

HOUSE BILL NO. 97

IN THE LEGISLATURE OF THE STATE OF ALASKA
THIRTY-FOURTH LEGISLATURE - FIRST SESSION

BY REPRESENTATIVE FIELDS

Introduced: 2/12/25

Referred: Judiciary, Finance

A BILL

FOR AN ACT ENTITLED

1 **"An Act relating to theft; relating to organized retail theft; relating to property crimes;**
2 **relating to aggravating factors at sentencing; establishing a statewide marketplace**
3 **facilitator sales tax; and establishing the organized retail theft fund in the general fund."**

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

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

6 **Sec. 11.46.100. Theft defined.** A person commits theft if

- 7 (1) with intent to deprive another of property or to appropriate property
8 of another to oneself or a third person, the person obtains the property of another;
- 9 (2) the person commits theft of lost or mislaid property under
10 AS 11.46.160;
- 11 (3) the person commits theft by deception under AS 11.46.180;
- 12 (4) the person commits theft by receiving under AS 11.46.190;
- 13 (5) the person commits theft of services under AS 11.46.200; [OR]
- 14 (6) the person commits theft by failure to make required disposition of

1 funds received or held under AS 11.46.210; or

2 (7) the person commits organized retail theft under AS 11.46.215.

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

4 (a) A person commits the crime of theft in the first degree if the person
5 commits theft as defined in AS 11.46.100 and the value or aggregate value of the
6 property or services is \$20,000 [\$25,000] or more.

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

8 (a) A person commits the crime of theft in the second degree if the person
9 commits theft as defined in AS 11.46.100 and

10 (1) the value or aggregate value of the property or services is \$500
11 [\$750] or more but less than \$20,000 [\$25,000];

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

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

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

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

18 (6) the value or aggregate value of the property is \$200 [\$250] or
19 more but less than \$500 [\$750] and, within the preceding five years, the person has
20 been convicted and sentenced on two or more separate occasions in this or another
21 jurisdiction of

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

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

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

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

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

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

1 (a) A person commits the crime of theft in the third degree if the person
2 commits theft as defined in AS 11.46.100 and

3 (1) the value or aggregate value of the property or services is \$200
4 [\$250] or more but less than \$500 [\$750]; or

5 (2) [REPEALED]

6 (3) [REPEALED]

7 (4) the value or aggregate value of the property is less than \$200
8 [\$250] and, within the preceding five years, the person has been convicted and
9 sentenced on three or more separate occasions in this or another jurisdiction of theft or
10 concealment of merchandise, or an offense under another law or ordinance with
11 similar elements.

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

13 (a) A person commits the crime of theft in the fourth degree if the person
14 commits theft as defined in AS 11.46.100 and the value or aggregate value of the
15 property or services is less than \$200 [\$250].

16 * **Sec. 6.** AS 11.46 is amended by adding a new section to read:

17 **Sec. 11.46.215. Organized retail theft.** A person commits organized retail
18 theft if, in the state, as part of a coordinated plan to deprive a commercial
19 establishment of merchandise on two or more occasions or as part of a coordinated
20 plan to deprive multiple commercial establishments of merchandise over a one-year
21 period, a person, with one or more conspirators,

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

24 (2) conceals merchandise with the intent to convert the merchandise
25 without paying for the merchandise;

26 (3) alters a label or a price tag, or marks the merchandise with the
27 intent of depriving a commercial establishment of all or some of the value of the
28 merchandise; or

29 (4) transfers merchandise from a container in or on which the
30 merchandise is displayed to another container with the intent of depriving the
31 commercial establishment of all or some of the value of the merchandise.

1 * **Sec. 7.** AS 11.46.220(c) is amended to read:

2 (c) Concealment of merchandise is

3 (1) a class C felony if

4 (A) the merchandise is a firearm;

5 (B) the value of the merchandise is \$500 [\$750] or more; or

6 (C) the value of the merchandise is \$200 [\$250] or more but
7 less than \$500 [\$750] and, within the preceding five years, the person has been
8 convicted and sentenced on two or more separate occasions in this or another
9 jurisdiction of

10 (i) the offense of concealment of merchandise under
11 this paragraph or (2)(A) of this subsection, or an offense under another
12 law or ordinance with similar elements; or

