

**ASSEMBLY BILL**

**No. 1326**

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**Introduced by Assembly Members Cooper and Cervantes  
(Coauthor: Assembly Member Bocanegra)**

February 17, 2017

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An act to amend Sections 459.5, 473, 476a, 490.2, and 496 of the Penal Code, relating to theft.

LEGISLATIVE COUNSEL'S DIGEST

AB 1326, as introduced, Cooper. Theft: aggregate valuation.

The Safe Neighborhoods and Schools Act (act), enacted as an initiative statute by Proposition 47, as approved by the electors at the November 4, 2014, statewide general election, provided that for a number of theft and theft-related offenses, where the value of the property involved does not exceed \$950, the offenses are punishable as a misdemeanor, unless the defendant has suffered a prior conviction for one or more specified crimes, in which case the offenses may be punished as a felony. The act created the offense of shoplifting, and applied the \$950 limit to that crime and to the crimes of forgery of certain financial instruments, passing a check or certain other instruments knowing there are insufficient funds for payment of the check or instrument, petty theft, and buying or receiving stolen property, as specified.

This bill would additionally provide that those offenses may be punishable as a felony if the property involved in the multiple commission of those offenses within a 12-month period has a value in the aggregate exceeding \$950, as specified.

The California Constitution authorizes the Legislature to amend an initiative statute by another statute that becomes effective only when approved by the electors.

This bill would provide that it would become effective only upon approval of the voters, and would provide for the submission of this measure to the voters for approval at the statewide general election.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 459.5 of the Penal Code is amended to  
2 read:

3 459.5. (a) Notwithstanding Section 459, shoplifting is defined  
4 as entering a commercial establishment with intent to commit  
5 larceny while that establishment is open during regular business  
6 hours, where the value of the property that is taken or intended to  
7 be taken does not exceed nine hundred fifty dollars (\$950). Any  
8 other entry into a commercial establishment with intent to commit  
9 larceny is burglary. Shoplifting shall be punished as a  
10 misdemeanor, except that a person with one or more prior  
11 convictions for an offense specified in clause (iv) of subparagraph  
12 (C) of paragraph (2) of subdivision (e) of Section 667 or for an  
13 offense requiring registration pursuant to subdivision (c) of Section  
14 ~~290~~ 290, *or a person convicted of multiple shoplifting offenses*  
15 *within a 12-month period where the value of the property in the*  
16 *aggregate that is taken or intended to be taken for those offenses*  
17 *exceeds nine hundred fifty dollars (\$950), may be punished*  
18 *pursuant to subdivision (h) of Section 1170.*

19 (b) Any act of shoplifting as defined in subdivision (a) shall be  
20 charged as shoplifting. No person who is charged with shoplifting  
21 may also be charged with burglary or theft of the same property.

22 SEC. 2. Section 473 of the Penal Code is amended to read:

23 473. (a) Forgery is punishable by imprisonment in a county  
24 jail for not more than one year, or by imprisonment pursuant to  
25 subdivision (h) of Section 1170.

26 (b) Notwithstanding subdivision (a), any person who is guilty  
27 of forgery relating to a check, bond, bank bill, note, cashier's check,  
28 traveler's check, or money order, where the value of the check,  
29 bond, bank bill, note, cashier's check, traveler's check, or money  
30 order does not exceed nine hundred fifty dollars (\$950), shall be  
31 ~~punishable~~ *punished* by imprisonment in a county jail for not more  
32 than one year, except that ~~such~~ *the* person may instead be punished

pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. 290, *or if the amount of the checks, bonds, bank bills, notes, cashier's checks, traveler's checks, or money orders in the aggregate for multiple forgeries under this section within a 12-month period exceeds nine hundred fifty dollars (\$950).* This subdivision shall not be applicable to any person who is convicted both of forgery and of identity theft, as defined in Section 530.5.

SEC. 3. Section 476a of the Penal Code is amended to read:

476a. (a) Any person who, for himself or herself, as the agent or representative of another, or as an officer of a corporation, willfully, with intent to defraud, makes or draws or utters or delivers a check, draft, or order upon a bank or depository, a person, a firm, or a corporation, for the payment of money, knowing at the time of that making, drawing, uttering, or delivering that the maker or drawer or the corporation has not sufficient funds in, or credit with the bank or depository, person, firm, or corporation, for the payment of that check, draft, or order and all other checks, drafts, or orders upon funds then outstanding, in full upon its presentation, although no express representation is made with reference thereto, is punishable by imprisonment in a county jail for not more than one year, or pursuant to subdivision (h) of Section 1170.

