

10328

I N A S S E M B L Y

May 22, 2012

Introduced by M. of A. CUSICK -- read once and referred to the Committee
on Codes

AN ACT to amend the general business law and the penal law, in relation
to the prevention of organized retail crime

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

1 Section 1. The general business law is amended by adding a new article
2 29-BB to read as follows:

3 ARTICLE 29-BB
4 PREVENTION OF ORGANIZED RETAIL CRIME

5 SECTION 527. LEGISLATIVE FINDINGS AND DETERMINATIONS.

6 527-A. ORGANIZED RETAIL CRIME.

7 527-B. ORGANIZED RETAIL THEFT WITH AGGREGATE VALUE OF ONE THOU-
8 SAND DOLLARS OR MORE.

9 S 527. LEGISLATIVE FINDINGS AND DETERMINATIONS. (A) THE LEGISLATURE
10 FINDS AND DETERMINES THAT ORGANIZED RETAIL CRIME IS A DISTURBING CRIMI-
11 NAL ENTERPRISE THAT INVOLVES THE LARGE SCALE THEFT OF CONSUMER ITEMS
12 FROM RETAIL COMMERCIAL ESTABLISHMENTS. SUCH CRIMINAL ACTIVITY HAS BROAD
13 AND DETRIMENTAL IMPLICATIONS FOR NEW YORK, ITS BUSINESSES AND CONSUMERS,
14 AND ADVERSELY AFFECTS THE HEALTH, SAFETY AND WELFARE OF ALL CITIZENS.
15 ORGANIZED RETAIL CRIME IS UNDERTAKEN BY PROFESSIONAL SHOPLIFTERS WHO
16 STEAL OR FRAUDULENTLY OBTAIN MERCHANDISE WITH THE INTENT TO RESELL SUCH
17 ITEMS TO INDIVIDUALS OR COMMERCIAL MARKETPLACES.

18 (B) THE LEGISLATURE FURTHER FINDS AND DECLARES THAT THE ECONOMIC
19 IMPACT OF ORGANIZED RETAIL CRIME EXTENDS FAR BEYOND THE MANUFACTURING
20 AND RETAIL INDUSTRY, AND INCLUDES COSTS AND INCONVENIENCES INCURRED BY
21 CONSUMERS, A REDUCTION IN POTENTIAL COMMERCIAL EMPLOYMENT AND JOB
22 GROWTH, AND A LOSS OF SALES TAX REVENUE FOR THE STATE AND ITS LOCALI-
23 TIES. THE SCOPE, SIZE AND SOPHISTICATION OF LOSS PREVENTION MEASURES
24 DEPLOYED BY RETAILERS TO PREVENT SUCH CRIMINAL ACTIVITY ARE ULTIMATELY
25 BORNE BY CONSUMERS IN THE FORM OF HIGHER PRICES OF RETAIL GOODS, AND THE

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

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THEFT AND UNREGULATED RESALE OF STOLEN RETAIL ITEMS, SUCH AS CONSUMABLE AND HEALTH AND BEAUTY PRODUCTS, CAN PRESENT SUBSTANTIAL HEALTH, SAFETY AND QUALITY CONCERNS FOR INDIVIDUAL CONSUMERS WHO PURCHASE THESE GOODS UNAWARE THAT THEY ARE BEING OFFERED FOR SALE AS A RESULT OF AN ORGANIZED RETAIL CRIME TRANSACTION.

(C) THE LEGISLATURE FURTHER FINDS AND DECLARES THAT THE STATE MUST TAKE SERIOUS ACTION TO COMBAT THE ISSUE OF ORGANIZED RETAIL CRIME, AND TO PREVENT ITS OCCURRENCE. THAT MEASURES MUST BE ENACTED IN BOTH THIS ARTICLE AND THE PENAL LAW, TO DETER AND PUNISH SUCH BEHAVIOR, AND TO PROMOTE A RETAIL ATMOSPHERE IN NEW YORK WHERE THIS TYPE OF CONDUCT WILL NOT OCCUR. THROUGH THE ESTABLISHMENT OF SUCH MEASURES, IT IS THE INTENTION OF THIS LEGISLATURE TO DETER AND PUNISH ORGANIZED RETAIL CRIME, AND TO PROMOTE AND PROTECT THE HEALTH, SAFETY AND ECONOMIC AFFORDABILITY OF NEW YORK'S CONSUMERS.

