- 1 SB405
- 2 213363-2
- 3 By Senator Waggoner
- 4 RFD: Judiciary
- 5 First Read: 27-APR-21

1	213363-2:n:04/27/2021:CMH*/bm LSA2021-1074R1	
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8	SYNOPSIS:	This bill would establish the crime of theft
9		by shoplifting and would prescribe criminal
10		penalties based on the monetary value of the
11		property taken.
12		This bill would provide for the crime of
13		organized retail theft.
14		This bill would also provide for certain
15		record keeping requirements for the sale and
16		purchase of stored value cards.
17		Amendment 621 of the Constitution of Alabama
18		of 1901, as amended by Amendment 890, now appearing
19		as Section 111.05 of the Official Recompilation of
20		the Constitution of Alabama of 1901, as amended,
21		prohibits a general law whose purpose or effect
22		would be to require a new or increased expenditure
23		of local funds from becoming effective with regard
24		to a local governmental entity without enactment by
25		a 2/3 vote unless: it comes within one of a number
26		of specified exceptions; it is approved by the

affected entity; or the Legislature appropriates

funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

11 A BILL

TO BE ENTITLED

13 AN ACT

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Retail Crime Prevention Act; to provide for the crime of theft by shoplifting; to provide for the crime of organized retail theft; to provide for certain record keeping requirements for the sale and purchase of stored value cards; to provide criminal penalties; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Amendment 621 of the Constitution of Alabama of 1901, as amended by Amendment 890, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended. Relating to crimes and offenses; to establish the crime of theft by shoplifting; and in connection therewith

1 would have as its purpose or effect the requirement of a new

or increased expenditure of local funds within the meaning of

3 Amendment 621 of the Constitution of Alabama of 1901, now

appearing as Section 111.05 of the Official Recompilation of

the Constitution of Alabama of 1901, as amended.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

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Section 1. This act shall be known and may be cited as the Retail Crime Prevention Act.

Section 2. As used in this act, the following terms shall have the following meanings:

- (1) CONCEAL. To place merchandise in a manner that is not visible through ordinary observation.
- (2) CORPORATE AUTHORIZED RESELLER. Any person authorized by the corporate issuer, or a corporate issuer agent, to sell the stored value cards of a corporate issuer.
- (3) CORPORATE ISSUER. A business entity 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.
- (4) CORPORATE ISSUER AGENT. A third party authorized by the corporate issuer to facilitate the sale of its stored value cards by corporate authorized resellers.
- (5) MERCHANDISE. An item of tangible personal property that is displayed, held, stored, or offered for sale within a retail establishment.

1 (6) MERCHANT. An owner or operator of a retail 2 establishment or an agent, employee, lessee, officer, or 3 director of the owner or operator.

- (7) PREMISES OF A RETAIL ESTABLISHMENT. The retail establishment, common use areas in shopping centers, and parking areas designated by a merchant or on behalf of a merchant for the parking of motor vehicles for the convenience of the patrons of the retail establishment.
- (8) STORED VALUE CARD. Any gift certificate or store gift card issued with or without a fee for the use of the cardholder to obtain money, goods, services, or anything else of value. The term does not include a general use gift card, demand deposit account, share draft account, savings account, prepaid debit card, or any card sold by a financial institution.
- (9) THIRD PARTY CARD. A stored value card for which the merchant buying or selling the card is not the corporate issuer and is not a corporate issuer agent or a corporate authorized reseller.
- (10) THIRD PARTY CARD DEALER. A merchant in the business of buying and selling third party cards.
- (11) VALUE. The actual retail price of merchandise prior to the commission of the subject criminal offense.

Section 3. (a) A person commits the crime of theft by shoplifting when the person, acting alone or in concert with another person, with the intent to appropriate merchandise of a retail establishment without paying for the

merchandise or to deprive the merchant of the retail
establishment of the merchandise of all or part of the value
of the merchandise, knowingly does any of the following:

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- (1) Conceals upon his or her person or in another manner and takes possession of two or more items of merchandise of the retail establishment.
- (2) Alters, transfers, or removes the label, price tag, marking, indicia of value, or any other markings that aid in determining value affixed to merchandise in a retail establishment, and purchases, or attempts to purchase, the merchandise at less than its value.
- (3) Transfers merchandise in a retail establishment from one container to another with the intent to purchase the merchandise at less than its value.
- (4) Causes the cash register or other sales recording device to reflect less than the value of the merchandise of a retail establishment.
- (5) Fails to scan the barcode and pay for merchandise at a self-checkout register.
- (6) Alters, bypasses, disables, shields, or removes any security or alarm device attached to or housing merchandise prior to the purchase of the merchandise.
- (b) (1) A violation of subsection (a) shall be deemed prima facie evidence that the person intended to deprive the merchant of all or part of the full value of the merchandise without paying the full value of the merchandise.