(b) ~~However,~~ *Notwithstanding subdivision (a),* if the total amount of all checks, drafts, or orders that the defendant is charged with and convicted of making, drawing, or uttering does not exceed nine hundred fifty dollars (\$950), the offense is punishable only by imprisonment in the county jail for not more than one year, except that ~~such~~ *the* person may instead be punished pursuant to subdivision (h) of Section 1170 if that person has one or more prior convictions for an offense specified in clause (iv) of subparagraph (C) of paragraph (2) of subdivision (e) of Section 667 or for an offense requiring registration pursuant to subdivision (c) of Section 290. 290, *or if the amount of the checks, drafts, or orders in the aggregate that the defendant is charged with and convicted of making, drawing, or uttering within a 12-month period exceeds nine hundred fifty dollars (\$950).* This subdivision shall not be applicable if the defendant has previously been convicted

1 of three or more violations of Section 470, 475, or 476, or of this  
2 section, or of the crime of petty theft in a case in which defendant's  
3 offense was a violation also of Section 470, 475, or 476 or of this  
4 section or if the defendant has previously been convicted of any  
5 offense under the laws of any other state or of the United States  
6 which, if committed in this state, would have been punishable as  
7 a violation of Section 470, 475 or 476 or of this section or if ~~he~~  
8 *the defendant* has been so convicted of the crime of petty theft in  
9 a case in which, if defendant's offense had been committed in this  
10 state, it would have been a violation also of Section 470, 475, or  
11 476, or of this section.

12 (c) Where the check, draft, or order is protested on the ground  
13 of insufficiency of funds or credit, the notice of protest shall be  
14 admissible as proof of presentation, nonpayment, and protest and  
15 shall be presumptive evidence of knowledge of insufficiency of  
16 funds or credit with the bank or depository, person, firm, or  
17 corporation.

18 (d) In any prosecution under this section involving two or more  
19 checks, drafts, or orders, it shall constitute prima facie evidence  
20 of the identity of the drawer of a check, draft, or order if both of  
21 the following occur:

22 (1) When the payee accepts the check, draft, or order from the  
23 drawer, he or she obtains from the drawer the following  
24 information: name and residence of the drawer, business or mailing  
25 address, either a valid driver's license number or Department of  
26 Motor Vehicles identification card number, and the drawer's home  
27 or work phone number or place of employment. That information  
28 may be recorded on the check, draft, or order itself or may be  
29 retained on file by the payee and referred to on the check, draft,  
30 or order by identifying number or other similar means.

31 (2) The person receiving the check, draft, or order witnesses  
32 the drawer's signature or endorsement, and, as evidence of that,  
33 initials the check, draft, or order at the time of receipt.

34 (e) The word "credit" as used herein shall be construed to mean  
35 an arrangement or understanding with the bank or depository,  
36 person, firm, or corporation for the payment of a check, draft, or  
37 order.

38 (f) If any of the preceding paragraphs, or parts thereof, shall be  
39 found unconstitutional or invalid, the remainder of this section

1 shall not thereby be invalidated, but shall remain in full force and  
2 effect.

3 (g) A sheriff's department, police department, or other law  
4 enforcement agency may collect a fee from the defendant for  
5 investigation, collection, and processing of checks referred to their  
6 agency for investigation of alleged violations of this section or  
7 Section 476.

8 (h) The amount of the fee shall not exceed twenty-five dollars  
9 (\$25) for each bad check, in addition to the amount of any bank  
10 charges incurred by the victim as a result of the alleged offense.  
11 If the sheriff's department, police department, or other law  
12 enforcement agency collects a fee for bank charges incurred by  
13 the victim pursuant to this section, that fee shall be paid to the  
14 victim for any bank fees the victim may have been assessed. In no  
15 event shall reimbursement of the bank charge to the victim pursuant  
16 to this section exceed ten dollars (\$10) per check.

17 SEC. 4. Section 490.2 of the Penal Code is amended to read:

18 490.2. (a) Notwithstanding Section 487 or any other provision  
19 of law defining grand theft, obtaining any property by theft where  
20 the value of the money, labor, real or personal property taken does  
21 not exceed nine hundred fifty dollars (\$950) shall be considered  
22 petty theft and shall be punished as a misdemeanor, except that  
23 ~~such~~ *the* person may instead be punished pursuant to subdivision  
24 (h) of Section 1170 if that person has one or more prior convictions  
25 for an offense specified in clause (iv) of subparagraph (C) of  
26 paragraph (2) of subdivision (e) of Section 667 or for an offense  
27 requiring registration pursuant to subdivision (c) of Section ~~290~~.  
28 ~~290, or if the value of the money, labor, real or personal property~~  
29 ~~taken in the aggregate for multiple thefts under this subdivision~~  
30 ~~committed within a 12-month period exceeds nine hundred fifty~~  
31 ~~dollars (\$950).~~

32 (b) This section shall not be applicable to any theft that may be  
33 charged as an infraction pursuant to any other provision of law.

