

ALASKA STATE LEGISLATURE



REPRESENTATIVE ZACK FIELDS

Fairview • South Addition • Forest Park • Downtown • North Star

Sectional Analysis

HB 97 v. A: Organized Retail Theft / Fund; Marketplace Sales Tax

2/17/2025

Section 1: This section amends **AS 11.46.100** to modify the definition of theft in the criminal code to include organized retail theft.

Section 2: This section amends **AS 11.46.120(a)** to update the definition of *theft in the first degree*, and it lowers the threshold for these crimes to \$20,000 from \$25,000.

Section 3: This section amends **AS 11.46.130(a)** to modify the definition of *theft in the second degree*, and it lowers the threshold for these crimes to a range of \$500 to \$20,000 from the current range of \$750 to \$25,000. This section also provides for individuals with a prior similar conviction in the last 5 years to be charged with theft in the second degree.

Section 4: This section amends **AS 11.46.140(a)** to modify the definition of *theft in the third degree*, and it lowers the threshold for these crimes to a range of \$200 to \$500 from the current range of \$250 to \$750. This section also provides for individuals with a prior similar conviction in the last 5 years to be charged with theft in the third degree.

Section 5: This section amends **AS 11.46.150(a)** to modify the definition of *theft in the fourth degree*, and it lowers the threshold for these crimes to \$200 or less from the current range of \$250 or less.

Section 6: This section amends the criminal code with a new section **Sec. 11.46.215** defining organized retail theft.

Section 7: This section amends **AS 11.46.220(c)**, which deals with the crime of concealment of merchandise, to conform with previous sections.

Section 8: This section amends **AS 11.46.260(b)**, which deals with the crime of removal of identification marks, to conform with previous sections.

Section 9: This section amends **AS 11.46.270(b)**, which deals with the crime of unlawful possession, to conform with previous sections.

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Section 10: This section amends **AS 11.46.280(d)**, which deals with the crime of issuing a bad check, to conform with previous sections.

Section 11: This section amends **AS 11.46.285(b)**, which deals with the crime of fraudulent use of an access device or identification document, to conform with previous sections.

Section 12: This section amends **AS 11.46.360(a)**, which deals with the crime of vehicle theft, to conform with previous sections.

Section 13: This section amends **AS 11.46.482(a)**, which deals with the crime of criminal mischief, to conform with previous sections.

Section 14: This section amends **AS 11.46.530(b)**, which deals with the crime of criminal simulation, to conform with previous sections.

Section 15: This section amends **AS 11.46.620(d)**, which deals with the crime of misapplication of property, to conform with previous sections.

Section 16: This section amends **AS 11.46.980(e)**, which allows for the combined value of goods or services to be aggregated. This is a conforming change.

Section 17: This section adds new paragraphs to **AS 11.46.990** to define the terms “aggregate value” and “commercial establishment.”

Section 18: This section amends **AS 12.55.155(c)** with a new paragraph that adds organized retail theft as an aggravating factor, which allows the sentencing court to consider a sentence above the presumptive range set out in AS 12.55.125.

Section 19: This section amends **AS 43** with a new chapter: Chapter 72: Marketplace Facilitator Sales Tax.

- Sec. 43.72.010 establishes a 2% sales tax on sales by marketplace facilitators.
- Sec. 43.72.020 requires the marketplace facilitator to collect the tax, hold it in trust for the state, and remit to Department of Revenue. There is a minimum sales threshold for the sales tax of \$250,000 or 200 individual transactions in the previous calendar year. Marketplace facilitators who meet or exceed the minimum sales threshold are required to register and remit the tax to the state, including online marketplace facilitators without a physical presence in state.
- Sec 43.72.030 establishes liability for payment of tax.

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- Sec 43.72.040 provides for the same method of accounting the person uses for federal tax purposes.
- Sec 43.72.050 requires marketplace facilitators file a tax return.
- Sec. 43.72.060 authorizes the Department to adopt regulations relating to a rounding method.
- Sec. 43.72.070 allows the marketplace facilitator to deduct bad debts from their tax return.
- Sec. 43.72.080 provides that the Department may require a cash deposit as a security, a bond to guarantee solvency, or that the tax-payer's corporate officers assume the tax liability.
- Sec 43.72.090 provides that the successor of a marketplace facilitator who quits business be liable for remitting any outstanding tax payment.
- Sec 43.72.100 names the tax imposed by this chapter as a personal debt of the marketplace facilitator and its personal representatives, officers, or employees.
- Sec 43.72.110 establishes an organized retail theft fund in the general fund. The Legislature may appropriate funds to law enforcement agencies to investigate and prosecute organized retail theft. The fund is not a dedicated fund.
- Sec. 43.72.990 provides definitions for "law enforcement agency," "marketplace facilitator," "online marketplace," "resident," and "third-party seller."
 - o The definition for "marketplace facilitator" includes a person who contracts with a third-party seller to facilitate the sale of the third-party seller's property through either a physical retail location or online marketplace.

Section 20: adds new sections in uncodified law to provide for an immediate effective date for each of this bill's sections.