

House Bill 488 (RULES COMMITTEE SUBSTITUTE)

By: Representatives Momtahan of the 17th, Corbett of the 174th, LaHood of the 175th, Hitchens of the 161st, Harrell of the 106th, and others

A BILL TO BE ENTITLED
AN ACT

1 To prevent organized retail crime; to amend Chapter 1 of Title 10 of the Official Code of
2 Georgia Annotated, relating to selling and other trade practices, so as to provide for
3 definitions; to provide for certain record-keeping and reporting requirements for the sale and
4 purchase of stored value cards; to provide for penalties for failure to comply; to provide for
5 confidentiality; to amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia
6 Annotated, relating to theft, so as to define certain terms relating to retail property fencing,
7 shoplifting, and refund fraud; to provide for the crime of organized retail theft; to provide for
8 penalties for violations; to provide for related matters; to repeal conflicting laws; and for
9 other purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **SECTION 1.**

12 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other
13 trade practices, is amended by revising Article 12, which was previously reserved, as
14 follows:

15 "ARTICLE 12

16 10-1-310.

17 (a) As used in this article, the term:

18 (1) 'Corporate authorized reseller' means any person authorized to sell the stored value
19 cards of a corporate issuer.

20 (2) 'Corporate issuer' means a retail store that sells stored value cards, directly or through
21 corporate authorized resellers, which may be used by the cardholder to purchase goods
22 or services at the retail locations of the corporate issuer or online from the corporate
23 issuer.

24 (3) 'Stored value card' means any 'gift certificate' or 'store gift card,' as such terms are
25 defined in subparagraph (b)(33)(B) of Code Section 10-1-393, issued with or without a
26 fee for the use of the cardholder to obtain money, goods, services, or anything else of
27 value. The term shall not include a 'general use gift card' as such term is defined in
28 subparagraph (b)(33)(B) of Code Section 10-1-393, demand deposit account, share draft
29 account, savings account, prepaid debit card, or any card sold by a financial institution
30 or access device associated therewith.

31 (b) Any sale or purchase of stored value cards by merchants, other than the corporate
32 issuer or the corporate authorized reseller, including any transaction that occurs in this
33 state, shall require that the appropriate information contained in this Code section be
34 recorded and that a copy of the record be maintained for at least three years.

35 (c) Any merchant purchaser of stored value cards shall maintain a permanent record book
36 in which shall be entered in legible English at the time of each purchase:

37 (1) The date of the transaction;

38 (2) The name of the person conducting the transaction;

39 (3) The name, age, and address of the seller; a description of the general appearance of
40 the customer; and the distinctive number from the customer's driver's license or other
41 similar identification card;

42 (4) An identification of the purchased stored value card, including the retailer for which
43 the stored value card is intended and the stored value card number;

44 (5) The amount of stored value on the stored value card;

45 (6) The price paid; and

46 (7) The signature of the customer.

47 (d) Entries shall appear in ink and shall be in chronological order. No blank lines may be
48 left between entries. No obliterations, alterations, or erasures may be made. Corrections
49 shall be made by drawing a line of ink through the entry without destroying its legibility.
50 The book shall be open to the inspection of any duly authorized law enforcement officer
51 during the ordinary hours of business or at any reasonable time.

52 (e) Any merchant purchaser of stored value cards and any clerk, agent, or employee of
53 such merchant who knowingly:

54 (1) Fails to make an entry of any material matter in his or her permanent record book;

55 (2) Makes any false entry therein;

56 (3) Falsifies, obliterates, destroys, or removes from his or her place of business such
57 permanent record book;

58 (4) Refuses to allow any duly authorized law enforcement officer who is certified by the
59 Georgia Peace Officer Standards and Training Council, or who is a federal officer, to

60 inspect his or her permanent record book or any stored value cards in his or her
 61 possession during the ordinary hours of business or at any reasonable time; or
 62 (5) Fails to maintain a record of each stored value card transaction for at least four years;
 63 shall be guilty of a misdemeanor.
 64 (f) Upon filing an official report to a law enforcement agency of competent jurisdiction
 65 by any person alleging to be a victim of theft of one or more stored value cards with an
 66 aggregate value exceeding \$500.00, such law enforcement agency shall request that the
 67 issuer or issuer's agent preserve and provide to law enforcement all relevant evidence
 68 reasonably foreseeable to assist in future criminal actions in accordance with the laws of
 69 evidence in criminal proceedings Reserved."

