

Amendment No. 116

Assembly Amendment to Assembly Bill No. 257

(BDR 15-532)

Proposed by: Assembly Committee on Judiciary**Amends:** Summary: No Title: No Preamble: No Joint Sponsorship: No Digest: Yes

ASSEMBLY ACTION				Initial and Date	SENATE ACTION				Initial and Date
Adopted	☐	Lost	☐	_____	Adopted	☐	Lost	☐	_____
Concurred In	☐	Not	☐	_____	Concurred In	☐	Not	☐	_____
Receded	☐	Not	☐	_____	Receded	☐	Not	☐	_____

EXPLANATION: Matter in (1) ***blue bold italics*** is new language in the original bill; (2) ***green bold italic underlining*** is new language proposed in this amendment; (3) ~~red strikethrough~~ is deleted language in the original bill; (4) ~~purple double strikethrough~~ is language proposed to be deleted in this amendment; (5) ~~orange double underlining~~ is deleted language in the original bill that is proposed to be retained in this amendment; and (6) ***green bold dashed underlining*** is newly added transitory language.

NCA/BAW



Date: 4/1/2009

A.B. No. 257—Prohibits the taking of an excessive number of certain free publications under certain circumstances. (BDR 15-532)



ASSEMBLY BILL NO. 257—ASSEMBLYMEN KIHUEN, HORNE, ANDERSON; CLABORN, CONKLIN, DENIS, DONDERO LOOP, MCCLAIN, MORTENSON, MUNFORD, OCEGUERA, OHRENSCHALL AND SEGERBLOM

MARCH 6, 2009

Referred to Committee on Judiciary

SUMMARY—Prohibits the taking of an excessive number of certain free publications under certain circumstances. (BDR 15-532)

FISCAL NOTE: Effect on Local Government: Increases or Newly Provides for Term of Imprisonment in County or City Jail or Detention Facility.

Effect on the State: No.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to crimes; prohibiting the taking of an excessive number of certain free publications under certain circumstances; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law defines the crime of theft and provides that theft is punishable as a misdemeanor if the value of the property involved in the theft is less than \$250. (NRS 205.0832, 205.0835) Existing law also defines the crime of petit larceny and provides that petit larceny is punishable as a misdemeanor if the value of the personal goods or property involved in the petit larceny is less than \$250. (NRS 205.240)

Section 1 of this bill, which is modeled after California Penal Code § 490.7, generally prohibits a person from taking more than 10 copies of a free or complimentary ~~newspaper~~ **periodical** if the person has the specific intent to: (1) profit by recycling the ~~newspaper~~ **periodical**; (2) sell or barter the ~~newspaper~~ **periodical**; (3) deprive others of the opportunity to read the ~~newspaper~~ **periodical**; or (4) harm a business competitor. **Section 1** provides that a person who commits a first offense is guilty of a misdemeanor and subject to a fine of up to \$250, and for a second or subsequent offense, is guilty of a misdemeanor punishable by up to 10 days in jail or a fine of up to \$500, or both. The court may also order a person convicted of a first or second offense to perform community service in lieu of all or a part of the punishment.

Sections 1-3 of the bill also clarify that a violation of **section 1** does not constitute the crime of theft or petit larceny.

WHEREAS, Free publications provide an important source of information to the public and a valuable alternative to the news and ideas expressed in other local media, thereby contributing to the marketplace of ideas; and

WHEREAS, The Nevada Legislature should attempt to ensure that the marketplace of ideas is preserved and that contributors to that marketplace, such as

free publications, are protected from improper and injurious interference with their mission; and

WHEREAS, The unauthorized taking of an excessive number of copies of free publications impoverishes the marketplace of ideas and injures the rights of a free publication's readers, writers, publishers and advertisers; now, therefore,

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 205 of NRS is hereby amended by adding thereto a new section to read as follows:

1. Except as otherwise provided in this section, a person shall not take from a news rack more than 10 copies of the current issue of a free or complimentary ~~newspaper~~ periodical if the person has the specific intent to:

- (a) Recycle the ~~newspaper~~ periodical for cash or other payment;
- (b) Sell or barter the ~~newspaper~~ periodical;
- (c) Deprive others of the opportunity to read or enjoy the ~~newspaper~~ periodical; or

(d) Harm a business competitor.

