

6959--A

I N   S E N A T E

April 16, 2012

---

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the penal law, in relation to creating a crime of leading a retail theft enterprise

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1     Section 1. The general business law is amended by adding a new section  
2     393-e to read as follows:  
3     S 393-E. LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE. 1. A PERSON IS  
4     GUILTY OF LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE IF HE OR SHE  
5     CONSPIRES WITH OTHERS AS AN ORGANIZER, SUPERVISOR, FINANCIER OR MANAGER,  
6     TO ENGAGE FOR PROFIT IN ORGANIZED RETAIL CRIME OR IN A SCHEME OR COURSE  
7     OF CONDUCT TO EFFECTUATE THE TRANSFER OR SALE OF SHOPLIFTED MERCHANDISE.  
8     LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE CONSTITUTES LARCENY IN THE  
9     SECOND DEGREE. NOTWITHSTANDING THE PROVISIONS OF SECTION 80.00 OF THE  
10    PENAL LAW, THE COURT MAY IMPOSE A FINE NOT TO EXCEED TWO HUNDRED FIFTY  
11    THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE MERCHANDISE  
12    SEIZED AT THE TIME OF THE ARREST, WHICHEVER IS GREATER.  
13    2. NOTWITHSTANDING THE PROVISIONS OF SECTION 70.35 OF THE PENAL LAW, A  
14    CONVICTION OF LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE SHALL NOT  
15    MERGE WITH THE CONVICTION FOR ANY OFFENSE WHICH IS THE OBJECT OF THE  
16    CONSPIRACY. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT THE COURT  
17    FROM IMPOSING AN EXTENDED TERM PURSUANT TO ARTICLE SEVENTY OF THE PENAL  
18    LAW; NOR SHALL THIS SECTION BE CONSTRUED IN ANY WAY TO PRECLUDE OR LIMIT  
19    THE PROSECUTION OR CONVICTION OF ANY PERSON FOR CONSPIRACY UNDER ARTICLE  
20    ONE HUNDRED FIVE OF THE PENAL LAW, OR ANY PROSECUTION OR CONVICTION FOR  
21    ANY OTHER OFFENSE.  
22    3. IT SHALL NOT BE NECESSARY IN ANY PROSECUTION UNDER THIS SECTION FOR  
23    THE STATE TO PROVE THAT ANY INTENDED PROFIT WAS ACTUALLY REALIZED. THE  
24    TRIER OF FACT MAY INFER THAT A PARTICULAR SCHEME OR COURSE OF CONDUCT  
25    WAS UNDERTAKEN FOR PROFIT FROM ALL OF THE ATTENDING CIRCUMSTANCES,  
26    INCLUDING BUT NOT LIMITED TO THE NUMBER OF PERSONS INVOLVED IN THE

EXPLANATION--Matter in *ITALICS* (underscored) is new; matter in brackets  
[ ] is old law to be omitted.

LBD15086-04-2

1 SCHEME OR COURSE OF CONDUCT, THE ACTOR'S NET WORTH AND HIS OR HER  
2 EXPENDITURES IN RELATION TO HIS OR HER LEGITIMATE SOURCES OF INCOME, THE  
3 AMOUNT OF MERCHANDISE INVOLVED, OR THE AMOUNT OF CASH OR CURRENCY  
4 INVOLVED.

5 4. IT SHALL NOT BE A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT  
6 ANY SHOPLIFTED MERCHANDISE WAS BROUGHT INTO OR TRANSPORTED IN THIS STATE  
7 SOLELY FOR ULTIMATE DISTRIBUTION IN ANOTHER JURISDICTION; NOR SHALL IT  
8 BE A DEFENSE THAT ANY PROFIT WAS INTENDED TO BE MADE IN ANOTHER JURIS-  
9 DICTION.

10 5. LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE IS A CLASS C FELONY.

11 S 2. The penal law is amended by adding a new section 155.50 to read  
12 as follows:

13 S 155.50 LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE.

14 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS  
15 SHALL HAVE THE FOLLOWING MEANINGS:

16 (A) "ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE COUNTERMEASURE"  
17 SHALL MEAN ANY ITEM OR DEVICE WHICH IS DESIGNED, MANUFACTURED, MODIFIED,  
18 OR ALTERED TO DEFEAT ANY ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE;

19 (B) "CONCEAL" SHALL MEAN TO HIDE, COVER, OR OTHERWISE DISGUISE  
20 MERCHANDISE SO THAT, ALTHOUGH THERE MAY BE SOME NOTICE OF ITS PRESENCE,  
21 IT IS NOT VISIBLE THROUGH ORDINARY OBSERVATION;

22 (C) "FULL RETAIL VALUE" SHALL MEAN THE MERCHANT'S STATED OR ADVERTISED  
23 PRICE OF THE MERCHANDISE;

24 (D) "MERCHANDISE" SHALL MEAN ANY GOODS, CHATTELS, FOODSTUFFS OR WARES  
25 OF ANY TYPE AND DESCRIPTION, REGARDLESS OF THE VALUE THEREOF;

