



March 11, 2025

House Judiciary Committee

SB 2257

Representative Lawrence R. Klemin, Chair

For the record, I am Bill Wocken, appearing on behalf of the North Dakota League of Cities (NDLC). The NDLC supports SB 2257, which is a technical fix to the enhancement of penalties for shoplifting offenses that the North Dakota Legislature passed in 2021.

In 2021, the North Dakota Legislature passed SB 2166 to address concern about increased shoplifting in retail establishments. Under that bill, the first offense of shoplifting is a class B misdemeanor but:

- A second or third of shoplifting occurring within three years is a class A misdemeanor.
- A fourth or subsequent violation of shoplifting occurring within three years is a class C felony.

Please note that the NDLC did not take a position on SB 2166 during the 2021 Legislative Session; however, it has come to the NDLC's attention that some district courts have been interpreting the language in SB 2166 to mean that municipal court shoplifting convictions do not count to enhance the penalties of subsequent shoplifting charges.

By way of example, in a 2023 Ward County District Court case, a defendant was charged for a class C felony of shoplifting based on it being the defendant's 4<sup>th</sup> shoplifting charge in three years. In that case, two of the defendant's shoplifting convictions were in district court and one of the defendant's shoplifting charges was in municipal court. In that case, the Ward County District Court found that the municipal court conviction did not count as the third conviction for purposes of charging the defendant with class C felony shoplifting.

The legal reasoning being applied for not counting a municipal conviction is that the language in SB 2166 did not include the words "or equivalent ordinance." Here's a snippet from the District Court's opinion:

[¶8] To reiterate, the theft enhancement statute under which Quitt was charged states:

A second or third offense under paragraph 1 of subdivision a occurring within three years is a class A misdemeanor. A fourth or subsequent violation under paragraph 1 of subdivision a occurring within four years is a class C felony.

N.D.C.C. § 12.1-23-05(5)(c). Quitt is correct that, on its face, the statute expressly references itself when stating the qualifying prior offenses for enhancement.

[¶9] The Legislature's approach to theft enhancement statute(s) are significantly differ from its statutory approach to DUI enhancement. See N.D.C.C. § 39-08-01(3), (4).

An individual violating this section or **equivalent ordinance** is guilty of a class B misdemeanor for the first or second offense in a seven-year period, of a class A misdemeanor for a third offense in a seven-year period, and of a class C felony for any fourth or subsequent offense within a fifteen-year period. The minimum

SB 2257 adds the language "or an equivalent ordinance" to subsection 5 of section 12.1-23-05 of the North Dakota Century Code to ensure that it is clear under the law that municipal court shoplifting convictions count for enhancing the shoplifting penalty for subsequent shoplifting charges within three years.

The NDLC respectfully requests a Do Pass recommendation on SB 2257 to fix the technical concern with the shoplifting statute and to make sure the intent of the legislature is carried out with respect to shoplifting violations.