

SB206 ENGROSSED



1 9321BP-2

2 By Senators Chambliss, Waggoner, Gudger, Jones, Price,
3 Roberts, Scofield, Williams, Allen, Elliott, Weaver,
4 Livingston, Hovey, Carnley, Givhan, Sessions, Albritton,
5 Melson, Bell, Chesteen

6 RFD: Judiciary

7 First Read: 12-Apr-23

8

9 2023 Regular Session



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2
3 Section 111.05 of the Constitution of Alabama of
4 2022, prohibits a general law whose purpose or effect
5 would be to require a new or increased expenditure of
6 local funds from becoming effective with regard to a
7 local governmental entity without enactment by a 2/3
8 vote unless: it comes within one of a number of
9 specified exceptions; it is approved by the affected
10 entity; or the Legislature appropriates funds, or
11 provides a local source of revenue, to the entity for
12 the purpose.

13 The purpose or effect of this bill would be to
14 require a new or increased expenditure of local funds
15 within the meaning of the amendment. However, the bill
16 does not require approval of a local governmental
17 entity or enactment by a 2/3 vote to become effective
18 because it comes within one of the specified exceptions
19 contained in the amendment.
20

21 A BILL

22 TO BE ENTITLED

23 AN ACT

24
25 Relating to crimes and offenses; to create the Retail
26 Theft Crime Prevention Act; to provide for the crime of retail
27 theft in various degrees; to provide for the crime of
28 organized retail theft; to provide criminal penalties for a



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29 violation; and in connection therewith would have as its
30 purpose or effect the requirement of a new or increased
31 expenditure of local funds within the meaning of Section
32 111.05 of the Constitution of Alabama of 2022.

33 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

34 Section 1. Article 11, commencing with Section
35 13A-8-220, is added to Chapter 8 of Title 13A, Code of Alabama
36 1975, to read as follows:

37 Article 11

38 §13A-8-220

39 This article shall be known and may be cited as the
40 Retail Theft Crime Prevention Act.

41 §13A-8-221

42 As used in this article, the following terms have the
43 following meanings:

44 (1) CONCEAL. To place merchandise in a manner that is
45 not visible through ordinary observation.

46 (2) ORGANIZED RETAIL THEFT. Obtaining or exerting
47 unauthorized control over retail merchandise from a retail
48 merchant, retail establishment, or premises of a retail
49 establishment with the intent to deprive the owner or retail
50 merchant of his or her property or reselling, distributing, or
51 otherwise reentering the retail merchandise in commerce,
52 including the transfer of the stolen retail merchandise to
53 another retail merchant or to any other person, whether in
54 person, through the mail, or through any electronic medium,
55 including the Internet, in exchange for anything of value.

56 (3) PREMISES OF A RETAIL ESTABLISHMENT. The retail



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57 establishment, common use areas in shopping centers, and
58 parking areas designated by a merchant or on behalf of a
59 merchant for the parking of motor vehicles for the convenience
60 of the patrons of the retail establishment or where stored for
61 delivery or transport to a retail establishment.

62 (4) RETAIL ESTABLISHMENT. Any place where merchandise
63 is displayed, held, stored, or offered for sale to the public.

64 (5) RETAIL MERCHANDISE. Any article, product,
65 commodity, component, or items of tangible personal property
66 displayed, held, stored, or offered for sale within a retail
67 establishment.

68 (6) RETAIL MERCHANT. An owner or operator of a retail
69 establishment or an agent, employee, lessee, officer, or
70 director of the owner or operator.

71 (7) RETAIL VALUE. The actual retail price of
72 merchandise prior to the commission of the subject criminal
73 offense.

74 §13A-8-222

75 A person commits the crime of retail theft if, with the
76 intent to obtain or exert unauthorized control over retail
77 merchandise from a retail merchant, retail establishment, or
78 premises of a retail establishment, or with the intent to
79 deprive the owner or retail merchant of his or her retail
80 merchandise of all or some part of the value thereof or
81 without paying for the retail merchandise, he or she knowingly
82 does any of the following:

83 (1) Conceals upon his or her person or in another
84 manner and takes possession of two or more items of retail



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85 merchandise of the retail establishment.

86 (2) Alters, transfers, or removes the label, price tag,
87 marking, indicia of value, or any other markings that aid in
88 determining the value affixed to retail merchandise in a
89 retail establishment, and purchases, or attempts to purchase,
90 the merchandise at less than its value.

91 (3) Transfers retail merchandise in a retail
92 establishment from one container to another with the intent to
93 purchase the merchandise at less than its retail value.

