



February 10, 2017

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## HOUSE BILL No. 1209

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DIGEST OF HB 1209 (Updated February 8, 2017 4:52 pm - DI 84)

**Citations Affected:** IC 34-24; IC 35-31.5; IC 35-43; IC 35-45.

**Synopsis:** Organized retail theft. Makes it organized retail theft, a Level 5 felony, for a person to knowingly: (1) take, procure, receive, conceal, or otherwise exercise control over merchandise of a retail merchant; or (2) use an artifice, an instrument, a container, a device, or another article to facilitate taking, procuring, receiving, concealing, or exercising control over merchandise of a retail merchant; without the consent of the retail merchant or without paying the appropriate consideration for the merchandise, and with the intent to sell, deliver, or distribute the merchandise to another person. Allows property with a retail or repurchase value of at least \$100 that is stolen during the commission of the crime of organized retail theft to be seized and forfeited under the law concerning forfeiture of property used in violation of certain criminal statutes. Allows a victim of the crime of organized retail theft to receive treble damages in a civil action concerning the crime. Adds organized retail theft to the list of crimes considered racketeering activity under the law concerning racketeer influenced and corrupt organizations.

**Effective:** July 1, 2017.

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**Negele, Steuerwald, Lawson L**

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January 10, 2017, read first time and referred to Committee on Courts and Criminal Code.  
February 9, 2017, reported — Do Pass.

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HB 1209—LS 6550/DI 128





February 10, 2017

First Regular Session of the 120th General Assembly (2017)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2016 Regular Session of the General Assembly.

## HOUSE BILL No. 1209

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A BILL FOR AN ACT to amend the Indiana Code concerning criminal law and procedure.

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

- 1 SECTION 1. IC 34-24-1-1, AS AMENDED BY P.L.237-2015,  
2 SECTION 8, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3 JULY 1, 2017]: Sec. 1. (a) The following may be seized:  
4 (1) All vehicles (as defined by IC 35-31.5-2-346), if they are used  
5 or are intended for use by the person or persons in possession of  
6 them to transport or in any manner to facilitate the transportation  
7 of the following:  
8 (A) A controlled substance for the purpose of committing,  
9 attempting to commit, or conspiring to commit any of the  
10 following:  
11 (i) Dealing in or manufacturing cocaine or a narcotic drug  
12 (IC 35-48-4-1).  
13 (ii) Dealing in methamphetamine (IC 35-48-4-1.1).  
14 (iii) Dealing in a schedule I, II, or III controlled substance  
15 (IC 35-48-4-2).  
16 (iv) Dealing in a schedule IV controlled substance  
17 (IC 35-48-4-3).

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- 1 (v) Dealing in a schedule V controlled substance  
 2 (IC 35-48-4-4).  
 3 (vi) Dealing in a counterfeit substance (IC 35-48-4-5).  
 4 (vii) Possession of cocaine or a narcotic drug (IC 35-48-4-6).  
 5 (viii) Possession of methamphetamine (IC 35-48-4-6.1).  
 6 (ix) Dealing in paraphernalia (IC 35-48-4-8.5).  
 7 (x) Dealing in marijuana, hash oil, hashish, or salvia  
 8 (IC 35-48-4-10).  
 9 (xi) Dealing in a synthetic drug or synthetic drug lookalike  
 10 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its  
 11 amendment in 2013).  
 12 (B) Any stolen (IC 35-43-4-2 **or IC 35-43-4-2.2**) or converted  
 13 property (IC 35-43-4-3) if the retail or repurchase value of that  
 14 property is one hundred dollars (\$100) or more.  
 15 (C) Any hazardous waste in violation of IC 13-30-10-1.5.  
 16 (D) A bomb (as defined in IC 35-31.5-2-31) or weapon of  
 17 mass destruction (as defined in IC 35-31.5-2-354) used to  
 18 commit, used in an attempt to commit, or used in a conspiracy  
 19 to commit an offense under IC 35-47 as part of or in  
 20 furtherance of an act of terrorism (as defined by  
 21 IC 35-31.5-2-329).  
 22 (2) All money, negotiable instruments, securities, weapons,  
 23 communications devices, or any property used to commit, used in  
 24 an attempt to commit, or used in a conspiracy to commit an  
 25 offense under IC 35-47 as part of or in furtherance of an act of  
 26 terrorism or commonly used as consideration for a violation of  
 27 IC 35-48-4 (other than items subject to forfeiture under  
 28 IC 16-42-20-5 or IC 16-6-8.5-5.1, before its repeal):  
 29 (A) furnished or intended to be furnished by any person in  
 30 exchange for an act that is in violation of a criminal statute;  
 31 (B) used to facilitate any violation of a criminal statute; or  
 32 (C) traceable as proceeds of the violation of a criminal statute.  
 33 (3) Any portion of real or personal property purchased with  
 34 money that is traceable as a proceed of a violation of a criminal  
 35 statute.  
 36 (4) A vehicle that is used by a person to:  
 37 (A) commit, attempt to commit, or conspire to commit;  
 38 (B) facilitate the commission of; or  
 39 (C) escape from the commission of;  
 40 murder (IC 35-42-1-1), kidnapping (IC 35-42-3-2), criminal  
 41 confinement (IC 35-42-3-3), rape (IC 35-42-4-1), child molesting  
 42 (IC 35-42-4-3), or child exploitation (IC 35-42-4-4), or an offense