26 (E) "MERCHANT" SHALL MEAN ANY OWNER OR OPERATOR OF ANY STORE OR OTHER  
27 RETAIL MERCANTILE ESTABLISHMENT, OR ANY AGENT, EMPLOYEE, LESSEE,  
28 CONSIGNEE, OFFICER, DIRECTOR, FRANCHISEE, OR INDEPENDENT CONTRACTOR OF  
29 SUCH OWNER OR PROPRIETOR;

30 (F) "ORGANIZED RETAIL THEFT" SHALL MEAN (1) THE STEALING, EMBEZZLE-  
31 MENT, OR OBTAINING BY FRAUD, FALSE PRETENSES, OR OTHER ILLEGAL MEANS, OF  
32 RETAIL MERCHANDISE IN QUANTITIES THAT WOULD NOT NORMALLY BE PURCHASED  
33 FOR PERSONAL USE OR CONSUMPTION FOR THE PURPOSE OF RESELLING OR OTHER-  
34 WISE REENTERING SUCH RETAIL MERCHANDISE IN COMMERCE, OR (2) THE RECRUIT-  
35 MENT OF PERSONS TO UNDERTAKE, OR THE COORDINATION, ORGANIZATION, OR  
36 FACILITATION OF, SUCH STEALING, EMBEZZLEMENT, OR OBTAINING BY FRAUD,  
37 FALSE PRETENSES, OR OTHER ILLEGAL MEANS;

38 (G) "ORGANIZED RETAIL THEFT ENTERPRISE" SHALL MEAN ANY ASSOCIATION OF  
39 TWO OR MORE PERSONS WHO ENGAGE IN THE CONDUCT OF OR ARE ASSOCIATED FOR  
40 THE PURPOSE OF EFFECTUATING ORGANIZED RETAIL THEFT OR ANY OTHER TRANSFER  
41 OR SALE OF SHOPLIFTED MERCHANDISE;

42 (H) "PERSON" SHALL MEAN ANY INDIVIDUAL OR INDIVIDUALS, INCLUDING AN  
43 AGENT, OR EMPLOYEE OF A MERCHANT WHERE THE FACTS OF THE SITUATION SO  
44 REQUIRE;

45 (I) "PREMISES OF A STORE OR RETAIL MERCANTILE ESTABLISHMENT" SHALL  
46 MEAN AND INCLUDE BUT BE NOT LIMITED TO THE RETAIL MERCANTILE ESTABLISH-  
47 MENT, ANY COMMON-USE AREAS IN SHOPPING CENTERS AND ALL PARKING AREAS SET  
48 ASIDE BY A MERCHANT OR ON BEHALF OF A MERCHANT FOR THE PARKING OF VEHI-  
49 CLES FOR THE CONVENIENCE OF THE PATRONS OF SUCH RETAIL MERCANTILE ESTAB-  
50 LISHMENT;

51 (J) "SHOPLIFTING" SHALL MEAN TO (1) PURPOSELY TAKE POSSESSION OF,  
52 CARRY AWAY, TRANSFER OR CAUSE TO BE TRANSFERRED ANY MERCHANDISE  
53 DISPLAYED, HELD, STORED, OR OFFERED FOR SALE BY ANY STORE OR OTHER  
54 RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING THE  
55 MERCHANT OF THE POSSESSION, USE OR BENEFIT OF SUCH MERCHANDISE OR  
56 CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE

1 MERCHANT THE VALUE THEREOF; (2) PURPOSELY TO CONCEAL UPON HIS OR HER  
2 PERSON OR OTHERWISE ANY MERCHANDISE OFFERED FOR SALE BY ANY STORE OR  
3 OTHER RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING  
4 THE MERCHANT OF THE PROCESSES, USE OR BENEFIT OF SUCH MERCHANDISE OR  
5 CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE  
6 MERCHANT THE FULL RETAIL VALUE THEREOF; (3) PURPOSELY AND WITH THE  
7 INTENT TO DEFRAUD, TO ALTER, TRANSFER OR REMOVE ANY LABEL, PRICE TAG OR  
8 MARKING INDICIA OF VALUE OR ANY OTHER MARKINGS WHICH AID IN DETERMINING  
9 VALUE AFFIXED TO ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR  
10 SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT AND TO  
11 ATTEMPT TO PURCHASE SUCH MERCHANDISE PERSONALLY OR IN CONSORT WITH  
12 ANOTHER AT LESS THAN THE FULL RETAIL VALUE WITH THE INTENTION OF DEPRIV-  
13 ING THE MERCHANT OF ALL OR SOME PART OF THE VALUE THEREOF; (4) PURPOSELY  
14 TO TRANSFER ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR SALE  
15 BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT FROM THE CONTAINER  
16 IN OR ON WHICH THE SAME SHALL BE DISPLAYED TO ANY OTHER CONTAINER WITH  
17 INTENT TO DEPRIVE THE MERCHANT OF ALL OR SOME PART OF THE RETAIL VALUE  
18 THEREOF; OR (5) PURPOSELY TO UNDER-RING WITH THE INTENTION OF DEPRIVING  
19 THE MERCHANT OF THE FULL RETAIL VALUE THEREOF;

20 (K) "STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT" SHALL MEAN A  
21 PLACE WHERE MERCHANDISE IS DISPLAYED, HELD, STORED, OR OFFERED TO THE  
22 PUBLIC FOR SALE; AND

23 (L) "UNDER-RING" SHALL MEAN TO CAUSE THE CASH REGISTER OR OTHER SALE  
24 RECORDING DEVICE TO REFLECT LESS THAN THE FULL RETAIL VALUE OF THE  
25 MERCHANDISE.