13 (ii) an offense under AS 11.46.120, 11.46.130, [OR]
14 11.46.140(a)(1), or 11.46.215, or an offense under another law or
15 ordinance with similar elements;

16 (2) a class A misdemeanor if

17 (A) the value of the merchandise is \$200 [\$250] or more but
18 less than \$500 [\$750]; or

19 (B) [REPEALED]

20 (C) the value of the merchandise is less than \$200 [\$250] and,
21 within the preceding five years, the person has been convicted and sentenced
22 on three or more separate occasions of the offense of concealment of
23 merchandise or theft in any degree, or an offense under another law or
24 ordinance with similar elements;

25 (3) a class B misdemeanor if the value of the merchandise is less than
26 \$200 [\$250].

27 * **Sec. 8.** AS 11.46.260(b) is amended to read:

28 (b) Removal of identification marks is

29 (1) a class C felony if the value of the property on which the serial
30 number or identification mark appeared is \$500 [\$750] or more;

31 (2) a class A misdemeanor if the value of the property on which the

1 serial number or identification mark appeared is \$200 [\$250] or more but less than
2 \$500 [\$750];

3 (3) a class B misdemeanor if the value of the property on which the
4 serial number or identification mark appeared is less than \$200 [\$250].

5 * **Sec. 9.** AS 11.46.270(b) is amended to read:

6 (b) Unlawful possession is

7 (1) a class C felony if the value of the property on which the serial
8 number or identification mark appeared is \$500 [\$750] or more;

9 (2) a class A misdemeanor if the value of the property on which the
10 serial number or identification mark appeared is \$200 [\$250] or more but less than
11 \$500 [\$750];

12 (3) a class B misdemeanor if the value of the property on which the
13 serial number or identification mark appeared is less than \$200 [\$250].

14 * **Sec. 10.** AS 11.46.280(d) is amended to read:

15 (d) Issuing a bad check is

16 (1) a class B felony if the face amount of the check is \$20,000
17 [\$25,000] or more;

18 (2) a class C felony if the face amount of the check is \$500 [\$750] or
19 more but less than \$20,000 [\$25,000];

20 (3) a class A misdemeanor if the face amount of the check is \$200
21 [\$250] or more but less than \$500 [\$750];

22 (4) a class B misdemeanor if the face amount of the check is less than
23 \$200 [\$250].

24 * **Sec. 11.** AS 11.46.285(b) is amended to read:

25 (b) Fraudulent use of an access device or identification document is

26 (1) a class B felony if the value of the property or services obtained is
27 \$20,000 [\$25,000] or more;

28 (2) a class C felony if the value of the property or services obtained is
29 \$75 or more but less than \$20,000 [\$25,000];

30 (3) a class A misdemeanor if the value of the property or services
31 obtained is less than \$75.

1 * **Sec. 12.** AS 11.46.360(a) is amended to read:

2 (a) A person commits the crime of vehicle theft in the first degree if, having
3 no right to do so or any reasonable ground to believe the person has such a right, the
4 person drives, tows away, or takes

5 (1) the car, truck, motorcycle, motor home, bus, aircraft, or watercraft
6 of another;

7 (2) the propelled vehicle of another and

8 (A) the vehicle or any other property of another is damaged in a
9 total amount of \$500 [\$750] or more;

10 (B) the owner incurs reasonable expenses as a result of the loss
11 of use of the vehicle [,] in a total amount of \$500 [\$750] or more; or

12 (C) the owner is deprived of the use of the vehicle for seven
13 days or more;

14 (3) the propelled vehicle of another and the vehicle is marked as a
15 police or emergency vehicle; or

16 (4) the propelled vehicle of another and, within the preceding seven
17 years, the person was convicted under

18 (A) this section or AS 11.46.365;

19 (B) former AS 11.46.482(a)(4) or (5);

20 (C) former AS 11.46.484(a)(2);

21 (D) AS 11.46.120 - 11.46.140 of an offense involving the theft
22 of a propelled vehicle; or

23 (E) a law or ordinance of this or another jurisdiction with
24 elements substantially similar to those of an offense described in (A) - (D) of
25 this paragraph.

