

5293

2015-2016 Regular Sessions

I N   S E N A T E

May 12, 2015

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Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to mercantile establishments and the defense of lawful detention

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

1     Section 1. Section 218 of the general business law, as amended by  
2 chapter 374 of the laws of 1994, is amended to read as follows:  
3     S 218. 1. Defense of lawful detention. In any action for false  
4 arrest, false imprisonment, unlawful detention, defamation of character,  
5 assault, trespass, or invasion of civil rights, brought by any person by  
6 reason of having been detained on or in the immediate vicinity of the  
7 premises of (a) a retail mercantile establishment for the purpose of  
8 investigation or questioning as to criminal possession of an anti-security  
9 item as defined in section 170.47 of the penal law or as to the  
10 ownership of any merchandise, or (b) a motion picture theater for the  
11 purposes of investigation or questioning as to the unauthorized operation  
12 of a recording device in a motion picture theater, it shall be a  
13 defense to such action that the person was detained in a reasonable  
14 manner and for not more than a reasonable time to permit such investigation  
15 or questioning by a peace officer acting pursuant to his special  
16 duties, police officer or by the owner of the retail mercantile establishment  
17 or motion picture theater, his authorized employee or agent,  
18 and that such officer, owner, employee or agent had reasonable grounds  
19 to believe that the person so detained was guilty of criminal possession  
20 of an anti-security item as defined in section 170.47 of the penal law  
21 or was committing or attempting to commit larceny on such premises of  
22 such merchandise or was engaged in the unauthorized operation of a  
23 recording device in a motion picture theater.  
24     2. As used in this section, "reasonable grounds" shall include, but  
25 not be limited to, knowledge that a person [(i)] (A) has concealed

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

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1 possession of unpurchased merchandise of a retail mercantile establish-  
2 ment, or [(ii)] (B) has possession of an item designed for the purpose  
3 of overcoming detection of security markings attachments placed on  
4 merchandise offered for sale at such an establishment, or [(iii)] (C)  
5 has possession of a recording device in a theater in which a motion  
6 picture is being exhibited [and a].

7 3. A "reasonable time" shall mean the PERIOD OF time [necessary to  
8 permit the person detained to make a statement or to refuse to make a  
9 statement, and the time necessary], NOT TO EXCEED ONE HOUR, to examine  
10 employees and records of the mercantile establishment relative to the  
11 ownership of the merchandise, or possession of such an item or device.

12 4. UNDER NO CIRCUMSTANCES SHALL "REASONABLE TIME" INCLUDE, NOR SHALL  
13 THE RELEASE FROM DETENTION BY A MERCANTILE ESTABLISHMENT BE CONDITIONED  
14 UPON, ANY REQUIREMENT THAT THE PERSON DETAINED FOR THE ALLEGED COMMIS-  
15 SION OF A LARCENY, OR HIS OR HER PARENT OR LEGAL GUARDIAN, ENTER INTO  
16 ANY AGREEMENT TO PAY, DIRECTLY OR THROUGH THE EXTENSION OF CREDIT, THE  
17 CIVIL DAMAGES AND PENALTIES PROVIDED FOR IN SECTION 11-105 OF THE GENER-  
18 AL OBLIGATIONS LAW; OR SIGN ANY PAPERWORK WHATSOEVER PRESENTED TO THAT  
19 INDIVIDUAL DETAINED OR SIGN ANY PAPERWORK WHATSOEVER PRESENTED TO HIS OR  
20 HER PARENT OR LEGAL GUARDIAN, PARTICULARLY THE PREPARED FORM THAT  
21 STATES, IN ESSENCE: "THE MERCANTILE ESTABLISHMENT DIDN'T COERCE YOU IN  
22 ANY WAY INTO SIGNING ANYTHING, YOU SIGNED VOLUNTARILY." EVERY PERSON WHO  
23 IS DETAINED PURSUANT TO THIS SECTION, AND, IF, DURING SUCH DETENTION  
24 MAKES AN ORAL STATEMENT OR SIGNS ANY STATEMENT OR DOCUMENTS, OR HIS OR  
25 HER PARENT OR LEGAL GUARDIAN SIGNS ANY STATEMENT OR DOCUMENTS, SHALL  
26 UPON HIS OR HER RELEASE BE PROVIDED WITH A WRITTEN TRANSCRIPT OF SUCH  
27 ORAL STATEMENT AND COPIES OF ANY STATEMENT OR DOCUMENTS SO SIGNED.

28 5. Such detention at such vicinity shall not authorize the taking of  
29 such person's fingerprints at such vicinity unless the taking of finger-  
30 prints is otherwise authorized by section 160.10 of the criminal proce-  
31 dure law and are taken by the arresting or other appropriate police  
32 officer or agency described therein in accordance with section 140.20 or  
33 140.27 of such law. Whenever fingerprints are taken, the requirements of  
34 article one hundred sixty of the criminal procedure law shall apply as  
35 if fully set forth herein.

36 S 2. This act shall take effect immediately.