94 (4) Causes the cash register or other sales recording
95 device to reflect less than the retail value of the retail
96 merchandise of a retail establishment.

97 (5) Fails to scan the barcode and pay for retail
98 merchandise at a cash register or self-checkout register.

99 (6) Causes the amount paid to be less than the retail
100 merchant's stated price for the retail merchandise.

101 (7) Alters, bypasses, disables, shields, or removes any
102 security or alarm device attached to or housing retail
103 merchandise prior to the purchase of the merchandise.

104 (8) Removes or causes the removal of retail merchandise
105 from the premises of a retail establishment.

106 (9) Collaborates with an employee of the retail
107 establishment to commit any form of retail theft described in
108 this section.

109 §13A-8-223

110 (a) (1) Retail theft that exceeds two thousand five
111 hundred dollars (\$2,500) in retail value constitutes retail
112 theft in the first degree.



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113 (2) Retail theft of one or more items of retail
114 merchandise during a 180-day period, the aggregate value of
115 which is one thousand dollars (\$1,000) or more constitutes
116 retail theft in the first degree.

117 (3) Theft of a firearm, rifle, or shotgun, regardless
118 of its value, from a retail merchant constitutes retail theft
119 in the first degree.

120 (b) Retail theft in the first degree is a Class B
121 felony.

122 §13A-8-224

123 (a) Retail theft that exceeds five hundred dollars
124 (\$500) in retail value, but does not exceed two thousand five
125 hundred dollars (\$2,500) in retail value, constitutes retail
126 theft in the second degree.

127 (b) Retail theft in the second degree is a Class C
128 felony.

129 §13A-8-225

130 (a) Retail theft that does not exceed five hundred
131 dollars (\$500) in retail value constitutes retail theft in the
132 third degree.

133 (b) Retail theft in the third degree is a Class A
134 misdemeanor.

135 (c) A fourth or subsequent conviction for an offense
136 under this article is a Class C felony.

137 §13A-8-226

138 (a) A person commits the crime of organized retail
139 theft when the person, in association with one or more other
140 persons, knowingly does any of the following:



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141 (1) Organizes, supervises, finances, participates,
142 directs, solicits, or otherwise manages or assists another
143 person in committing organized retail theft.

144 (2) Removes, destroys, deactivates, or knowingly evades
145 any component of an antishoplifting or inventory control
146 device to prevent the activation of that device or to
147 facilitate another person in committing organized retail
148 theft.

149 (3) Attempts, solicits, or conspires with another
150 person to commit organized retail theft.

151 (4) Receives, purchases, or possesses retail
152 merchandise for sale or resale knowing or believing the retail
153 merchandise to be stolen is from a retail merchant.

154 (5) Uses any fraud, artifice, instrument, container,
155 device, or other article to facilitate the commission of
156 organized retail theft.

157 (6) Remains unlawfully inside a retail establishment
158 after business hours, with the intent to commit a retail theft
159 therein.

160 (7) Uses a wireless telecommunication device or other
161 digital or electronic device to facilitate the theft of retail
162 merchandise.

163 (8) Uses a rental or stolen motor vehicle or vehicle of
164 another in the course of committing retail theft for the
165 purposes of the concealment of his or her identity.

166 (9) Receives, retains, or disposes of retail
167 merchandise knowing that it has been stolen or having
168 reasonable grounds to believe it has been stolen.



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169 (b) It shall be prima facie evidence that a person who
170 violates this section acts knowingly when any of the following
171 apply:

172 (1) On two or more separate occasions within a year
173 prior of the commission of the instant offense of organized
174 retail theft, the person is found in possession or control of
175 stolen retail merchandise.

176 (2) The person possesses retail merchandise which has
177 been recently stolen.

178 (3) The person regularly buys, sells, uses, or handles
179 in the course of business retail merchandise of the sort
180 received, and acquired the retail merchandise without making
181 reasonable inquiry whether the individual selling or
182 delivering the retail merchandise to him or her had a legal
183 right to do so.

184 (c) The fact that the person or persons who acted in
185 association with the person charged under this article have
186 not been charged, convicted, apprehended, or identified is not
187 a defense to a charge of organized retail theft.

188 (d) Organized retail theft is a Class B felony.

189 §13A-8-227

190 (a) Any proceeds, property obtained by proceeds, or
191 instruments of the crimes of organized retail theft or retail
192 theft may be subject to forfeiture pursuant to the procedures
193 set forth in Section 20-2-93.