- 1 under IC 35-47 as part of or in furtherance of an act of terrorism.  
 2 (5) Real property owned by a person who uses it to commit any of  
 3 the following as a Level 1, Level 2, Level 3, Level 4, or Level 5  
 4 felony:  
 5 (A) Dealing in or manufacturing cocaine or a narcotic drug  
 6 (IC 35-48-4-1).  
 7 (B) Dealing in methamphetamine (IC 35-48-4-1.1).  
 8 (C) Dealing in a schedule I, II, or III controlled substance  
 9 (IC 35-48-4-2).  
 10 (D) Dealing in a schedule IV controlled substance  
 11 (IC 35-48-4-3).  
 12 (E) Dealing in marijuana, hash oil, hashish, or salvia  
 13 (IC 35-48-4-10).  
 14 (F) Dealing in a synthetic drug or synthetic drug lookalike  
 15 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its  
 16 amendment in 2013).  
 17 (6) Equipment and recordings used by a person to commit fraud  
 18 under IC 35-43-5-4(10).  
 19 (7) Recordings sold, rented, transported, or possessed by a person  
 20 in violation of IC 24-4-10.  
 21 (8) Property (as defined by IC 35-31.5-2-253) or an enterprise (as  
 22 defined by IC 35-45-6-1) that is the object of a corrupt business  
 23 influence violation (IC 35-45-6-2).  
 24 (9) Unlawful telecommunications devices (as defined in  
 25 IC 35-45-13-6) and plans, instructions, or publications used to  
 26 commit an offense under IC 35-45-13.  
 27 (10) Any equipment, including computer equipment and cellular  
 28 telephones, used for or intended for use in preparing,  
 29 photographing, recording, videotaping, digitizing, printing,  
 30 copying, or disseminating matter in violation of IC 35-42-4.  
 31 (11) Destructive devices used, possessed, transported, or sold in  
 32 violation of IC 35-47.5.  
 33 (12) Tobacco products that are sold in violation of IC 24-3-5,  
 34 tobacco products that a person attempts to sell in violation of  
 35 IC 24-3-5, and other personal property owned and used by a  
 36 person to facilitate a violation of IC 24-3-5.  
 37 (13) Property used by a person to commit counterfeiting or  
 38 forgery in violation of IC 35-43-5-2.  
 39 (14) After December 31, 2005, if a person is convicted of an  
 40 offense specified in IC 25-26-14-26(b) or IC 35-43-10, the  
 41 following real or personal property:  
 42 (A) Property used or intended to be used to commit, facilitate,



