

STATE OF NEW YORK

5820

2017-2018 Regular Sessions

IN SENATE

May 2, 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 or her
16 special duties, police officer or by the owner of the retail mercantile
17 establishment or motion picture theater, his or her authorized employee
18 or agent, and that such officer, owner, employee or agent had reasonable
19 grounds to believe that the person so detained was guilty of criminal
20 possession of an anti-security item as defined in section 170.47 of the
21 penal law or was committing or attempting to commit larceny on such
22 premises of such merchandise or was engaged in the unauthorized opera-
23 tion of a 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 time necessary, not to exceed
8 one hour, except for extraordinary circumstances, to permit the person
9 detained to make a statement or to refuse to make a statement[~~7~~] and the
10 time necessary to examine employees and records of the mercantile estab-
11 lishment relative to the ownership of the merchandise, or possession of
12 such an item or device.

13 4. The release from detention shall not be conditioned upon any
14 requirement that, the person detained pursuant to subdivision one of
15 this section, or his or her parent or legal guardian, sign any docu-
16 ments, statements, or agreements to pay damages. Any documents presented
17 shall not contain any message stating that such document or statement is
18 being signed voluntarily and without coercion. Any person detained, or
19 his or her parent or legal guardian, who signs any statement or docu-
20 ments, shall, upon release, be provided with copies of such statements
21 or documents so signed. A minor, under the age of eighteen, detained
22 pursuant to this section, should immediately be afforded the ability to
23 contact his or her parents or legal guardian.

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

32 § 2. This act shall take effect immediately.