34 (c) This section shall not apply to theft of a firearm.

35 SEC. 5. Section 496 of the Penal Code is amended to read:

36 496. (a) (1) Every person who buys or receives any property  
37 that has been stolen or that has been obtained in any manner  
38 constituting theft or extortion, knowing the property to be so stolen  
39 or obtained, or who conceals, sells, withholds, or aids in  
40 concealing, selling, or withholding any property from the owner,

1 knowing the property to be so stolen or obtained, shall be punished  
2 by imprisonment in a county jail for not more than one year, or  
3 imprisonment pursuant to subdivision (h) of Section 1170.  
4 However, if the value of the property does not exceed nine hundred  
5 fifty dollars (\$950), the offense shall be a misdemeanor, punishable  
6 only by imprisonment in a county jail not exceeding one year, if  
7 ~~such~~ *the* person has no prior convictions for an offense specified  
8 in clause (iv) of subparagraph (C) of paragraph (2) of subdivision  
9 (e) of Section 667 or for an offense requiring registration pursuant  
10 to subdivision (c) of Section 290. *However, if the value of the*  
11 *property in the aggregate for multiple offenses under this*  
12 *subdivision committed within a 12-month period exceeds nine*  
13 *hundred fifty dollars (\$950), the person may be punished pursuant*  
14 *to subdivision (h) of Section 1170.*

15 ~~A~~

16 (2) A principal in the actual theft of the property may be  
17 convicted pursuant to this section. However, ~~no~~ *a* person may *not*  
18 be convicted both pursuant to this section and of the theft of the  
19 same property.

20 (b) (1) Every swap meet vendor, as defined in Section 21661  
21 of the Business and Professions Code, and every person whose  
22 principal business is dealing in, or collecting, merchandise or  
23 personal property, and every agent, employee, or representative  
24 of that person, who buys or receives any property of a value in  
25 excess of nine hundred fifty dollars (\$950) that has been stolen or  
26 obtained in any manner constituting theft or extortion, under  
27 circumstances that should cause the person, agent, employee, or  
28 representative to make reasonable inquiry to ascertain that the  
29 person from whom the property was bought or received had the  
30 legal right to sell or deliver it, without making a reasonable inquiry,  
31 shall be punished by imprisonment in a county jail for not more  
32 than one year, or imprisonment pursuant to subdivision (h) of  
33 Section 1170.

34 ~~Every~~

35 (2) *Every* swap meet vendor, as defined in Section 21661 of the  
36 Business and Professions Code, and every person whose principal  
37 business is dealing in, or collecting, merchandise or personal  
38 property, and every agent, employee, or representative of that  
39 person, who buys or receives any property of a value of nine  
40 hundred fifty dollars (\$950) or less that has been stolen or obtained

1 in any manner constituting theft or extortion, under circumstances  
2 that should cause the person, agent, employee, or representative  
3 to make reasonable inquiry to ascertain that the person from whom  
4 the property was bought or received had the legal right to sell or  
5 deliver it, without making a reasonable inquiry, shall be guilty of  
6 a misdemeanor.

7 (c) Any person who has been injured by a violation of  
8 subdivision (a) or (b) may bring an action for three times the  
9 amount of actual damages, if any, sustained by the plaintiff, costs  
10 of suit, and reasonable attorney's fees.

11 (d) Notwithstanding Section 664, any attempt to commit any  
12 act prohibited by this section, except an offense specified in the  
13 accusatory pleading as a misdemeanor, is punishable by  
14 imprisonment in a county jail for not more than one year, or by  
15 imprisonment pursuant to subdivision (h) of Section 1170.

16 SEC. 6. Sections 1 to 5, inclusive, of this act amend the Safe  
17 Neighborhoods and Schools Act, Proposition 47, an initiative  
18 statute, and shall become effective only when submitted to and  
19 approved by the voters at a statewide election. The Secretary of  
20 State shall submit Sections 1 to 5, inclusive, of this act for approval  
21 by the voters at a statewide election in accordance with Section  
22 9040 of the Elections Code.