2. This section does not apply to the taking of a current issue of a free or complimentary issue:

- (a) By the owner or operator of a news rack in which the copies are placed;
- (b) By the owner or operator of the property on which the news rack is placed ~~is~~, unless the news rack is on a portion of the property which is a public forum;

(c) By the publisher, printer, distributor or deliverer of the ~~newspaper~~ periodical;

(d) By any person who advertises in the current issue of the ~~newspaper~~ periodical;

(e) By any person who has the express permission of any person described in paragraphs (a) to (d), inclusive; or

(f) If the publisher has indicated on the news rack or in the ~~newspaper~~ periodical that the limitation set forth in this section does not apply to the current issue.

3. A person who violates this section:

(a) For the first offense, is guilty of a misdemeanor and shall be punished by a fine of not more than \$250.

(b) For a second or subsequent offense, is guilty of a misdemeanor and shall be punished by imprisonment in the county jail for not more than 10 days, or by a fine of not more than \$500, or by both fine and imprisonment.

4. In lieu of all or a part of the punishment which may be imposed pursuant to subsection 3, the convicted person may be sentenced to perform:

(a) For a first offense, 20 hours of community service pursuant to the conditions prescribed in NRS 176.087.

(b) For a second or subsequent offense, 40 hours of community service pursuant to the conditions prescribed in NRS 176.087.

5. A conviction under this section shall be deemed not to constitute a conviction for theft or petit larceny.

6. For the purposes of this section ~~is~~ an:

(a) An issue of a ~~newspaper~~ periodical is the "current issue" if not more than half the period until the distribution of the next issue of the ~~newspaper~~ periodical has passed.

(b) "Periodical" means a newspaper or magazine that is published at regular fixed intervals and has consecutive issue or volume numbers.

Sec. 2. NRS 205.0832 is hereby amended to read as follows:

205.0832 1. Except as otherwise provided in subsection 2 **and section 1 of this act**, a person commits theft if, without lawful authority, he knowingly:

(a) Controls any property of another person with the intent to deprive that person of the property.

(b) Converts, makes an unauthorized transfer of an interest in, or without authorization controls any property of another person, or uses the services or property of another person entrusted to him or placed in his possession for a limited, authorized period of determined or prescribed duration or for a limited use.

(c) Obtains real, personal or intangible property or the services of another person by a material misrepresentation with intent to deprive that person of the property or services. As used in this paragraph, "material misrepresentation" means the use of any pretense, or the making of any promise, representation or statement of present, past or future fact which is fraudulent and which, when used or made, is instrumental in causing the wrongful control or transfer of property or services. The pretense may be verbal or it may be a physical act.

(d) Comes into control of lost, mislaid or misdelivered property of another person under circumstances providing means of inquiry as to the true owner and appropriates that property to his own use or that of another person without reasonable efforts to notify the true owner.

(e) Controls property of another person knowing or having reason to know that the property was stolen.

(f) Obtains services or parts, products or other items related to such services which he knows are available only for compensation without paying or agreeing to pay compensation or diverts the services of another person to his own benefit or that of another person without lawful authority to do so.

(g) Takes, destroys, conceals or disposes of property in which another person has a security interest, with intent to defraud that person.

(h) Commits any act that is declared to be theft by a specific statute.

(i) Draws or passes a check, and in exchange obtains property or services, if he knows that the check will not be paid when presented.

(j) Obtains gasoline or other fuel or automotive products which are available only for compensation without paying or agreeing to pay compensation.

2. A person who commits an act that is prohibited by subsection 1 which involves the repair of a vehicle has not committed theft unless, before the repair was made, he received a written estimate of the cost of the repair.

Sec. 3. NRS 205.240 is hereby amended to read as follows:

205.240 1. Except as otherwise provided in NRS 205.220, 205.226, 205.228 and 475.105 **and section 1 of this act**, a person commits petit larceny if the person:

(a) Intentionally steals, takes and carries away, leads away or drives away:

(1) Personal goods or property, with a value of less than \$250, owned by another person;

(2) Bedding, furniture or other property, with a value of less than \$250, which the person, as a lodger, is to use in or with his lodging and which is owned by another person; or

(3) Real property, with a value of less than \$250, that the person has converted into personal property by severing it from real property owned by another person.

- 1 (b) Intentionally steals, takes and carries away, leads away, drives away or
- 2 entices away one or more domesticated animals or domesticated birds, with an
- 3 aggregate value of less than \$250, owned by another person.
- 4 2. A person who commits petit larceny is guilty of a misdemeanor. In addition
- 5 to any other penalty, the court shall order the person to pay restitution.