

Senate Bill 243

By: Senators Hamrick of the 30th and Mullis of the 53rd

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,
2 relating to theft, so as to provide definitions; to provide for the offense of organized retail
3 crime; to provide for penalties; to authorize certain inferences; to provide for related matters;
4 to provide an effective date and applicability; to repeal conflicting laws; and for other
5 purposes.

6 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

7 **SECTION 1.**

8 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
9 is amended by revising Code Section 16-8-5.2, relating to retail property fencing, forfeiture,
10 and related matters, as follows:

11 "16-8-5.2.

12 (a) As used in this Code section, the term:

13 (1) 'Organized retail crime' means the theft of merchandise from any retail establishment
14 with the intent to resell for anything of value.

15 (2) 'Organized retail crime enterprise' means any association of two or more persons who
16 engage in the conduct of or are associated for the purpose of effectuating the transfer or
17 sale of stolen merchandise.

18 ~~(1)~~(3) 'Retail property' means any new article, product, commodity, item, or component
19 intended to be sold in retail commerce.

20 ~~(2)~~(4) 'Retail property fence' means a person or entity that buys, sells, transfers, or
21 possesses with the intent to sell or transfer retail property that such person knows or
22 should have known was stolen.

23 ~~(3)~~(5) 'Value' means the retail value of the item as stated or advertised by the affected
24 retail establishment, to include applicable taxes.

25 (b) A person commits the offense of organized retail crime when such person takes retail
26 property valued at more than \$500.00 of aggregated value over a period not to exceed 180
27 days with the intent to resell for anything of value.

28 ~~(b)~~(c) A person commits the offense of retail property fencing when such persons receives,
29 disposes of, or retains retail property which was unlawfully taken or shoplifted over a
30 period not to exceed 180 days with the intent to:

31 (1) Transfer, sell, or distribute such retail property to a retail property fence; or

32 (2) Attempt or cause such retail property to be offered for sale, transfer, or distribution
33 for money or other things of value.

34 ~~(c)~~(d) Whoever knowingly receives, possesses, conceals, stores, barter, sells, or disposes
35 of retail property with the intent to distribute any retail property which is known or should
36 be known to have been taken or stolen in violation of this subsection with the intent to
37 distribute the proceeds, or to otherwise promote, manage, carry on, or facilitate an offense
38 described in this subsection, shall have committed the offense of retail property fencing.

39 ~~(d)~~(e)(1) It shall not be necessary in any prosecution under this Code section for the state
40 to prove that any intended profit was actually realized. The trier of fact may infer that a
41 particular scheme or course of conduct was undertaken for profit from all of the attending
42 circumstances, including, but not limited to, the number of persons involved in the
43 scheme or course of conduct, the actor's net worth and his or her expenditures in relation
44 to his or her legitimate sources of income, the amount of merchandise involved, and the
45 amount of cash or currency involved.

46 (2) It shall not be a defense to violating this Code section that the property was obtained
47 by means other than through the commission of a theft offense if the property was
48 explicitly represented to the accused as being obtained through the commission of a theft.

49 ~~(e)~~(f) Any property constituting proceeds derived from or realized through a violation of
50 this Code section shall be subject to forfeiture to the State of Georgia except that no
51 property of any owner shall be forfeited under this subsection, to the extent of the interest
52 of such owner, by reason of an act or omission established by such owner to have been
53 committed or omitted without knowledge or consent of such owner. The procedure for
54 forfeiture and disposition of forfeited property under this subsection shall be as provided
55 for under Code Section 16-13-49.

56 (g) Upon conviction of the offense of organized retail crime, the defendant shall be guilty
57 of a felony and shall be punished by imprisonment for not less than one nor more than ten
58 years and the first year of such sentence shall not be suspended, probated, deferred, or
59 withheld.

60 ~~(f)~~(h) Each violation of this Code section shall constitute a separate offense."

61 **SECTION 2.**

62 This Act shall become effective on July 1, 2011, and shall apply to all offenses on and after
63 such date.

64 **SECTION 3.**

65 All laws and parts of laws in conflict with this Act are repealed.