

STATE OF NEW YORK

4984

2017-2018 Regular Sessions

IN SENATE

March 3, 2017

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 § 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-secur-
9 ity 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 opera-
12 tion 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 investi-
15 gation or questioning by a peace officer acting pursuant to his special
16 duties, police officer or by the owner of the retail mercantile estab-
17 lishment 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, except for
10 certain extenuating circumstances, to examine employees and records of
11 the mercantile establishment relative to the ownership of the merchan-
12 dise, or possession of such an item or device.

13 4. Under no circumstances shall "reasonable time" include, nor shall
14 the release from detention by a mercantile establishment be conditioned
15 upon, any requirement that the person detained for the alleged commis-
16 sion of a larceny, or his or her parent or legal guardian, enter into
17 any agreement to pay, directly or through the extension of credit, the
18 civil damages and penalties provided for in section 11-105 of the gener-
19 al obligations law; or sign any paperwork whatsoever presented to that
20 individual detained or sign any paperwork whatsoever presented to his or
21 her parent or legal guardian, particularly the prepared form that
22 states, in essence: "THE MERCANTILE ESTABLISHMENT DIDN'T COERCE YOU IN
23 ANY WAY INTO SIGNING ANYTHING, YOU SIGNED VOLUNTARILY." Every person who
24 is detained pursuant to this section, and, if, during such detention
25 makes an oral statement or signs any statement or documents, or his or
26 her parent or legal guardian signs any statement or documents, shall
27 upon his or her release be provided with a written transcript of such
28 oral statement and copies of any statement or documents so signed. Any
29 statement described in this subdivision, prior to it being signed, shall
30 be translated into the language spoken by the person detained, or in the
31 case of a minor, the language spoken by such detainee's parent or legal
32 guardian.

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

41 § 2. This act shall take effect immediately.