House Bill 327

By: Representatives Momtahan of the 17th, Kelley of the 16th, Efstration of the 104th, Reeves of the 34th, Allen of the 40th, and others

A BILL TO BE ENTITLED

AN ACT

To prevent organized retail crime; to amend Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, so as to provide for definitions; to provide for certain record-keeping and reporting requirements for the sale and purchase of stored value cards; to provide for certain record-keeping and reporting requirements for the sale of goods by third-party sellers on online marketplaces; to provide for penalties for failure to comply; to provide for confidentiality; to amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft, so as to define certain terms relating to retail property fencing, shoplifting, and refund fraud; to provide for the crime of organized retail theft; to provide for penalties for violations; to provide a short title; to provide for related matters; to repeal conflicting laws; and for other purposes.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

PART ONE

SECTION 1-1.

This Act shall be known and may be cited as the "Organized Retail Crime Prevention Act."

PAR TWO

SECTION 2-1.

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

"ARTICLE 12

10-1-310.

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

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

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

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

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

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

(1) The date of the transaction;

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

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

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

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

(6) The price paid; and

(7) The signature of the customer.

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

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

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

(2) Makes any false entry therein;

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

(4) Refuses to allow any duly authorized law enforcement officer who is certified by the Georgia Peace Officer Standards and Training Council, or who is a federal officer, to inspect his or her permanent record book or any stored value cards in his or her possession during the ordinary hours of business or at any reasonable time; or

(5) Fails to maintain a record of each stored value card transaction for at least four years; shall be guilty of a misdemeanor.

(f) Upon filing an official report to a law enforcement agency of competent jurisdiction by any person alleging to be a victim of theft of one or more stored value cards with an aggregate value exceeding $500.00, such law enforcement agency shall request that the issuer or issuer's agent preserve and provide to law enforcement all relevant evidence reasonably foreseeable to assist in future criminal actions in accordance with the laws of evidence in criminal proceedings ~~Reserved~~."

PART THREE

SECTION 3-1.

Said chapter is further amended by adding a new article to read as follows:

"ARTICLE 35

10-1-930.

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

(1) 'Consumer product' means any tangible personal property which is distributed in commerce and which is normally used for personal, family, or household purposes.

(2) 'High-volume third-party seller' means a participant in an online marketplace who is a third-party seller and who, in any continuous 12 month period during the previous 24 months, has entered into 200 or more discrete sales or transactions of new or unused consumer products resulting in the accumulation of an aggregate total of $5,000.00 or more in gross revenues.

(3) 'Online marketplace' means any electronically based or accessed platform that includes features that allow for, facilitate, or enable third-party sellers to engage in the

sale, purchase, payment, storage, shipping, or delivery of a consumer product in the United States; and hosts one or more third-party sellers.

(4) 'Seller' means a person who sells, offers to sell, or contracts to sell a consumer product through an online marketplace.

(5) 'Third-party seller' means any seller, independent of an operator, facilitator, or owner of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product in the United States through an online marketplace.

(6) 'Verify' means to confirm information provided to an online marketplace pursuant to this article by the use of a third-party or proprietary identity verification system that has the capability to confirm a seller's name, email address, physical address, and phone number; or a combination of two-factor authentication, public records search, and the presentation of a government issued identification.

(b) Any online marketplace doing business in the State of Georgia shall require that any seller doing business on the online marketplace provide to the online marketplace the following information within 24 hours of meeting the definition of 'high-volume third-party seller':

(1) Bank account information, which shall be:

(A) Accurately confirmed by the online marketplace, by a payment processor, or by another other third-party contracted by such online marketplace; or

(B) If the high-volume third-party seller does not have a bank account, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller;

(2) Contact information, which shall include a valid email address and working phone number for the high-volume third-party seller, as well as:

(A) If the high-volume third-party seller is an individual, a copy of a valid government issued photo identification for the individual that includes the individual's name and physical address; or

(B) If the high-volume third-party seller is not an individual, either a copy of a government issued photo identification for an individual acting on behalf of such high-volume third-party seller that includes such individual's name and physical address or a copy of a government issued record or tax document that includes the business name and physical address of the high-volume third-party seller;

(3) A business tax identification number or, if the high-volume third-party seller does not have a business tax identification number, a taxpayer identification number; and

(4) Whether the high-volume third-party seller is exclusively advertising or offering the consumer product or products exclusively on the online marketplace, or if the high-volume third-party seller is currently advertising or offering for sale the same consumer product or products on any other websites other than the online marketplace.