- 1 or promote the commission of the offense.  
 2 (B) Property constituting, derived from, or traceable to the  
 3 gross proceeds that the person obtained directly or indirectly  
 4 as a result of the offense.
- 5 (15) Except as provided in subsection (e), a vehicle used by a  
 6 person who operates the vehicle:  
 7 (A) while intoxicated, in violation of IC 9-30-5-1 through  
 8 IC 9-30-5-5, if in the previous five (5) years the person has two  
 9 (2) or more prior unrelated convictions:  
 10 (i) for operating a motor vehicle while intoxicated in  
 11 violation of IC 9-30-5-1 through IC 9-30-5-5; or  
 12 (ii) for an offense that is substantially similar to IC 9-30-5-1  
 13 through IC 9-30-5-5 in another jurisdiction; or  
 14 (B) on a highway while the person's driving privileges are  
 15 suspended in violation of IC 9-24-19-2 through IC 9-24-19-3,  
 16 if in the previous five (5) years the person has two (2) or more  
 17 prior unrelated convictions:  
 18 (i) for operating a vehicle while intoxicated in violation of  
 19 IC 9-30-5-1 through IC 9-30-5-5; or  
 20 (ii) for an offense that is substantially similar to IC 9-30-5-1  
 21 through IC 9-30-5-5 in another jurisdiction.
- 22 If a court orders the seizure of a vehicle under this subdivision,  
 23 the court shall transmit an order to the bureau of motor vehicles  
 24 recommending that the bureau not permit a vehicle to be  
 25 registered in the name of the person whose vehicle was seized  
 26 until the person possesses a current driving license (as defined in  
 27 IC 9-13-2-41).
- 28 (16) The following real or personal property:  
 29 (A) Property used or intended to be used to commit, facilitate,  
 30 or promote the commission of an offense specified in  
 31 IC 23-14-48-9, IC 30-2-9-7(b), IC 30-2-10-9(b), or  
 32 IC 30-2-13-38(f).  
 33 (B) Property constituting, derived from, or traceable to the  
 34 gross proceeds that a person obtains directly or indirectly as a  
 35 result of an offense specified in IC 23-14-48-9, IC 30-2-9-7(b),  
 36 IC 30-2-10-9(b), or IC 30-2-13-38(f).
- 37 (17) An automated sales suppression device (as defined in  
 38 IC 35-43-5-4.6(a)(1) or phantom-ware (as defined in  
 39 IC 35-43-5-4.6(a)(3)).
- 40 (18) Real or personal property, including a vehicle, that is used by  
 41 a person to:  
 42 (A) commit, attempt to commit, or conspire to commit;



- 1 (B) facilitate the commission of; or  
 2 (C) escape from the commission of;  
 3 a violation of IC 35-42-3.5-1 (human trafficking) or IC 35-45-4-4  
 4 (promoting prostitution).
- 5 (b) A vehicle used by any person as a common or contract carrier in  
 6 the transaction of business as a common or contract carrier is not  
 7 subject to seizure under this section, unless it can be proven by a  
 8 preponderance of the evidence that the owner of the vehicle knowingly  
 9 permitted the vehicle to be used to engage in conduct that subjects it to  
 10 seizure under subsection (a).
- 11 (c) Equipment under subsection (a)(10) may not be seized unless it  
 12 can be proven by a preponderance of the evidence that the owner of the  
 13 equipment knowingly permitted the equipment to be used to engage in  
 14 conduct that subjects it to seizure under subsection (a)(10).
- 15 (d) Money, negotiable instruments, securities, weapons,  
 16 communications devices, or any property commonly used as  
 17 consideration for a violation of IC 35-48-4 found near or on a person  
 18 who is committing, attempting to commit, or conspiring to commit any  
 19 of the following offenses shall be admitted into evidence in an action  
 20 under this chapter as prima facie evidence that the money, negotiable  
 21 instrument, security, or other thing of value is property that has been  
 22 used or was to have been used to facilitate the violation of a criminal  
 23 statute or is the proceeds of the violation of a criminal statute:
- 24 (1) IC 35-48-4-1 (dealing in or manufacturing cocaine or a  
 25 narcotic drug).  
 26 (2) IC 35-48-4-1.1 (dealing in methamphetamine).  
 27 (3) IC 35-48-4-2 (dealing in a schedule I, II, or III controlled  
 28 substance).  
 29 (4) IC 35-48-4-3 (dealing in a schedule IV controlled substance).  
 30 (5) IC 35-48-4-4 (dealing in a schedule V controlled substance)  
 31 as a Level 4 felony.  
 32 (6) IC 35-48-4-6 (possession of cocaine or a narcotic drug) as a  
 33 Level 3, Level 4, or Level 5 felony.  
 34 (7) IC 35-48-4-6.1 (possession of methamphetamine) as a Level  
 35 3, Level 4, or Level 5 felony.  
 36 (8) IC 35-48-4-10 (dealing in marijuana, hash oil, hashish, or  
 37 salvia) as a Level 5 felony.  
 38 (9) IC 35-48-4-10.5 (dealing in a synthetic drug or synthetic drug  
 39 lookalike substance) as a Level 5 felony or Level 6 felony (or as  
 40 a Class C felony or Class D felony under IC 35-48-4-10 before its  
 41 amendment in 2013).  
 42 (e) A vehicle operated by a person who is not:



