or she is determined to be responsible for by the trier of fact. A party is responsible for the fault of another defendant or for payment of the proportionate share of another defendant if the other defendant was an employee of the party or if the party's liability for the fault of another arises out of the duty created by the Federal Employers' Liability Act. Defendants are only severally liable for the percentage of punitive damages that are attributed to the defendant by the trier of fact. In all tort actions, parties are prohibited from disclosing to the trier of fact the impact of the provisions relating to joint and several liability;

(13) Includes long-term care facilities licensed under Chapter 198, RSMo, in the definition of "health care provider." Exemplary damages and damages for aggravating circumstances are included in the definition of "punitive damages";

(14) Specifies that the cap on non-economic damages for all plaintiffs is \$350,000, irrespective of the number of defendants. There is no inflation adjustment on the non-economic damages cap;

(15) Requires future medical payments to be made in an amount according to a schedule determined by the payee's life expectancy. The court must apply interest on future payments at an interest rate equal to the average auction price of a 52-week United States Treasury bill. The parties are not prohibited from agreeing to settle and resolve the claim for future damages; and if an agreement is reached, the future payment schedule does not apply;

(16) Requires a court to dismiss any medical malpractice claim where the plaintiff fails to file an affidavit stating that he or she has obtained the written opinion of a legally qualified health care provider which states that the defendant failed to use reasonable care that caused the plaintiff's damages. Currently, the court gives discretion as to whether or not to dismiss a claim under these circumstances;

(17) Allows a defendant to file a motion 180 days after the filing of the petition asking the court to examine the opinion of the health care provider. If the opinion fails to meet the requirements specified in the bill, the court must conduct a hearing within 30 days to determine whether there is probable cause to believe that one or more qualified and competent health care providers will testify that the plaintiff was injured because of the medical negligence of the defendant. If the court finds no probable cause, the court may dismiss the petition and hold the plaintiff responsible for the defendant's reasonable attorney fees and costs;

(18) Specifies that physicians who provide medical treatment to patients in city, county, or nonprofit health clinics that provide free health care service are not liable for civil damages for acts or omissions, unless the damages were caused by gross negligence or by willful or wanton acts or omissions of the physician;

(19) Prohibits statements, writings, or benevolent gestures expressing sympathy made to the person or the family from being admitted into evidence;

(20) Specifies, for purposes of determining venue, that in any action against a health care provider for damages for personal injury or death arising out of the rendering of or failure to render health care services, the plaintiff will be considered injured by the health care provider only in the county where the plaintiff first received treatment by a defendant for the medical condition at issue in the case;

(21) Limits the amount of a supersedeas bond to \$50 million in all cases in which there is a count alleging a tort;

(22) Authorizes the appointment of a peer review committee by the board of trustees or chief executive officer of a long-term care facility licensed under Chapter 198;

(23) Specifies that the disclosure of interviews, memoranda, proceedings, findings, or deliberations of a peer review committee does not waive or have an effect on the confidentiality, nondiscoverability, or nonadmissibility of the documents;

(24) Specifies that the judge will transfer the case to a proper forum if a plaintiff or defendant is added or removed prior to trial which would alter the determination of venue if originally added or removed;

(25) Specifies that for purposes of determining damages, if the deceased was not employed full-time and was at least 50% responsible for the care of one or more minors, disabled persons, or persons over the age of 65, there is a rebuttable presumption that the value of the care provided is equal to 110% of the state average weekly wage;

(26) Specifies that actions against physicians and other health care providers for malpractice must be brought within two years of a minor's eighteenth birthday. Currently, the statute of limitations is 10 years from the minor's twentieth birthday; and

(27) Specifies that the provisions of the bill, except for Section 512.099, apply to all causes of action filed after August 28, 2005.

# **Universal Benefits Card**

## Texas

**BILL NUMBER:** SB 46

**SUBJECT:** Universal Benefits Card

**DATE STAMP:** Signed by Governor, June 17, 2005

**HYPERLINK:** <http://www.capitol.state.tx.us/cgi-bin/tlo/textframe.cmd?LEG=79&SESS=R&CHAMBER=S&BILLTYPE=B&BILLSUFFIX=00046&VERSION=5&TYPE=B>

### **BILL TEXT:**

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter B, Chapter 531, Government Code, is amended by adding Section 531.080 to read as follows:

Sec. 531.080. INTEGRATED BENEFITS ISSUANCE. (a) The commission may develop and implement a method to consolidate, to the extent possible, recipient identification and benefits issuance for the commission and health and human services agencies if the commission determines that the implementation would be feasible and cost-effective.