1 (2) The unaltered price tag or other marking on the
2 merchandise, or duly identified photographs of the
3 merchandise, shall be prima facie evidence of the
4 merchandise's actual retail value and ownership.

- Section 4. (a) Theft by shoplifting of merchandise which exceeds two thousand five hundred dollars (\$2,500) in value constitutes theft by shoplifting in the first degree.
- (b) Theft by shoplifting in the first degree is a Class B felony.
 - Section 5. (a) Theft by shoplifting of merchandise which exceeds one thousand five hundred dollars (\$1,500) in value but does not exceed two thousand five hundred dollars (\$2,500) in value constitutes theft by shoplifting in the second degree.
 - (b) Theft by shoplifting of a firearm, rifle, or shotgun which does not exceed two thousand five hundred dollars (\$2,500) in value constitutes theft by shoplifting in the second degree.
 - (c) Theft by shoplifting in the second degree is a $\mbox{\it Class C felony.}$
 - Section 6. (a) Theft by shoplifting of merchandise which exceeds five hundred dollars (\$500) in value but does not exceed one thousand five hundred dollars (\$1,500) in value constitutes theft by shoplifting in the third degree.
 - (b) Theft by shoplifting in the third degree is a Class D felony.

- 1 Section 7. (a) Theft by shoplifting of merchandise 2 which does not exceed five hundred dollars (\$500) in value constitutes theft by shoplifting in the fourth degree. 3 (b) Theft by shoplifting in the fourth degree is a 4 5 Class A misdemeanor. Section 8. (a) A person commits the offense of 6 7 organized retail theft when the person does all of the following: 8 9 (1) Intentionally organizes, plans, finances, 10 directs, manages, or supervises one or more persons to do any of the following over a period of 180 calendar days: 11 12 a. Appropriate property of one or more stores or 13 retail establishments to his or her own use without paying for 14 the property. b. Deprive the owner of a store or retail 15 establishment of the property of the value of the property, in 16 17 whole or in part. 18 (2) The person has the intent to sell the property 19 for monetary or other gain. 2.0 (3) The aggregate value of the property that was the
 - subject of the theft has a value of twenty-five thousand dollars (\$25,000) or more.

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- (4) The property is placed, or is to be placed, in the control of a retail property fence or other person in exchange for consideration.
- (b) The unaltered price tag or other marking on the property, or duly identified photographs of the property,

- shall be prima facie evidence of value and ownership of the property.
- 3 (c) A violation of this section is a Class C felony.
 - Section 9. (a) When a third party card dealer makes a sale or purchase of a stored value card, including any transaction that occurs in this state, the third party card dealer shall record the information provided for in subsection (b) and maintain a copy of the record for at least three years.
 - (b) 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 all of the following:
 - (1) The date of the transaction.
- 15 (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 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.
- 23 (5) The amount of stored value on the stored value 24 card.
- 25 (6) The price paid.

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26 (7) The signature of the customer.

(c) Entries shall appear in ink or be logged into a secure database, 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, the corrections shall be made by drawing a line of ink through the entry without destroying its legibility. The permanent records shall be open to the inspection of any duly authorized law enforcement officer during the ordinary hours of business or at any reasonable time.

- (d) Any third party card dealer and any clerk, agent, or employee of the third party card dealer, who intentionally does any of the following, shall be guilty of a Class C misdemeanor:
- (1) Fails to make an entry of any material matter in his or her permanent record.
 - (2) Makes any false entry into his or her permanent record.
- (3) Falsifies, obliterates, destroys, or removes from his or her place of business his or her permanent record.
- enforcement officer who is certified by the Alabama Peace Officers' Standards and Training Commission, or who is a federal law enforcement 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.

1 (5) Fails to maintain a record of each stored value 2 card transaction for at least three years.

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 of more than five hundred dollars (\$500), the law enforcement agency may request that the issuer or its agents preserve and provide the law enforcement agency all relevant evidence reasonably foreseeable to assist in future criminal actions in accordance with the laws of evidence in criminal proceedings.

Section 10. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements and application under Amendment 621, as amended by Amendment 890, now appearing as Section 111.05 of the Official Recompilation of the Constitution of Alabama of 1901, as amended, because the bill defines a new crime or amends the definition of an existing crime.

Section 11. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.