1 (1) an owner of the vehicle; or  
 2 (2) the spouse of the person who owns the vehicle;  
 3 is not subject to seizure under subsection (a)(15) unless it can be  
 4 proven by a preponderance of the evidence that the owner of the  
 5 vehicle knowingly permitted the vehicle to be used to engage in  
 6 conduct that subjects it to seizure under subsection (a)(15).

7 SECTION 2. IC 34-24-3-2 IS AMENDED TO READ AS  
 8 FOLLOWS [EFFECTIVE JULY 1, 2017]: Sec. 2. (a) For purposes of  
 9 determining the amount of damages recoverable under section 1(1) of  
 10 this chapter, there is an irrebuttable presumption that a retailer who  
 11 brings a civil action under this chapter (or IC 34-4-30 before its repeal)  
 12 as the result of a violation of IC 35-43-4-2 (theft), **IC 35-43-4-2.2**  
 13 **(organized retail theft)**, or IC 35-43-4-3 (conversion) suffers a  
 14 pecuniary loss in the amount of:

15 (1) one hundred dollars (\$100) regardless of whether:  
 16 (A) the property is returned to the retailer; or  
 17 (B) the actual retail value of the property is less than one  
 18 hundred dollars (\$100); or  
 19 (2) the retailer's actual damages;  
 20 whichever is greater.

21 (b) An individual found liable in a civil action under this chapter (or  
 22 IC 34-4-30 before its repeal) for violating IC 35-43-4-2,  
 23 **IC 35-43-4-2.2**, or IC 35-43-4-3 may not be indemnified or insured for  
 24 any penalties, damages, or settlement arising from the violation.

25 SECTION 3. IC 35-31.5-2-278.2 IS ADDED TO THE INDIANA  
 26 CODE AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
 27 **1, 2017]: Sec. 278.2. "Retail merchant", for**  
 28 **purposes of IC 35-43-4-2.2, has the meaning set forth in**  
 29 **IC 35-43-4-2.2(a).**

30 SECTION 4. IC 35-43-4-2.2 IS ADDED TO THE INDIANA CODE  
 31 AS A **NEW SECTION** TO READ AS FOLLOWS [EFFECTIVE JULY  
 32 **1, 2017]: Sec. 2.2. (a) As used in this section, "retail merchant" has**  
 33 **the meaning set forth in IC 6-2.5-1-8.**

34 **(b) A person who knowingly takes, procures, receives, conceals,**  
 35 **or otherwise exercises control over merchandise of a retail**  
 36 **merchant or uses an artifice, an instrument, a container, a device,**  
 37 **or another article to facilitate taking, procuring, receiving,**  
 38 **concealing, or exercising control over merchandise of a retail**  
 39 **merchant:**

40 **(1) without the consent of the retail merchant or without**  
 41 **paying the appropriate consideration for the merchandise;**  
 42 **and**





1           **(2) with the intent to sell, deliver, or distribute the**  
 2           **merchandise to another person;**  
 3           **commits organized retail theft, a Level 5 felony.**

4           SECTION 5. IC 35-45-6-1, AS AMENDED BY P.L.168-2014,  
 5           SECTION 84, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
 6           JULY 1, 2017]: Sec. 1. (a) The definitions in this section apply  
 7           throughout this chapter.

8           (b) "Documentary material" means any document, drawing,  
 9           photograph, recording, or other tangible item containing compiled data  
 10          from which information can be either obtained or translated into a  
 11          usable form.

12          (c) "Enterprise" means:

13           (1) a sole proprietorship, corporation, limited liability company,  
 14           partnership, business trust, or governmental entity; or

15           (2) a union, an association, or a group, whether a legal entity or  
 16           merely associated in fact.