(b) The method may:

(1) provide for the use of a single integrated benefits issuance card or multiple cards capable of integrating benefits issuance or other program functions;

(2) incorporate a fingerprint image identifier to enable personal identity verification at a point of service and reduce fraud as permitted by Section 531.1063;

(3) enable immediate electronic verification of recipient eligibility;  
and

(4) replace multiple forms, cards, or other methods used for fraud reduction or provision of health and human services benefits, including:

(A) electronic benefits transfer cards; and

(B) smart cards used in the Medicaid program.

(c) In developing and implementing the method, the commission shall:

(1) to the extent possible, use industry-standard communication, messaging, and electronic benefits transfer protocols;

(2) ensure that all identifying and descriptive information of recipients of each health and human services program included in the method can only be accessed by providers or other entities participating in the particular program;

(3) ensure that a provider or other entity participating in a health and human services program included in the method cannot identify whether a recipient of the program is receiving benefits under another program included in the method; and

(4) ensure that the storage and communication of all identifying and descriptive information included in the method complies with existing federal and state privacy laws governing individually identifiable information for recipients of public benefits programs.

SECTION 2. (a) Not later than January 1, 2006, the Health and Human Services Commission shall assess the feasibility and cost-effectiveness of using a single integrated benefits issuance card, multiple cards, or another method for consolidating recipient identification and benefits issuance for various health and human services programs, including:

(1) the financial assistance program under Chapter 31, Human Resources Code;

(2) the medical assistance program under Chapter 32, Human Resources Code;

(3) the nutritional assistance programs under Chapter 33, Human Resources Code; and

(4) the special supplemental nutrition program for women, infants, and children authorized by 42 U.S.C. Section 1786.

(b) In conducting the assessment, the Health and Human Services Commission may consider information obtained from:

(1) the Medicaid fraud reduction pilot program required by Section 531.1063, Government Code;

(2) the Texas Integrated Enrollment Services eligibility determination system; and

(3) the state's electronic benefits transfer system.

(c) The Health and Human Services Commission may require any health and human services agency and the Department of Information Resources to assist the commission in performing its duties under this section.

SECTION 3. Not later than July 1, 2006, the Health and Human Services Commission shall report the findings of the assessment required by Section 2 of this Act to the clerks of the standing committees of the senate and house of representatives having jurisdiction over health and human services issues.

SECTION 4. If before implementing any provision of this Act a state agency determines that a waiver or authorization from a federal agency is necessary for implementation of that provision, the agency affected by the provision shall request the waiver or authorization and may delay implementing that provision until the waiver or authorization is granted.

SECTION 5. This Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. If this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2005.

# **Workers Compensation**

## Missouri

**BILL NUMBER:** SB 1

**SUBJECT:** Workers Compensation

**DATE STAMP:** Signed by Governor, March 30, 2005

**HYPERLINK:** <http://www.senate.mo.gov/05info/billtext/tat/SB1.htm>

### **BILL TEXT:**

[FMI NOTE: DUE TO THE LENGTH OF THE FULL BILL TEXT, THE STATE BILL SUMMARY IS BEING PROVIDED IN ITS PLACE. FULL TEXT CAN BE FOUND BY USING THE HYPERLINK ABOVE.]

CCS/HCS/SS/SCS/SBs 1 & 130 - This act revises the workers' compensation law.

ACCIDENT AND INJURY - The act modifies the definition of "accident" to include only events that are "an unexpected traumatic event or unusual strain identifiable by time and place of occurrence producing at the time objective symptoms of an injury, caused by a specific event during a single work shift". The act modifies the definition of "injury" by limiting the definition to only allow compensation if the accident was the prevailing factor in causing the condition. The act limits benefits for pre-existing conditions in cases where a work-related injury causes increased permanent disability and reduces compensation by the amount of permanent partial disability that was pre-existing. The act exempts from coverage injuries from unknown causes and personal health conditions that manifest themselves at work, when an accident is not the prevailing factor in the need for medical treatment. The act prohibits accidents which are sustained while traveling to the employer's principal place of business from the employee's home or to the employee's home from the employer's principal place of business from being compensable.

ABROGATION OF CASE LAW - It is the intent of the Legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "accident", "occupational disease", "arising out of", and "in the course of the employment". It is also the intent of the legislature to reject and abrogate earlier case law interpretations on the meaning of or definition of "owner".

