The Senate Committee on Judiciary offered the following substitute to HB 327:

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 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."

PART 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 or entity authorized by the corporate issuer or a corporate issuer agent to sell the stored value cards of a corporate issuer.

(2) 'Corporate issuer' means a company that issues or contracts with an affiliate or third party to issue stored value cards that may be used by the cardholder to purchase goods or services at the retail locations of the corporate issuer or its affiliates or online from the corporate issuer or its affiliates.

(3) 'Corporate issuer agent' means a third party authorized by the corporate issuer to facilitate the sale of its stored value cards by corporate authorized resellers.

(4) '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.

(5) 'Third party card' means a stored value card for which the merchant buying or selling the card is neither the corporate issuer, a corporate issuer agent, nor a corporate authorized reseller.

(6) 'Third party card dealer' means a merchant in the business of buying and selling third party cards.

(b) When a third party card dealer makes a sale or purchase of a stored value card, including any transaction that occurs in this state, such third party card dealer shall record the information provided for in subsection (c) of this Code section and maintain a copy of such record for at least three years.

(c) Third party card dealers shall maintain a permanent record in which shall be entered in legible English at the time of each purchase of a third party card:

(1) The date of the transaction;

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

(3) The name, age, and address of the seller 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 or be logged into a secure data base, software system, or other technology platform and shall be in chronological order. No obliterations, alterations, or erasures may be made. If handwritten corrections are made, such corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The permanent record 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 third party card dealer and any clerk, agent, or employee of such third party card dealer who knowingly:

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

(2) Makes any false entry therein;

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

(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 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 three 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 may request that the issuer or its agents 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 goods' means goods that are used or bought for use primarily for personal, family, or household purposes.

(2) 'High-volume third-party seller' means a participant in an online marketplace that is a third-party seller and that, 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 goods resulting in the accumulation of an aggregate total of $5,000.00 or more in gross revenues in this state.

(3) 'Online marketplace' means any person or entity that operates an electronically based or accessed platform that:

(A) Facilitates retail sales that are to be delivered, held for pickup, consumed, distributed, or stored for use or consumption within this state; and

(B) Is used by one or more third-party sellers for such purpose.

(4) 'Third-party seller' means any seller, independent of an online marketplace, that sells, offers to sell, or contracts to sell a consumer good in this state through an online marketplace.

(5) 'Verify' means to confirm information and documents provided to an online marketplace pursuant to this article through the use of one or more methods that enable an online marketplace pursuant to this article to reliably determine that any such information and documents provided are valid, correspond to the seller or an individual acting on the seller's behalf, not misappropriated, and not falsified.

(b) An online marketplace shall require that any high-volume third-party seller on such marketplace's platform to provide, not later than three business days after qualifying as a high-volume third-party seller on such platform, the following information to the online marketplace:

(1) Deposit account information from a financial institution. If the high-volume third-party seller does not have deposit account information at a financial institution, the name of the payee for payments issued by the online marketplace to the high-volume third-party seller shall be accurately confirmed. This information may be confirmed by the online marketplace or by another third party contracted by the online marketplace; and

(2) Contact information, which shall include:

(A) A valid email address and working phone number;

(B) 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;

(C) If the high-volume third-party seller is a business entity, either a copy of a government issued photo identification for an individual acting on behalf of such 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; and

(D) 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.

(c)(1) The online marketplace shall verify the information and documents provided in paragraph (2) of subsection (b) of this Code section within three business days after such collection.

(2) If a high-volume third-party seller provides a copy of a valid government issued tax document, the information contained within such tax document shall be presumed to be verified as of the date of issuance of such document.

(d)(1) The online marketplace shall on at least an annual basis send a notification to each high-volume third-party seller on its platform requiring that each such high-volume third-party seller to inform the online marketplace of any changes to the information previously provided by the high-volume third-party seller pursuant to subsection (b) of this Code section within three business days of receiving the notification. Such notification shall require the high-volume third-party seller to electronically certify either that the high-volume third-party seller's information is unchanged or shall require that the high-volume third-party seller provide changes to the information as necessary.

(2) If the online marketplace becomes aware that a high-volume third-party seller has neither certified that such information is unchanged nor has provided such changed information within three business days of receiving such notification, the online marketplace shall suspend the selling privileges of the high-volume third-party seller until the high-volume third-party seller provides such certification or changed information.

(e) An online marketplace shall disclose to consumers in a conspicuous manner on the consumer good listing or through a conspicuously placed link on the consumer good listing, the following:

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

(2) The full physical address of the high-volume third-party seller. If the full physical address of the high-volume third-party seller is the primary residential address of such high-volume third-party seller, only the city, state, and country of the high-volume third-party seller shall be disclosed;

(3) Contact information for the high-volume third-party seller, including a working telephone number and working email address. If the only telephone number of the high-volume third-party seller is the personal telephone number of such high-volume third-party seller, then only the working email address shall be disclosed or other means of electronic messaging provided by the online marketplace shall be used; and

(4) The identification of any seller that supplies the consumer good to the consumer upon purchase if such seller is different than the high-volume third-party seller listed on the consumer good listing prior to purchase.

(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 restrict the full physical address and telephone number information required in subsection (e) of this Code section, the online marketplace shall require the full disclosure of the high-volume third-party seller's full physical address, telephone number, and email upon three business days' notice to the high-volume third-party seller. If such information is not disclosed within three business days, the online marketplace shall suspend the selling privileges of the high-volume third-party seller on the online marketplace until the information required in this subsection is disclosed.

(g) An online marketplace shall provide to consumers, in a conspicuous manner on the consumer good 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) Nothing in this Code section shall prevent an online marketplace from providing any additional measures, electronic or otherwise, that it deems necessary to prevent the sale of fraudulent, stolen, or counterfeit consumer goods on its platform.

(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 Georgia Department of Law's Consumer Protection Division may promulgate rules and 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 to deprive the owner of the property of 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.