17          (d) "Pattern of racketeering activity" means engaging in at least two  
 18          (2) incidents of racketeering activity that have the same or similar  
 19          intent, result, accomplice, victim, or method of commission, or that are  
 20          otherwise interrelated by distinguishing characteristics that are not  
 21          isolated incidents. However, the incidents are a pattern of racketeering  
 22          activity only if at least one (1) of the incidents occurred after August  
 23          31, 1980, and if the last of the incidents occurred within five (5) years  
 24          after a prior incident of racketeering activity.

25          (e) "Racketeering activity" means to commit, to attempt to commit,  
 26          to conspire to commit a violation of, or aiding and abetting in a  
 27          violation of any of the following:

28           (1) A provision of IC 23-19, or of a rule or order issued under  
 29           IC 23-19.

30           (2) A violation of IC 35-45-9.

31           (3) A violation of IC 35-47.

32           (4) A violation of IC 35-49-3.

33           (5) Murder (IC 35-42-1-1).

34           (6) Battery as a Class C felony before July 1, 2014, or a Level 5  
 35           felony after June 30, 2014 (IC 35-42-2-1).

36           (7) Kidnapping (IC 35-42-3-2).

37           (8) Human and sexual trafficking crimes (IC 35-42-3.5).

38           (9) Child exploitation (IC 35-42-4-4).

39           (10) Robbery (IC 35-42-5-1).

40           (11) Carjacking (IC 35-42-5-2) (before its repeal).

41           (12) Arson (IC 35-43-1-1).

42           (13) Burglary (IC 35-43-2-1).



- 1 (14) Theft (IC 35-43-4-2).
- 2 (15) Receiving stolen property (IC 35-43-4-2).
- 3 (16) Forgery (IC 35-43-5-2).
- 4 (17) Fraud (IC 35-43-5-4(1) through IC 35-43-5-4(10)).
- 5 (18) Bribery (IC 35-44.1-1-2).
- 6 (19) Official misconduct (IC 35-44.1-1-1).
- 7 (20) Conflict of interest (IC 35-44.1-1-4).
- 8 (21) Perjury (IC 35-44.1-2-1).
- 9 (22) Obstruction of justice (IC 35-44.1-2-2).
- 10 (23) Intimidation (IC 35-45-2-1).
- 11 (24) Promoting prostitution (IC 35-45-4-4).
- 12 (25) Professional gambling (IC 35-45-5-3).
- 13 (26) Maintaining a professional gambling site
- 14 (IC 35-45-5-3.5(b)).
- 15 (27) Promoting professional gambling (IC 35-45-5-4).
- 16 (28) Dealing in or manufacturing cocaine or a narcotic drug
- 17 (IC 35-48-4-1).
- 18 (29) Dealing in or manufacturing methamphetamine
- 19 (IC 35-48-4-1.1).
- 20 (30) Dealing in a schedule I, II, or III controlled substance
- 21 (IC 35-48-4-2).
- 22 (31) Dealing in a schedule IV controlled substance
- 23 (IC 35-48-4-3).
- 24 (32) Dealing in a schedule V controlled substance (IC 35-48-4-4).
- 25 (33) Dealing in marijuana, hash oil, hashish, or salvia
- 26 (IC 35-48-4-10).
- 27 (34) Money laundering (IC 35-45-15-5).
- 28 (35) A violation of IC 35-47.5-5.
- 29 (36) A violation of any of the following:
- 30 (A) IC 23-14-48-9.
- 31 (B) IC 30-2-9-7(b).
- 32 (C) IC 30-2-10-9(b).
- 33 (D) IC 30-2-13-38(f).
- 34 (37) Practice of law by a person who is not an attorney
- 35 (IC 33-43-2-1).
- 36 (38) Dealing in a synthetic drug or synthetic drug lookalike
- 37 substance (IC 35-48-4-10.5, or IC 35-48-4-10 before its
- 38 amendment in 2013).
- 39 **(39) Organized retail theft (IC 35-43-4-2.2).**



COMMITTEE REPORT

Mr. Speaker: Your Committee on Courts and Criminal Code, to which was referred House Bill 1209, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

(Reference is to HB 1209 as introduced.)

WASHBURN

Committee Vote: Yeas 9, Nays 0