S 527-A. ORGANIZED RETAIL CRIME. (A) DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ACCESS DEVICE" SHALL MEAN ANY CARD, INCLUDING GIFT CARD, PLATE, CODE, INCLUDING UNIVERSAL PRICE CODE LABEL, ACCOUNT NUMBER, ELECTRONIC SERIAL NUMBER, MOBILE IDENTIFICATION NUMBER, PERSONAL IDENTIFICATION NUMBER, OR OTHER TELECOMMUNICATIONS SERVICE, EQUIPMENT, OR INSTRUMENT IDENTIFIER, INCLUDING A RADIO FREQUENCY IDENTIFICATION TRANSPONDER, OR OTHER MEANS OF ACCOUNT ACCESS THAT CAN BE USED, ALONE OR IN CONJUNCTION WITH ANOTHER ACCESS DEVICE, TO OBTAIN MONEY, GOODS, SERVICES, OR ANY OTHER THING OF VALUE, OR THAT CAN BE USED TO INITIATE A TRANSFER OF FUNDS (OTHER THAN A TRANSFER ORIGINATED SOLELY BY PAPER INSTRUMENT);

2. "ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE COUNTERMEASURE" SHALL MEAN ANY ITEM OR DEVICE WHICH IS DESIGNED, MANUFACTURED, MODIFIED, OR ALTERED TO DEFEAT ANY ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE;

3. "CONCEAL" SHALL MEAN TO HIDE, COVER, OR OTHERWISE DISGUISE MERCHANDISE SO THAT, ALTHOUGH THERE MAY BE SOME NOTICE OF ITS PRESENCE, IT IS NOT VISIBLE THROUGH ORDINARY OBSERVATION;

4. "CREDIT CARD SYSTEM NUMBER" SHALL MEAN A FINANCIAL INSTITUTION OR OTHER ENTITY THAT IS A MEMBER OF A CREDIT CARD SYSTEM, INCLUDING AN ENTITY, WHETHER AFFILIATED WITH OR IDENTICAL TO THE CREDIT CARD ISSUER, THAT IS THE SOLE MEMBER OF A CREDIT CARD SYSTEM;

5. "COUNTERFEIT ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS COUNTERFEIT, FICTITIOUS, ALTERED, OR FORGED, OR AN IDENTIFIABLE COMPONENT OF AN ACCESS DEVICE OR A COUNTERFEIT ACCESS DEVICE;

6. "DEVICE-MAKING EQUIPMENT" SHALL MEAN ANY EQUIPMENT, MECHANISM, OR IMPRESSION DESIGNED OR PRIMARILY USED FOR MAKING AN UNAUTHORIZED ACCESS DEVICE OR A COUNTERFEIT ACCESS DEVICE;

7. "FULL RETAIL VALUE" SHALL MEAN THE MERCHANT'S STATED OR ADVERTISED PRICE OF THE MERCHANDISE;

8. "MERCHANDISE" SHALL MEAN ANY GOODS, CHATTELS, FOODSTUFFS OR WARES OF ANY TYPE AND DESCRIPTION, REGARDLESS OF THE VALUE THEREOF;

9. "MERCHANT" SHALL MEAN ANY OWNER OR OPERATOR OF ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT, OR ANY AGENT, EMPLOYEE, LESSEE, CONSIGNEE, OFFICER, DIRECTOR, FRANCHISEE, OR INDEPENDENT CONTRACTOR OF SUCH OWNER OR PROPRIETOR;

10. "ORGANIZED RETAIL THEFT" SHALL MEAN (1) THE STEALING, EMBEZZLEMENT, OR OBTAINING BY FRAUD, FALSE PRETENSES, OR OTHER ILLEGAL MEANS, OF RETAIL MERCHANDISE IN QUANTITIES THAT WOULD NOT NORMALLY BE PURCHASED FOR PERSONAL USE OR CONSUMPTION FOR THE PURPOSE OF RESELLING OR OTHERWISE REENTERING SUCH RETAIL MERCHANDISE IN COMMERCE, OR (2) THE RECRUITMENT OF PERSONS TO UNDERTAKE, OR THE COORDINATION, ORGANIZATION, OR

