

8048

I N S E N A T E

June 3, 2010

Introduced by Sen. O. JOHNSON -- 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 and the general obligations
law, in relation to detention for larceny in mercantile establishments

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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. Defense of lawful detention. In any action for false arrest,
4 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 OR HER authorized employee or
18 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. As used in this
24 section, "reasonable grounds" shall include, but not be limited to,
25 knowledge that a person (i) has concealed possession of unpurchased
26 merchandise of a retail mercantile establishment, or (ii) has possession
27 of an item designed for the purpose of overcoming detection of security
28 markings attachments placed on merchandise offered for sale at such an

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

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1 establishment, or (iii) has possession of a recording device in a thea-
2 ter in which a motion picture is being exhibited and a "reasonable time"
3 shall mean the PERIOD OF time, NOT TO EXCEED ONE HOUR, necessary to
4 permit the person detained to make a statement or to refuse to make a
5 statement, and the time necessary to examine employees and records of
6 the mercantile establishment relative to the ownership of the merchan-
7 dise, or possession of such an item or device. UNDER NO CIRCUMSTANCES
8 SHALL "REASONABLE TIME" INCLUDE, NOR SHALL THE RELEASE FROM DETENTION BY
9 A MERCANTILE ESTABLISHMENT BE CONDITIONED UPON, ANY REQUIREMENT THAT THE
10 PERSON DETAINED FOR COMMISSION OF A LARCENY, OR HIS OR HER PARENT OR
11 LEGAL GUARDIAN, ENTER INTO ANY AGREEMENT TO PAY, DIRECTLY OR THROUGH THE
12 EXTENSION OF CREDIT, THE CIVIL DAMAGES PROVIDED FOR IN SECTION 11-105 OF
13 THE GENERAL OBLIGATIONS LAW. EVERY PERSON WHO IS DETAINED PURSUANT TO
14 THIS SECTION, AND WHO DURING SUCH DETENTION MAKES AN ORAL STATEMENT OR
15 SIGNS ANY STATEMENT OR DOCUMENT, SHALL UPON HIS OR HER RELEASE BE
16 PROVIDED WITH A WRITTEN TRANSCRIPT OF SUCH ORAL STATEMENT AND A COPY OF
17 ANY STATEMENT OR DOCUMENT SO SIGNED. Such detention at such vicinity
18 shall not authorize the taking of such person's fingerprints at such
19 vicinity unless the taking of fingerprints is otherwise authorized by
20 section 160.10 of the criminal procedure law and are taken by the
21 arresting or other appropriate police officer or agency described there-
22 in in accordance with section 140.20 or 140.27 of such law. Whenever
23 fingerprints are taken, the requirements of article one hundred sixty of
24 the criminal procedure law shall apply as if fully set forth herein.

25 S 2. Subdivisions 5, 6 and 8 of section 11-105 of the general obli-
26 gations law, as added by chapter 724 of the laws of 1991, are amended
27 and a new subdivision 8-a is added to read as follows:

28 5. An adult or emancipated minor who commits larceny against the prop-
29 erty of a mercantile establishment shall be civilly liable to the opera-
30 tor of such establishment in an amount consisting of:

31 (a) the [retail] ACTUAL SALE price of the merchandise IMPOSED FOR THE
32 RETAIL SALE THEREOF AT THE TIME OF SUCH LARCENY if SUCH MERCHANDISE IS
33 not recovered in merchantable condition up to an amount not to exceed
34 fifteen hundred dollars; plus

35 (b) a penalty not to exceed the greater of five times [the retail]
36 SUCH price of the merchandise or seventy-five dollars; provided, howev-
37 er, that in no event shall such penalty exceed five hundred dollars.

38 6. Parents or legal guardians of an unemancipated minor shall be
39 civilly liable for said minor who commits larceny against the property
40 of a mercantile establishment to the operator of such establishment in
41 an amount consisting of:

42 (a) the [retail] ACTUAL SALE price of the merchandise IMPOSED FOR THE
43 RETAIL SALE THEREOF AT THE TIME OF SUCH LARCENY if SUCH MERCHANDISE IS
44 not recovered in merchantable condition up to an amount not to exceed
45 fifteen hundred dollars; plus

46 (b) a penalty not to exceed the greater of five times [the retail]
47 SUCH price of the merchandise or seventy-five dollars; provided, howev-
48 er, that in no event shall such penalty exceed five hundred dollars.

49 8. The fact that an operator of a mercantile establishment may bring
50 an action against an individual as provided in this section shall not
51 limit the right of such merchant to demand, orally or in writing, that a
52 person who is liable for damages and penalties under this section remit
53 the damages and penalties prior to the commencement of any legal action.
54 PROVIDED, HOWEVER, UNDER NO CIRCUMSTANCES SHALL THE PROVISIONS OF THIS
55 SUBDIVISION BE DEEMED TO AUTHORIZE THE OPERATOR OF A MERCANTILE ESTAB-
56 LISHMENT TO DETAIN ANY PERSON IN VIOLATION OF SECTION TWO HUNDRED EIGH-

1 TEEN OF THE GENERAL BUSINESS LAW FOR THE PURPOSE OF RECOVERING THE
2 DAMAGES AND PENALTIES ESTABLISHED PURSUANT TO THIS SECTION. ANY OPERATOR
3 OF A MERCANTILE ESTABLISHMENT WHO SO DETAINS ANY PERSON IN VIOLATION OF
4 SUCH SECTION OF THE GENERAL BUSINESS LAW SHALL FORFEIT HIS OR HER RIGHT
5 TO DAMAGES AND PENALTIES PURSUANT TO THIS SECTION, AND SHALL REMAIN
6 CIVILLY LIABLE TO THE PERSON DETAINED FOR FALSE ARREST, FALSE IMPRISON-
7 MENT, UNLAWFUL DETENTION, DEFAMATION OF CHARACTER, ASSAULT, TRESPASS
8 AND/OR INVASION OF CIVIL RIGHTS.

9 8-A. IN ANY ACTION BROUGHT PURSUANT TO SUBDIVISION FIVE OR SIX OF THIS
10 SECTION, THE COURT SHALL CONSIDER IN THE INTEREST OF JUSTICE, AS A MITI-
11 GATING CIRCUMSTANCE, ANY CREDIBLE EVIDENCE OFFERED BY THE DEFENDANT OF
12 MENTAL DISEASE OR DEFECT, AS DEFINED IN SECTION 40.15 OF THE PENAL LAW,
13 SUFFERED BY SUCH DEFENDANT.

14 S 3. This act shall take effect on the thirtieth day after it shall
15 have become a law, and shall apply to larcenies and attempted larcenies
16 committed on or after such effective date.