70 **SECTION 2.**

71 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
 72 is amended by revising paragraph (1) of subsection (a) of Code Section 16-8-5.2, relating to
 73 retail property fencing, civil forfeiture, and related matters, as follows:

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

76 **SECTION 3.**

77 Said article is further amended by revising subparagraph (b)(1)(C) of Code Section 16-8-14,
 78 relating to theft by shoplifting, as follows:

79 "(C)(i) As used in this subparagraph, the term 'conviction' shall include a plea of nolo
 80 contendere.

81 (ii) Upon conviction of a fourth or subsequent offense for shoplifting, ~~where~~ when
 82 the prior convictions are either felonies or misdemeanors, or any combination of
 83 felonies and misdemeanors, as defined by this Code section, the defendant ~~commits~~
 84 ~~shall be guilty of~~ a felony and shall be punished by imprisonment for not less than one
 85 nor more than ten years; and the first year of such sentence shall not be suspended,
 86 probated, deferred, or withheld; ~~provided, however, that, in the court's discretion, the~~
 87 ~~court may depart from such mandatory minimum sentence when the prosecuting~~
 88 ~~attorney and defendant have agreed to a sentence that is below such mandatory~~
 89 ~~sentence.~~"

90 **SECTION 4.**

91 Said article is further amended by revising paragraph (3) of subsection (c) of Code
 92 Section 16-8-14.1, relating to refund fraud, as follows:

93 "(3)(A) As used in this paragraph, the term 'conviction' shall include a plea of nolo
 94 contendere.

95 (B) Upon conviction of a fourth or subsequent offense for a violation of any provision
 96 of this Code section, the defendant shall be guilty of a felony and shall be punished by
 97 imprisonment for not less than one nor more than ten years; and the first year of such
 98 sentence shall not be suspended, probated, deferred, or withheld; provided, however,
 99 that, in the court's discretion, the court may depart from such mandatory minimum
 100 sentence when the prosecuting attorney and defendant have agreed to a sentence that
 101 is below such mandatory sentence."

102 SECTION 5.

103 Said article is further amended by adding a new Code section to read as follows:

104 "16-8-14.2.

105 (a) A person commits the offense of organized retail theft when such person intentionally
 106 organizes, plans, finances, directs, manages, or supervises one or more other persons to
 107 appropriate property of a store or retail establishment to his or her own use without paying
 108 for such property or deprives the owner of the property or the value thereof, in whole or in
 109 part, and when such property is taken from one or more stores or retail establishments over
 110 a period of 180 days with the intent to sell such property for monetary or other gain and
 111 when the aggregate value of the property which was the subject of the theft has a value
 112 exceeding \$24,999.99 and is placed or is to be placed in the control of a retail property
 113 fence as defined in Code Section 16-8-5.2 or other person in exchange for consideration.

114 (b) In all cases involving organized retail theft, the term 'value' means the actual retail
 115 price of the property at the time and place of the offense. The unaltered price tag or other
 116 marking on property, or duly identified photographs thereof, shall be prima-facie evidence
 117 of value and ownership of the property.

118 (c) In any criminal proceeding pursuant to this Code section, the crime shall be considered
 119 to have been committed in any county in which an incident of organized retail theft
 120 occurred.

121 (d) A person convicted of a violation of this Code section shall be guilty of a felony and
 122 shall be punished by imprisonment for not less than three nor more than 20 years, a fine not
 123 to exceed \$50,000.00, or both."

124 SECTION 6.

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