



Legislation Text

File #: 25494, Version: 1

**Fiscal Note**

There may be a small increase in General Fund revenues derived from forfeitures.

**Title**

Amending Sec. 23.54 of the Madison General Ordinances to include theft of services and amending Sec. 1.08 (3)(a) to add theft of services to the bail deposit listing.

**Body**

DRAFTER'S ANALYSIS: This amendment creates a new violation for theft of services. It prohibits an individual from leaving an establishment without paying for services received. The retail theft statute was recently amended to include this new violation and this ordinance is in conformity with the state statute.

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The Common Council of the City of Madison do hereby ordain as follows:

1. Section 23.54 entitled "Retail Theft" of the Madison General Ordinances is amended to read as follows:  
**"23.54 RETAIL THEFT, THEFT OF SERVICES.**

- (42) Any person who does any of the following may be penalized as provided in Subsection (9):
  - (a) Intentionally alters indicia of price or value of merchandise of a merchant without the merchant's consent and with intent to deprive the merchant of possession, or the full purchase price, of the merchandise.
  - (b) Takes or carries away, transfers, conceals, or retains possession of property of the merchant or merchandise held for resale by the merchant without the merchant's consent and with intent to deprive the merchant permanently of possession, or the full purchase price, of the merchandise.
  - (c) Having obtained a service from a service provider, he or she, without the service provider's consent and with intent to deprive the service provider permanently of the full price of the service, absconds and intentionally fails or refuses to pay for the service.
- (21) Definitions. In this section:
  - (a) "Intentionally" has the meaning designated in Sec. 939.23(3), Wis. Stats.
  - (b) "Merchandise" means a service provided by a service provider or one or more items of property with a total retail value of \$.01 through \$200 exclusive of sales tax.
  - (c) "Merchant" has the meaning designated in Sec. 402.104(3), Wis. Stats., and includes any innkeeper, motelkeeper or hotelkeeper as defined in Sec. 50.50, Wis. Stats.
  - (d) "Peace officer" has the meaning designated in Sec. 939.22(22), Wis. Stats.
  - (e) "Property" means one or more items of merchandise with a total retail value of \$.01 through \$200 exclusive of sales tax.
  - (f) "Service provider" means a merchant who provides a service to retail customers without a written contract with the expectation that the service will be paid for by the customer upon completion of the service.
  - (fg) "Transfer" has the meaning designated in Sec. 939.22(40), Wis. Stats.
  - (gh) "Value of merchandise" has the meaning designated in Sec. 943.50(1)(b), Wis. Stats.
  - (hi) "With intent to" has the meaning designated in Sec. 939.23(4), Wis. Stats.
  - (ij) "Without consent" has the meaning designated in Sec. 939.22(48), Wis. Stats.
- (3) The intentional concealment of unpurchased merchandise which continues from one floor to another or beyond the last station for receiving payments in a merchant's store is evidence of intent to deprive the merchant permanently of possession of such merchandise without paying the purchase price thereof.
- (4) The discovery of unpurchased merchandise concealed upon the person or among the

belongings of such person or concealed by a person upon the person or among the belongings of another is evidence of intentional concealment on the part of the person so concealing such goods.

- (5) A merchant or service provider, a merchant's or service provider's adult employee, or a merchant's or service provider's security agent who has reasonable cause to believe that a person has violated this ordinance in her or his presence may detain, within or at the merchant's or service provider's place of business where the suspected violation took place, the person in a reasonable manner for a reasonable length of time to deliver the person to a peace officer. The detained person must be promptly informed of the purpose for the detention and be permitted to make phone calls, but she or he shall not be interrogated or searched against her or his will before the arrival of a peace officer who may conduct a lawful interrogation of the accused person. The merchant, merchant's adult employee, or merchant's security agent may release the detained person before the arrival of a peace officer.
- (6) A merchant or service provider, a merchant's or service provider's adult employee, or a merchant's or service provider's security agent is privileged to defend property as set forth in Sec. ~~939.49~~939.50, Wis. Stats. Any merchant, or service provider, or merchant's or service provider's adult employee, or merchant's or service provider's security agent who acts in good faith in any act authorized under Subsection (5) is immune from civil or criminal liability for those acts.
- (7) Pursuant to Sec. 66.0107 and Sec. 943.50(3m)(a), Wis. Stats, in any action or proceeding for violation of this ordinance, duly identified and authenticated photographs of merchandise which was the subject of the violation may be used as evidence in lieu of producing the merchandise.
- (8) Severability. If any section or part of this ordinance is adjudged unconstitutional or invalid by any court of competent jurisdiction, the validity of the remainder of this ordinance shall not be affected thereby and shall be in full force and effect as if said unlawful section was not originally a part hereof.
- (9) Penalties.
  - (a) Any person violating any section of this ordinance shall be subject to a forfeiture of not less than fifty dollars (\$50) nor more than five hundred dollars (\$500), exclusive of costs.
  - (b) Any person violating any section of this ordinance may be subject to restitution as set forth in Sec. 800.093, Wis. Stats.

~~(10) (R. by Ord. 11,203, 3-16-95)"~~

2. Subdivision (a) of Subsection (3) entitled "Schedule of Deposits" of Section 1.08 entitled "Issuance of Citations for Violations of Certain Ordinances and Providing a Schedule of Cash Deposits" of the Madison General Ordinances is amended by amending therein the following:

<u>"Offense</u>	<u>Ord. No./Adopted Statute No.**</u>	<u>Deposit*</u>
Retail theft, <u>theft of services</u> .	23.54	\$300"