26 2. A PERSON IS A LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE IF HE  
27 OR SHE CONSPIRES WITH OTHERS AS AN ORGANIZER, SUPERVISOR, FINANCIER OR  
28 MANAGER, TO ENGAGE FOR PROFIT IN ORGANIZED RETAIL CRIME OR IN A SCHEME  
29 OR COURSE OF CONDUCT TO EFFECTUATE THE TRANSFER OR SALE OF SHOPLIFTED  
30 MERCHANDISE. LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE CONSTITUTES  
31 LARCENY IN THE SECOND DEGREE. NOTWITHSTANDING THE PROVISIONS OF SECTION  
32 80.00 OF THIS CHAPTER, THE COURT MAY IMPOSE A FINE NOT TO EXCEED TWO  
33 HUNDRED FIFTY THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE  
34 MERCHANDISE SEIZED AT THE TIME OF THE ARREST, WHICHEVER IS GREATER.

35 3. NOTWITHSTANDING THE PROVISIONS OF SECTION 70.35 OF THIS CHAPTER, A  
36 CONVICTION OF LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE SHALL NOT  
37 MERGE WITH THE CONVICTION FOR ANY OFFENSE WHICH IS THE OBJECT OF THE  
38 CONSPIRACY. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT THE COURT  
39 FROM IMPOSING AN EXTENDED TERM PURSUANT TO ARTICLE SEVENTY OF THIS CHAP-  
40 TER; NOR SHALL THIS SECTION BE CONSTRUED IN ANY WAY TO PRECLUDE OR LIMIT  
41 THE PROSECUTION OR CONVICTION OF ANY PERSON FOR CONSPIRACY UNDER ARTICLE  
42 ONE HUNDRED FIVE OF THIS CHAPTER, OR ANY PROSECUTION OR CONVICTION FOR  
43 ANY OTHER OFFENSE.

44 4. IT SHALL NOT BE NECESSARY IN ANY PROSECUTION UNDER THIS SECTION FOR  
45 THE STATE TO PROVE THAT ANY INTENDED PROFIT WAS ACTUALLY REALIZED. THE  
46 TRIER OF FACT MAY INFER THAT A PARTICULAR SCHEME OR COURSE OF CONDUCT  
47 WAS UNDERTAKEN FOR PROFIT FROM ALL OF THE ATTENDING CIRCUMSTANCES,  
48 INCLUDING BUT NOT LIMITED TO THE NUMBER OF PERSONS INVOLVED IN THE  
49 SCHEME OR COURSE OF CONDUCT, THE ACTOR'S NET WORTH AND HIS OR HER  
50 EXPENDITURES IN RELATION TO HIS OR HER LEGITIMATE SOURCES OF INCOME, THE  
51 AMOUNT OF MERCHANDISE INVOLVED, OR THE AMOUNT OF CASH OR CURRENCY  
52 INVOLVED.

53 5. IT SHALL NOT BE A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT  
54 ANY SHOPLIFTED MERCHANDISE WAS BROUGHT INTO OR TRANSPORTED IN THIS STATE  
55 SOLELY FOR ULTIMATE DISTRIBUTION IN ANOTHER JURISDICTION; NOR SHALL IT

1 BE A DEFENSE THAT ANY PROFIT WAS INTENDED TO BE MADE IN ANOTHER JURIS-  
2 DICTION.

3 S 3. Section 155.40 of the penal law, as amended by chapter 515 of  
4 the laws of 1986, is amended to read as follows:

5 S 155.40 Grand larceny in the second degree.

6 A person is guilty of grand larceny in the second degree when he  
7 steals property and when:

8 1. [The] THE value of the property exceeds fifty thousand dollars;  
9 [or]

10 2. [The] THE property, regardless of its nature and value, is obtained  
11 by extortion committed by instilling in the victim a fear that the actor  
12 or another person will (a) cause physical injury to some person in the  
13 future, or (b) cause damage to property, or (c) use or abuse his OR HER  
14 position as a public servant by engaging in conduct within or related to  
15 his OR HER official duties, or by failing or refusing to perform an  
16 official duty, in such manner as to affect some person adversely; OR

17 3. THE PERSON IS A LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE AS  
18 PROVIDED IN SECTION 155.50 OF THIS ARTICLE.

19 Grand larceny in the second degree is a class C felony.

20 S 4. This act shall take effect on the first of November next succeed-  
21 ing the date on which it shall have become a law.