(c)(1) The online marketplace shall verify the information provided in paragraph (1) of subsection (b) of this Code section within three days and shall verify within three days any changes to such information that is provided to the marketplace by a high-volume third-party seller. If a high-volume third-party seller provides a copy of a valid government issued tax document, information contained within such tax document shall be presumed to be verified as of the date of issuance of such record or document.

(2) The online marketplace shall on at least an annual basis send a notification to each high-volume third-party seller and require each high-volume third-party seller to inform the online marketplace of:

(A) Any changes to the information previously provided by the high-volume third-party seller pursuant to subsection (b) of this Code section within three days of receiving the notification. Such notification shall require the third-party high-volume seller to electronically certify either that the high-volume third-party seller's information is unchanged or that the high-volume third-party seller is providing changes to the information; and

(B) If the online marketplace becomes aware that a high-volume third-party seller has neither certified that such high-volume third-party seller's information is unchanged nor has not provided such changed information within three days of receiving such notification, the online marketplace shall suspend the high-volume third-party seller's participation on the marketplace until the high-volume third-party seller has either certified that the high-volume third-party seller's information is unchanged or has provided such changed information and the information has been verified.

(d) Any online marketplace shall require a high-volume third-party seller in an online marketplace to disclose to consumers in a conspicuous manner identifying information either on the product listing or, for information other than the high-volume third-party seller's full name, through a conspicuously placed link on the product listing, the following information:

(1) The full name of the high-volume third-party seller;

(2) The full physical address of the high-volume third-party seller;

(3) Whether the high-volume third-party seller also engages in the manufacturing, importing, or reselling of consumer products;

(4) Contact information for the high-volume third-party seller, including a working phone number and working email address. Such working email address may be provided to the high-volume third-party seller by the online marketplace; and

(5) Any other information determined to be necessary to address circumvention or evasion of the requirements of this subsection, provided that the additional information is limited to what is necessary to address such circumvention or evasion.

(e) Upon the request of a high-volume third-party seller, an online marketplace may provide for partial disclosure of the identity information required under paragraph (5) of subsection (d) of this Code section in the following situations:

(1) If the high-volume third-party seller demonstrates to the online marketplace that the high-volume third-party seller does not have a business address and only has a residential

street address, the online marketplace may direct such high-volume third-party seller to disclose on the product listing only the country and, if applicable, the state in which such high-volume third-party seller resides and may inform consumers that there is no business address available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller by telephone or email;

(2) If the high-volume third-party seller demonstrates to the online marketplace that such high-volume third-party seller is a business that has a physical address for product returns, the online marketplace may direct the high-volume third-party seller to disclose the high-volume third-party seller's physical address for product returns; and

(3) If a high-volume third-party seller demonstrates to the online marketplace that such high-volume third-party seller does not have a phone number other than a personal phone number, the online marketplace shall inform consumers that there is no phone number available for the high-volume third-party seller and that consumer inquiries should be submitted to the high-volume third-party seller's email address.

(f) If an online marketplace becomes aware that a high-volume third-party seller has made a false representation to such online marketplace in order to justify the provision of a partial disclosure under subsection (e) of this Code section or that a high-volume third-party seller who has requested and received a provision for a partial disclosure under subsection (e) of this Code section has not provided responses within a reasonable timeframe to consumer inquiries submitted to such high-volume third-party seller by telephone or email address, the online marketplace shall withdraw its provision for partial disclosure and require the full disclosure of the high-volume third-party seller's identity information required under subsection (e) of this Code section upon three business days' notice to the high-volume third-party seller.

(g) An online marketplace shall disclose to consumers, in a conspicuous manner on the product listing of any high-volume third-party seller, a reporting mechanism that allows for electronic and telephonic reporting of suspicious marketplace activity to the online marketplace and a message encouraging individuals seeking goods for purchase to report suspicious activity to the online marketplace.

(h) In addition to the requirements of subsection (d) of this Code section, an online marketplace that warehouses, distributes, or otherwise fulfills a consumer product order shall disclose to the consumer the identification of any high-volume third-party seller supplying the consumer product if different than the high-volume third-party seller listed on the product listing page.

(i) A violation of this Code section shall be treated as a violation of Part 2 of Article 15 of this chapter, the 'Fair Business Practices Act of 1975.'

(j) The Consumer Protection Division of the Georgia Department of Law may promulgate regulations with respect to collecting and verifying information under this Code section.″

PART FOUR

SECTION 4-1.

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

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

SECTION 4-2.

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

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

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

SECTION 4-3.

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

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

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

SECTION 4-4.

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

″16-8-14.2.

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

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

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

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

PART FIVE

SECTION 5-1.

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