

5293--A

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 -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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

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

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1 such merchandise or was engaged in the unauthorized operation of a  
2 recording device in a motion picture theater.

3 2. As used in this section, "reasonable grounds" shall include, but  
4 not be limited to, knowledge that a person [(i)] (A) has concealed  
5 possession of unpurchased merchandise of a retail mercantile establish-  
6 ment, or [(ii)] (B) has possession of an item designed for the purpose  
7 of overcoming detection of security markings attachments placed on  
8 merchandise offered for sale at such an establishment, or [(iii)] (C)  
9 has possession of a recording device in a theater in which a motion  
10 picture is being exhibited [and a].

11 3. A "reasonable time" shall mean the PERIOD OF time [necessary to  
12 permit the person detained to make a statement or to refuse to make a  
13 statement, and the time necessary], NOT TO EXCEED ONE HOUR, EXCEPT FOR  
14 CERTAIN EXTENUATING CIRCUMSTANCES, to examine employees and records of  
15 the mercantile establishment relative to the ownership of the merchan-  
16 dise, or possession of such an item or device.

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

37 5. Such detention at such vicinity shall not authorize the taking of  
38 such person's fingerprints at such vicinity unless the taking of finger-  
39 prints is otherwise authorized by section 160.10 of the criminal proce-  
40 dure law and are taken by the arresting or other appropriate police  
41 officer or agency described therein in accordance with section 140.20 or  
42 140.27 of such law. Whenever fingerprints are taken, the requirements of  
43 article one hundred sixty of the criminal procedure law shall apply as  
44 if fully set forth herein.

45 S 2. This act shall take effect immediately.