

§ 3922. Theft by deception.

(a) Offense defined.--A person is guilty of theft if he intentionally obtains or withholds property of another by deception. A person deceives if he intentionally:

- (1) creates or reinforces a false impression, including false impressions as to law, value, intention or other state of mind; but deception as to a person's intention to perform a promise shall not be inferred from the fact alone that he did not subsequently perform the promise;
- (2) prevents another from acquiring information which would affect his judgment of a transaction; or
- (3) fails to correct a false impression which the deceiver previously created or reinforced, or which the deceiver knows to be influencing another to whom he stands in a fiduciary or confidential relationship.

(b) Exception.--The term "deceive" does not, however, include falsity as to matters having no pecuniary significance, or puffing by statements unlikely to deceive ordinary persons in the group addressed.

Cross References. Section 3922 is referred to in sections 3311, 5708 of this title; sections 5552, 9717 of Title 42

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§ 3929. Retail theft.

(a) Offense defined.--A person is guilty of a retail theft if he:

- (1) takes possession of, carries away, transfers or causes 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 without paying the full retail value thereof;
- (2) alters, transfers or removes any label, price tag marking, indicia of value or any other markings which aid in determining value affixed to any merchandise displayed, held, stored or offered for sale in a store or other retail

mercantile establishment and attempts 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 the full retail value of such merchandise;
(3) transfers any merchandise displayed, held, stored or offered for sale by any store or other retail mercantile 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 full retail value thereof; or

(4) under-rings with the intention of depriving the merchant of the full retail value of the merchandise.

(5) destroys, removes, renders inoperative or deactivates any inventory control tag, security strip or any other mechanism designed or employed to prevent an offense under this section with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof.

(b) Grading.--

(1) Retail theft constitutes a:

(i) Summary offense when the offense is a first offense and the value of the merchandise is less than \$150.

(ii) Misdemeanor of the second degree when the offense is a second offense and the value of the merchandise is less than \$150.

(iii) Misdemeanor of the first degree when the offense is a first or second offense and the value of the merchandise is \$150 or more.

(iv) Felony of the third degree when the offense is a third or subsequent offense, regardless of the value of the merchandise.

(v) Felony of the third degree when the amount involved exceeds \$2,000 or if the merchandise involved is a firearm or a motor vehicle.

(1.1) Any person who is convicted under subsection (a) of retail theft of motor fuel may, in addition to any other penalty imposed, be sentenced as follows:

(i) For a first offense, to pay a fine of not less than \$100 nor more than \$250.

(ii) For a second offense, to pay a fine of not less than \$250 nor more than \$500.

(iii) For a third or subsequent offense, to pay a fine of not less than \$500, or the court may order the operating privilege of the person suspended for 30 days.

A copy of the order shall be transmitted to the

Department of Transportation.

(2) Amounts involved in retail thefts committed pursuant to one scheme or course of conduct, whether from the same store or retail mercantile establishment or several stores or retail mercantile establishments, may be aggregated in determining the grade of the offense.

(c) Presumptions.--Any person intentionally concealing unpurchased property of any store or other mercantile establishment, either on the premises or outside the premises of such store, shall be prima facie presumed to have so concealed such property with the intention of depriving the merchant of the possession, use or benefit of such merchandise without paying the full retail value thereof within the meaning of subsection (a), and the finding of such unpurchased property concealed, upon the person or among the belongings of such person, shall be prima facie evidence of intentional concealment, and, if such person conceals, or causes to be concealed, such unpurchased property, upon the person or among the belongings of another, such fact shall also be prima facie evidence of intentional concealment on the part of the person so concealing such property.

(c.1) Evidence.--To the extent that there is other competent evidence to substantiate the offense, the conviction shall not be avoided because the prosecution cannot produce the stolen merchandise.

(d) Detention.--A peace officer, merchant or merchant's employee or an agent under contract with a merchant, who has probable cause to believe that retail theft has occurred or is occurring on or about a store or other retail mercantile establishment and who has probable cause to believe that a specific person has committed or is committing the retail theft may detain the suspect in a reasonable manner for a reasonable time on or off the premises for all or any of the following purposes: to require the suspect to identify himself, to verify such identification, to determine whether such suspect has in his possession unpurchased merchandise taken from the mercantile establishment and, if so, to recover such merchandise, to inform a peace officer, or to institute criminal proceedings against the suspect. Such detention shall not impose civil or criminal liability upon the peace officer, merchant, employee, or agent so detaining.

(e) Reduction prohibited.--No magisterial district judge shall have the power to reduce any other charge of theft to a charge of retail theft as defined in this section.

(f) Definitions.--

"Conceal." To conceal merchandise so that, although there

may be some notice of its presence, it is not visible through ordinary observation.

"Full retail value." The merchant's stated or advertised price of the merchandise.

"Merchandise." Any goods, chattels, foodstuffs or wares of any type and description, regardless of the value thereof.

"Merchant." An owner or operator of any retail mercantile establishment or any agent, employee, lessee, consignee, officer, director, franchisee or independent contractor of such owner or operator.

"Premises of a retail mercantile establishment." 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.

"Store or other retail mercantile establishment." A place where merchandise is displayed, held, stored or sold or offered to the public for sale.

"Under-ring." To cause the cash register or other sales recording device to reflect less than the full retail value of the merchandise.

(g) Fingerprinting.--Prior to the commencement of trial or entry of plea of a defendant 16 years of age or older accused of the summary offense of retail theft, the issuing authority shall order the defendant to submit within five days of such order for fingerprinting by the municipal police of the jurisdiction in which the offense allegedly was committed or the State Police. Fingerprints so obtained shall be forwarded immediately to the Pennsylvania State Police for determination as to whether or not the defendant previously has been convicted of the offense of retail theft. The results of such determination shall be forwarded to the Police Department obtaining the fingerprints if such department is the prosecutor, or to the issuing authority if the prosecutor is other than a police officer. The issuing authority shall not proceed with the trial or plea in summary cases until in receipt of the determination made by the State Police. The magisterial district judge shall use the information obtained solely for the purpose of grading the offense pursuant to subsection (b).

(Dec. 2, 1976, P.L.1230, No.272, eff. imd.; Apr. 28, 1978, P.L.202, No.53, eff. 2 years; Dec. 20, 1996, P.L.1530, No.200, eff. 60 days; June 25, 1997, P.L.377, No.42, eff. imd.; Oct. 2, 2002, P.L.806, No.116, eff. 60 days; Nov. 30, 2004, P.L.1618, No.207, eff. 60 days)

2004 Amendment. Act 207 amended subsecs. (e) and (g). See sections 28 and 29 of Act 207 in the appendix to this title for special provisions relating to applicability and construction of law.

2002 Amendment. Act 116 amended subsec. (b).

1997 Amendment. Act 42 added subsec. (a)(5).

Cross References. Section 3929 is referred to in sections 3903, 3929.2, 9112 of this title; sections 3573, 5552, 8308 of Title 42 (Judiciary and Judicial Procedure).