EMPLOYER LIABILITY - Any person who contracts to have work done as part of the usual course of business on their premises shall be liable to the contractor, it's subcontractors and employees for death or injury which occurs on the premises. If the erection of improvements, demolition, alteration or repair of the premises is being provided by an independent contractor, the independent

contractor shall be deemed the employer of the subcontractors and employees where the principle contractor is on the premises and doing work. The immediate contractor or subcontractor shall have primary liability as an employer of the employees of his subcontractor. A right to contribution is available for any secondarily liable parties.

**COMPENSABILITY** - Occupational disease is only compensable if the occupational exposure was the prevailing factor in causing the condition. Injury due to repetitive motion is recognized as an occupational disease and is only compensable if the occupational exposure is a prevailing factor in causing the medical condition or disability. Disease of the lungs or respiratory tract, hypotension, hypertension, or disease of the heart or cardiovascular system, including carcinoma, may be recognized as occupational diseases for the purposes of workers' compensation law and are defined to be disability due to exposure to smoke, gases, carcinogens, inadequate oxygen of paid firefighters of a paid fire department or paid police officers of a paid police department certified under Chapter 590, RSMo, if a direct causal relationship is established.

**REDUCTION OF BENEFITS FOR CERTAIN ACTS** - The act eliminates the posting requirements for reduction of compensation and death benefits where an injury is caused by the failure the employee to use employer provided safety devises. An employee who suffers an injury as a result of the failure to obey employer safety rules will have benefits reduced by 25 to 50 percent. The act increases the penalty when violation of a drug or alcohol rule is involved, by mandating that workers' compensation and death benefits reduced by fifty percent. Intoxication at or above the legal blood level shall give rise to a rebuttable presumption that the voluntary use of alcohol was the proximate cause of injury. A preponderance of the evidence standard will apply to rebut such presumption.

**NOTICE POSTING BY EMPLOYERS** - Every employer must post notice in a prominent and conspicuous place, which notifies employees of the requirement that such employees must inform their employers of an accident within thirty days from such accident and that failure to do so may jeopardize their ability to receive medical coverage, compensation or any other benefit for the injury under workers' compensation law.

**CRIMINAL PENALTIES FOR VIOLATIONS OF WORKERS' COMPENSATION LAW** - Any insurance company or self-insurer who intentionally refuses to comply with known and legally indisputable compensation obligations with an intent to defraud will be guilty of a Class D felony, and receive the greater of a fine up to ten thousand dollars or double the value of the fraud. The punishment for a subsequent offense is a Class C felony.

Any person who knowingly makes a false or fraudulent statement to an investigator of the division of workers' compensation in the course of investigating fraud or noncompliance will be guilty of a class a misdemeanor and receive a fine of up to ten thousand dollars. The punishment for a subsequent offense is increased to a Class C felony.

Any person, company, or other entity that prepares or provides an invalid certificate of insurance as proof of workers' compensation insurance will be guilty of a Class D felony and receive a fine of the greater of a fine up to ten thousand dollars or double the value of the fraud.

Any employer who knowingly fails to insure his liability under workers' compensation law will be guilty of a Class A misdemeanor and will receive the greater of a fine in an amount up to three times the amount of annual premiums the employer would have paid or fifty thousand dollars.

Any health care provider who commits fraudulent billing practices will be guilty of a Class A misdemeanor and receive a fine of up to twenty thousand dollars. The punishment for a subsequent offense is increased to a Class D felony.

ANNUAL REPORT FROM THE ATTORNEY GENERAL - By January 1 of each year, the Attorney General shall forward to the Division of Workers' Compensation, an annual report of the costs of prosecuting fraud and noncompliance under workers' compensation law. The report will include the number of cases filed with the Attorney General by county, by the fraud and noncompliance unit, the number of cases prosecuted by county by the Attorney General and county prosecutor, fines and penalties levied and received, and all incidental costs.

VOCATIONAL TESTING AND ASSESSMENT - The act provides that an employee must submit to appropriate vocational testing and a vocational rehabilitation assessment required by an employer or insurer.

SUBROGATION LIENS - The act grants an employer a subrogation lien when a third person is liable for the death of an employee.