26 * **Sec. 13.** AS 11.46.482(a) is amended to read:

27 (a) A person commits the crime of criminal mischief in the third degree if,
28 having no right to do so or any reasonable ground to believe the person has such a
29 right,

30 (1) with intent to damage property of another, the person damages
31 property of another in an amount of \$500 [\$750] or more;

1 (2) the person recklessly creates a risk of damage in an amount
2 exceeding \$100,000 to property of another by the use of widely dangerous means; or

3 (3) the person knowingly

4 (A) defaces, damages, or desecrates a cemetery or the contents
5 of a cemetery or a tomb, grave, or memorial regardless of whether the tomb,
6 grave, or memorial is in a cemetery or whether the cemetery, tomb, grave, or
7 memorial appears to be abandoned, lost, or neglected;

8 (B) removes human remains or associated burial artifacts from
9 a cemetery, tomb, grave, or memorial regardless of whether the cemetery,
10 tomb, grave, or memorial appears to be abandoned, lost, or neglected;

11 (C) defaces or damages real property that

12 (i) has a place of religious education or worship located
13 on it; and

14 (ii) if leased or used by a religious organization and is
15 part of a larger property, is the part of the property leased or used by
16 the religious organization, including the access to the entry of that part
17 of the property; or

18 (D) defaces or damages tangible personal property that has
19 religious significance and is used by a religious organization or displayed for
20 educational purposes.

21 * **Sec. 14.** AS 11.46.530(b) is amended to read:

22 (b) Criminal simulation is

23 (1) a class C felony if the value of what the object purports to represent
24 is \$500 [\$750] or more;

25 (2) a class A misdemeanor if the value of what the object purports to
26 represent is \$200 [\$250] or more but less than \$500 [\$750];

27 (3) a class B misdemeanor if the value of what the object purports to
28 represent is less than \$200 [\$250].

29 * **Sec. 15.** AS 11.46.620(d) is amended to read:

30 (d) Misapplication of property is

31 (1) a class C felony if the value of the property misapplied is \$500

1 [\$750] or more;

2 (2) a class A misdemeanor if the value of the property misapplied is
3 less than \$500 [\$750].

4 * **Sec. 16.** AS 11.46.980(e) is amended to read:

5 (e) In determining the degree or classification of a crime under this chapter, if
6 the combined value of the property or services taken from one or more persons or
7 commercial establishments within a period of 180 days is \$500 [\$750] or more but
8 less than \$20,000 [\$25,000], the value may be aggregated.

9 * **Sec. 17.** AS 11.46.990 is amended by adding new paragraphs to read:

10 (15) "aggregate value" means the total value of merchandise taken,
11 concealed, altered, or transferred from any commercial establishment over the course
12 of one calendar year;

13 (16) "commercial establishment" means a person or business that sells
14 goods to the public for use or consumption rather than for resale.

15 * **Sec. 18.** AS 12.55.155(c) is amended by adding a new paragraph to read:

16 (38) the offense was one of a continuing series of criminal offenses
17 that qualify as organized retail theft.

18 * **Sec. 19.** AS 43 is amended by adding a new chapter to read:

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

20 **Sec. 43.72.010. Levy of sales tax.** A sales tax of two percent is levied on the
21 annual gross sales of the sale of property or services delivered in the state by a
22 marketplace facilitator. A sale by or to the United States or an entity that is exempt
23 from federal taxation under 26 U.S.C. 501(c)(3) (Internal Revenue Code) is exempt
24 from the tax imposed under this chapter.

25 **Sec. 43.72.020. Collection of sales tax by marketplace facilitators; physical**
26 **presence.** (a) The tax described in AS 43.72.010 is imposed on the purchaser. The
27 marketplace facilitator shall collect the tax and pay the tax to the department. A
28 marketplace facilitator shall hold all taxes collected in trust for the state. A
29 marketplace facilitator shall apply the tax to the sales price.

30 (b) The marketplace facilitator is not required to collect and remit taxes to the
31 department unless, in the previous calendar year, the

1 (1) marketplace facilitator's gross sales revenue from the sale of
2 property or services delivered in the state met or exceeded \$250,000; or

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

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

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

12 **Sec. 43.72.030. Liability for payment of tax.** (a) Liability for the payment of
13 a tax imposed under this chapter is not extinguished until the taxes have been paid to
14 the department.

15 (b) A marketplace facilitator is liable for the tax due under this chapter and
16 may be required to furnish adequate security as provided in AS 43.72.080 to ensure
17 collection and payment of the taxes.