194 (b) When a person is convicted of organized retail
195 theft or retail theft, upon request of the district attorney,
196 the court shall order the defendant to make restitution as



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197 follows:

198 (1) To the retail merchant victim, pursuant to the
199 procedures set forth in Section 15-18-67.

200 (2) To the primary investigative law enforcement and
201 prosecutorial entities for any legitimate cost incurred in the
202 course of the investigation or prosecution, pursuant to the
203 procedures set forth in Section 20-2-190(j), or an amount
204 agreed upon by the district attorney.

205 §13A-8-228

206 It is not a defense to a charge under this article that
207 the property was not stolen, embezzled, or converted property
208 at the time of the violation if the property was explicitly
209 represented to the accused person as being stolen, embezzled,
210 or converted property.

211 §13A-8-229

212 Nothing in this article prohibits a person from being
213 charged with, convicted of, or sentenced for any violation of
214 law arising out of the same criminal transaction that violates
215 this article.

216 §13A-8-230

217 (a) Any violation of this article may only be
218 prosecuted in the circuit or district court.

219 (b) In any criminal proceeding brought pursuant to this
220 article, the crime shall be considered to be committed in any
221 county in which any part of the crime took place, regardless
222 of whether the defendant was ever actually present in that
223 county, or in the county of residence of the person who is the
224 subject of the theft by retail theft or organized retail



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225 theft.

226 (c) Any arrest or detention by a retail merchant shall
227 be subject to the requirements and protections as provided in
228 Section 15-10-14.

229 §13A-8-231

230 (a) The fact that a person conceals merchandise for
231 which he or she has not paid the full value, and the retail
232 merchandise has been taken beyond the area within the retail
233 establishment or premises of a retail establishment where
234 payment for it is to be made, shall be prima facie evidence
235 that the person has possessed, carried away, or transferred
236 the retail merchandise with the intention of depriving the
237 retail merchant of all or part of the full value of the retail
238 merchandise without paying the full value of the retail
239 merchandise in violation of this article.

240 (b) (1) A violation of this article shall be deemed
241 prima facie evidence that the person intended to deprive the
242 merchant of all or part of the full retail value of the
243 merchandise without paying the full value of the merchandise.

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

248 (c) Nothing in this subsection shall be construed to
249 provide that the mere possession of goods or the production by
250 shoppers of improperly priced merchandise for checkout shall
251 constitute prima facie evidence of guilt.

252 §13A-8-232



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253 (a) A warrant for the crime of retail theft or
254 organized retail theft may be sworn and issued by a magistrate
255 remotely, digitally, via video link, or by telephone. The
256 physical presence of the affiant before the magistrate is not
257 required.

258 (b) Other methods of technology not specifically
259 described in subsection (a) may be used to facilitate the oath
260 and issuance of a criminal warrant pursuant to this article
261 upon the approval of the technology by the presiding judge and
262 district attorney of the judicial circuit.

263 §13A-8-233

264 The Office of Prosecution Services, Office of the
265 Attorney General, Alabama State Law Enforcement Agency,
266 Alabama Association of Chiefs of Police, Alabama Sheriffs
267 Association, Alabama Grocers Association, and Alabama Retail
268 Association shall make reasonable coordinated efforts to
269 develop training for prosecutors and law enforcement agencies
270 throughout the state to combat organized retail crime,
271 violations of Chapter 41 of Title 8, and other crimes
272 negatively impacting small and large businesses in Alabama and
273 make recommendations to the Alabama Legislature and Governor
274 regarding public safety and the prevention of organized retail
275 crime, enforcement and prosecution of this article and Chapter
276 41 of Title 8, as well as the impact of organized retail
277 thefts on Alabama businesses and the public.

278 Section 2. Although this bill would have as its purpose
279 or effect the requirement of a new or increased expenditure of
280 local funds, the bill is excluded from further requirements



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281 and application under Section 111.05 of the Constitution of
282 Alabama of 2022, because the bill defines a new crime or
283 amends the definition of an existing crime.

284 Section 3. This act shall become effective on the first
285 day of the third month following its passage and approval by
286 the Governor, or its otherwise becoming law.

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287
288
289 Senate

290 Read for the first time and referred12-Apr-23
291 to the Senate committee on Judiciary
292
293 Read for the second time and placed27-Apr-23
294 on the calendar:
295 0 amendments
296
297 Read for the third time and passed11-May-23
298 as amended
299 Yeas 34
300 Nays 0
301 Abstains 0
302
303

Patrick Harris,
Secretary.

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