DISQUALIFICATION FOR RECEIPT OF UNEMPLOYMENT COMPENSATION OR POST INJURY MISCONDUCT - The act disqualifies an employee from receiving temporary total disability during any period of time in which the claimant applies and receives unemployment compensation. Any employee who is terminated from post injury employment based upon post injury misconduct shall be ineligible to receive either temporary total disability or temporary partial disability benefits.

PROOF OF PERMANENT DISABILITY - Permanent partial or total disability shall be demonstrated and certified by a physician. In determining

compensability and disability, where inconsistent or conflicting medical opinions exist, objective medical findings shall prevail over subjective medical findings. Objective medical findings are those findings demonstrable on physical examination or by appropriate tests or diagnostic procedures.

COMPENSATION FOR HEARING LOSS - Loss of hearing of twenty-six decibels or less shall not constitute any compensable hearing disability and loss of hearing average ninety-two decibels shall constitute total or one hundred percent compensable hearing loss.

COSTS - If the division or the commission determines that any proceedings have been brought, prosecuted, or defended without reasonable grounds, the division may assess the whole cost of the proceedings upon the party who brought, prosecuted, or defended them.

WAGES AND BONUSES - A monetary bonus, paid by an employer to an employee, of up to three percent of the employee's yearly compensation from such employer shall not have the effect of increasing the compensation amount used in calculating the employee's compensation or wages for purposes of any workers' compensation claim governed under workers' compensation law.

ACCIDENT REPORTING - The act requires every employer or his insurer in this state to file with the division a full and complete report of every injury or death to any employee within thirty days after knowledge of the injury or death.

VOLUNTARY SETTLEMENT AGREEMENTS - The act allows parties to enter into voluntary agreements to settle claims and states that approval shall be granted as long as the settlement is not the result of undue influence or fraud, and the employee fully understands his or her rights and benefits and voluntarily agrees to accept the terms of the agreement. In any claim where an offer of settlement is made in writing, and the employee is not represented by counsel, the employee is entitled to one hundred percent of the amount offered. Legal counsel representing the employee will receive reasonable fees for services rendered.

NOTICE OF REPETITIVE TRAUMA CASE - The act requires written notice to an employer be made no later than thirty days after diagnosis of the condition before proceedings are maintained for a repetitive trauma or occupational disease case.

ADMINISTRATIVE LAW JUDGES - After August 28, 2005, the Governor may appoint additional administrative law judges for a maximum of forty authorized administrative law judges. Performance audits shall be conducted every two years by the six member administrative law judge review committee with a recommendation of confidence or no confidence for each administrative law

judge. Administrative law judges will stand for retention votes by the committee every twelve years. An administrative law judge will not receive a retention vote if the administrative law judge has received two or more votes of no confidence for performance audits and may be removed from the appointment immediately.

**COMPENSATION FOR CHIEF COUNSEL** - Each chief legal counsel located at the division office in Jefferson City shall be compensated at two thousand dollars above eighty percent of the rate at which an associate circuit judge is compensated.

**SECOND INJURY FUND** - Beginning October 31, 2005, the Director of the Division of Workers' Compensation is required to estimate the amount of benefits payable for each year and calculate the total amount of annual surcharge to be imposed upon all workers' compensation policyholders and self-insured for the following calendar year. The amount of the annual surcharge shall be set at a percentage not to exceed three percent.

**STANDARD OF REVIEW** - The act imposes a strict construction review with regard to the provisions of the workers compensation chapter and an impartial standard of review for the facts and evidence of a case. Beginning January 1, 2006, only administrative law judges, the commission, and the appellate courts of this state shall have the power to review claims filed under workers' compensation law.

**OPT-OUT PROVISION** - Allows an employee to opt out of the provisions of workers' compensation law for religious reasons.

**BURDEN OF PROOF** - The burden of proof for establishing an affirmative defense is on the employer. The burden of proving an entitlement to compensation under workers' compensation law is on the employee or dependent.

**CLAIMS AGAINST INSOLVENT SELF-INSURED PARTIES** - The act requires the Division of Workers' Compensation to notify each employee of a self-insured member filing bankruptcy, liquidation, or dissolution of his or her obligation to file a notice of claim with the court of jurisdiction and of the need of the employee to provide the guarantee fund and the division with the records set out in this section. The act then requires the claimant to file a claim with the appropriate bankruptcy court prior to the time the division attaches jurisdiction.

**TREND FACTORS** - The Director of Insurance will allow pure premium rate data to be distributed, upon filing with the director with a final distribution, in a format which allows for comparison of such data with trend factors developed by the advisory organization for each of the job classifications.