

1979 WL 42913 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

April 9, 1979

\*1 The Honorable J. Verne Smith  
Senator  
Greenville and Laurens Counties  
P. O. Box 142  
Suite 612, Gressette Senate Office Building  
Columbia, South Carolina 29202

Dear Senator Smith:

In a recent letter to this Office, you raised several questions concerning shoplifting. You indicated that some law enforcement officers are informing merchants that they must wait until a suspected shoplifter leaves their place of business before they can apprehend the person while others have indicated that once a suspected shoplifter leaves a place of business, he could not be detained.

The shoplifting law in this State was amended by the General Assembly in 1978 to indicate that a person is guilty of shoplifting if he:

(1) Takes possession of, carries away, transfers from one person to another or from one area of a store or other retail mercantile establishment to another area, 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.

(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 which it is displayed to any other container with intent to deprive the merchant of the full retail value. (Emphasis added) [Section 16-13-110, Code of Laws of South Carolina](#), 1976, as supplemented.

As you can see, the definition of shoplifting was considerably broadened to include certain acts not previously specifically defined as shoplifting.

[Section 16-13-120 of the 1976 Code](#) of Laws remained unchanged. Such section states:

Any person wilfully concealing unpurchased goods or merchandise 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 article with the intention of converting it to his own use without paying the purchase price thereof within the meaning of [Section 16-13-110](#), and the finding of such unpurchased goods or merchandise concealed upon such person or among the belongings of such person shall be prima facie evidence of wilful concealment. If such person conceals or causes to be concealed such unpurchased goods or merchandise upon the person or among the belongings of another, the finding of such unpurchased goods or merchandise shall also be prima facie evidence of wilful concealment on the part of the person so concealing such goods. (Emphasis added)

\*2 This section states therefore that the presumption of shoplifting is raised by the mere wilful concealment of unpurchased goods by an individual whether on his person or in his belongings or on the person or in the belongings of another.

With reference to the above, it is apparent that you are correct in your understanding that it is not necessary that a person leave a place of business before being apprehended for shoplifting if his conduct has been within the above prohibited acts. As to your statement that some merchants are being told that once a shoplifter leaves a place of business he could not be detained, such an understanding is not in keeping with the intent of the shoplifting statute. Therefore a person may be apprehended for shoplifting prior to leaving a place of business or after he has left a business. However it is my information that merchants generally wait until an individual has passed through a check-out line before apprehending a suspected shoplifter so as to prevent the defense of 'I was intending to pay' which is often raised if an individual is apprehended with concealed merchandise prior to being given the opportunity to pay for such merchandise. Such giving of an opportunity to pay, however, is not necessary in light of the above-referenced [Sections 16-13-110](#) and [16-13-120](#).

Hopefully the above is in full response to the-questions raised in your letter. If there is anything further, do not hesitate to contact me.

Sincerely,

Charles H. Richardson  
Assistant Attorney General

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