18 **Sec. 43.72.040. Method of accounting.** A person who is a marketplace
19 facilitator shall report and pay the tax due under this chapter using the same method of
20 accounting that the person uses for federal tax purposes.

21 **Sec. 43.72.050. Returns; payment.** A marketplace facilitator responsible for
22 collecting the sales tax due under AS 43.72.020 shall file a return on a form or in a
23 format prescribed by the department and pay the tax to the department. The
24 marketplace facilitator shall file the return and pay the tax on or before the last day of
25 the month following the month for which the tax is due.

26 **Sec. 43.72.060. Methods.** (a) The department shall adopt regulations providing
27 a rounding method for payment of a tax imposed under this chapter.

28 (b) The department may use sampling principles or methods instead of
29 examining 100 percent of records in conducting an audit of a return filed under
30 AS 43.72.050.

31 **Sec. 43.72.070. Deduction for bad debts.** (a) A marketplace facilitator filing a

1 return under AS 43.72.050 may deduct sales found to be worthless. The bad debt may
2 be deducted when it

3 (1) is written off as uncollectable in the person's books and records;
4 and

5 (2) qualifies as a deduction for federal income tax purposes under 26
6 U.S.C. (Internal Revenue Code).

7 (b) If the amount of bad debt exceeds the amount of taxable sales or leases
8 during the period that the bad debt is written off, a marketplace facilitator may file a
9 refund claim with the department.

10 (c) If a bad debt deducted under (a) of this section is later collected, the
11 marketplace facilitator who claimed the deduction shall pay the tax levied under
12 AS 43.72.020 on the amount collected. For purposes of this section, a payment made
13 on a debt or account is applied first to the sales price of the property or service, then to
14 interest, service charges, and any other charges.

15 **Sec. 43.72.080. Security: limitations; sale of security deposit at auction;**
16 **bond.** (a) The department may require a marketplace facilitator to deposit with the
17 department security in a form and amount that the department determines is
18 appropriate. The deposit may not be more than twice the estimated average tax
19 liability under this chapter for the period for which the return is required under
20 AS 43.72.050 to be filed or \$10,000, whichever is less. The department may increase
21 or decrease the amount of security, subject to the limitations provided in this section.

22 (b) The department may sell at public auction property deposited as security to
23 recover a tax amount required to be collected under this chapter, including interest and
24 penalties. Notice of the sale must be sent at least 30 days before the sale by certified
25 mail to the last known address of the person who deposited the security. After the sale,
26 any surplus above the amount due that is not required as security under this section
27 must be returned to the person who deposited the security.

28 (c) Instead of security, the department may require a marketplace facilitator to
29 file a bond to guarantee solvency and responsibility issued by a surety company
30 authorized to transact business in this state.

31 (d) In addition to the other requirements of this section, the department may

1 require the corporate officers, directors, or shareholders of a marketplace facilitator
 2 corporation to provide a personal guaranty and assumption of liability for the payment
 3 of the tax due under this chapter.

4 **Sec. 43.72.090. Quitting business; liability of successor.** (a) Within 10 days
 5 after a marketplace facilitator quits business, sells, exchanges, or otherwise transfers
 6 the business, or disposes of the complete stock of goods of the business, the
 7 marketplace facilitator shall file a return and pay the taxes due under this chapter.

8 (b) Except as provided in (d) of this section, a successor in a business or stock
 9 of goods is liable for the payment of the full amount of tax and shall withhold from the
 10 sales price payable to the predecessor a sum sufficient to pay any tax due until the
 11 predecessor produces either a receipt from the department showing payment in full of
 12 any tax due or a statement from the department that tax is not due.

13 (c) If a tax is due but has not been paid as provided in (a) of this section, the
 14 successor is liable for the payment of the full amount of tax. The payment of the tax
 15 by the successor is considered to be a payment on the sales price and, if the payment is
 16 greater in amount than the sales price, the amount of the difference becomes a debt
 17 due to the successor from the taxpayer owing the tax under (a) of this section.

18 (d) A successor is not liable for any tax due under this section if the successor
 19 gives written notice to the department of the acquisition and the department does not
 20 issue an assessment against the predecessor within six months after receipt of the
 21 notice from the successor. If the department issues an assessment and a copy of the
 22 assessment is not mailed to the successor, the successor is not liable for the tax due.

23 (e) In this section, "predecessor" means a marketplace facilitator that quits
 24 business, sells, exchanges, or otherwise transfers the business, or disposes of the
 25 complete stock of goods of the business.

26 **Sec. 43.72.100. Tax as debt.** (a) The tax imposed by this chapter and related
 27 interest and penalties become a personal debt of a marketplace facilitator required to
 28 file a return under AS 43.72.050 or a person required by the department to personally
 29 guarantee the payment of taxes under this chapter from the time the liability arises,
 30 regardless of when the time for payment of the liability occurs.

31 (b) If the personal representative of an estate has voluntarily distributed the

1 assets held in that capacity without reserving sufficient assets to pay the taxes due
 2 under this chapter and interest and penalties resulting from taxes due under this
 3 chapter, the personal representative is personally liable for the taxes, interest, and
 4 penalties, to the extent permitted under AS 13.16.

5 (c) An officer or employee of a marketplace facilitator whose duty it is to
 6 collect, truthfully account for, and pay to the state the taxes imposed by this chapter
 7 and who fails to pay the taxes is liable to the state for the taxes imposed by this
 8 chapter and the penalty and interest due on the taxes.

9 **Sec. 43.72.110. Organized retail theft fund.** (a) The organized retail theft
 10 fund is established in the general fund. The legislature may appropriate the tax
 11 collected under AS 43.72.010 to the organized retail theft fund. The legislature may
 12 appropriate money in the fund to law enforcement agencies to investigate and
 13 prosecute organized retail theft under AS 11.46.215 and related fraud and property
 14 crimes.

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

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

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

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

26 (A) directly or indirectly by

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

29 (ii) owning or operating the electronic, physical, or
 30 technological infrastructure that brings the buyer and the third-party
 31 seller together;

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

3 (iv) software development or research and development
4 activities related to any of the activities described in (i) - (iii) of this
5 subparagraph, if the activities are directly related to a physical or
6 electronic marketplace operated by the person or an affiliated person;
7 and

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

10 (i) payment processing services;

11 (ii) fulfillment or storage services;

12 (iii) listing products for sale;

13 (iv) setting prices;

14 (v) branding sales as the marketplace facilitator;

15 (vi) taking orders;

16 (vii) advertising or promotion; or

17 (viii) providing customer service or accepting or
18 assisting with returns or exchanges;

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

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

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

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

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

27 (5) "third-party seller" means a person who sells, offers to sell, or
28 contracts to sell a consumer product through an online marketplace; "third-party
29 seller" does not include a person who operates an online marketplace or has an
30 ongoing contractual relationship with an online marketplace to provide manufacturing,
31 distribution, wholesaling, or fulfillment of consumer product orders for the online

1 marketplace.

2 * **Sec. 20.** The uncodified law of the State of Alaska is amended by adding a new section to
3 read:

4 APPLICABILITY. (a) The following sections apply to offenses committed on or after
5 the effective date of those sections:

6 (1) AS 11.46.120(a), as amended by sec. 2 of this Act;

7 (2) AS 11.46.130(a), as amended by sec. 3 of this Act;

8 (3) AS 11.46.140(a), as amended by sec. 4 of this Act;

9 (4) AS 11.46.150(a), as amended by sec. 5 of this Act;

10 (5) AS 11.46.220(c), as amended by sec. 7 of this Act;

11 (6) AS 11.46.260(b), as amended by sec. 8 of this Act;

12 (7) AS 11.46.270(b), as amended by sec. 9 of this Act;

13 (8) AS 11.46.280(d), as amended by sec. 10 of this Act;

14 (9) AS 11.46.285(b), as amended by sec. 11 of this Act;

15 (10) AS 11.46.360(a), as amended by sec. 12 of this Act;

16 (11) AS 11.46.482(a), as amended by sec. 13 of this Act;

17 (12) AS 11.46.530(b), as amended by sec. 14 of this Act;

18 (13) AS 11.46.620(d), as amended by sec. 15 of this Act; and

19 (14) AS 11.46.980(e), as amended by sec. 16 of this Act.

20 (b) AS 43.72.010, added by sec. 19 of this Act, applies to the taxation of goods
21 purchased on or after the effective date of this Act.