1 FACILITATION OF, SUCH STEALING, EMBEZZLEMENT, OR OBTAINING BY FRAUD,
2 FALSE PRETENSES, OR OTHER ILLEGAL MEANS;

3 11. "ORGANIZED RETAIL THEFT ENTERPRISE" SHALL MEAN ANY ASSOCIATION OF
4 TWO OR MORE PERSONS WHO ENGAGE IN THE CONDUCT OF OR ARE ASSOCIATED FOR
5 THE PURPOSE OF EFFECTUATING ORGANIZED RETAIL THEFT OR ANY OTHER TRANSFER
6 OR SALE OF SHOPLIFTED MERCHANDISE;

7 12. "PERSON" SHALL MEAN ANY INDIVIDUAL OR INDIVIDUALS, INCLUDING AN
8 AGENT, OR EMPLOYEE OF A MERCHANT WHERE THE FACTS OF THE SITUATION SO
9 REQUIRE;

10 13. "PREMISES OF A STORE OR RETAIL MERCANTILE ESTABLISHMENT" SHALL
11 MEAN AND INCLUDE BUT BE NOT LIMITED TO THE RETAIL MERCANTILE ESTABLISH-
12 MENT, ANY COMMON-USE AREAS IN SHOPPING CENTERS AND ALL PARKING AREAS SET
13 ASIDE BY A MERCHANT OR ON BEHALF OF A MERCHANT FOR THE PARKING OF VEHI-
14 CLES FOR THE CONVENIENCE OF THE PATRONS OF SUCH RETAIL MERCANTILE ESTAB-
15 LISHMENT;

16 14. "PRODUCE" SHALL MEAN DESIGN, ALTER, AUTHENTICATE, DUPLICATE, OR
17 ASSEMBLE;

18 15. "RETAIL SALES RECEIPT" SHALL MEAN ANY HANDWRITTEN OR MACHINE OR
19 COMPUTER PRODUCED DOCUMENT AS PROPERLY ISSUED BY A RETAILER TO ACKNOWL-
20 EDGE PAYMENT RECEIVED BY A CUSTOMER;

21 16. "SHOPLIFTING" SHALL MEAN TO (1) PURPOSELY TAKE POSSESSION OF,
22 CARRY AWAY, TRANSFER OR CAUSE TO BE TRANSFERRED ANY MERCHANDISE
23 DISPLAYED, HELD, STORED, OR OFFERED FOR SALE BY ANY STORE OR OTHER
24 RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING THE
25 MERCHANT OF THE POSSESSION, USE OR BENEFIT OF SUCH MERCHANDISE OR
26 CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE
27 MERCHANT THE VALUE THEREOF; (2) PURPOSELY CONCEAL UPON HIS OR HER PERSON
28 OR OTHERWISE ANY MERCHANDISE OFFERED FOR SALE BY ANY STORE OR OTHER
29 RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING THE
30 MERCHANT OF THE PROCESSES, USE OR BENEFIT OF SUCH MERCHANDISE OR
31 CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE
32 MERCHANT THE FULL RETAIL VALUE THEREOF; (3) PURPOSELY AND WITH THE
33 INTENT TO DEFRAUD, TO ALTER, TRANSFER OR REMOVE ANY LABEL, PRICE TAG OR
34 MARKING INDICIA OF VALUE OR ANY OTHER MARKINGS WHICH AID IN DETERMINING
35 VALUE AFFIXED TO ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR
36 SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT AND TO
37 ATTEMPT TO PURCHASE SUCH MERCHANDISE PERSONALLY OR IN CONSORT WITH
38 ANOTHER AT LESS THAN THE FULL RETAIL VALUE WITH THE INTENTION OF DEPRIV-
39 ING THE MERCHANT OF ALL OR SOME PART OF THE VALUE THEREOF; (4) PURPOSELY
40 TRANSFER ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR SALE BY
41 ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT FROM THE CONTAINER IN
42 OR ON WHICH THE SAME SHALL BE DISPLAYED TO ANY OTHER CONTAINER WITH
43 INTENT TO DEPRIVE THE MERCHANT OF ALL OR SOME PART OF THE RETAIL VALUE
44 THEREOF; OR (5) PURPOSELY UNDER-RING WITH THE INTENTION OF DEPRIVING THE
45 MERCHANT OF THE FULL RETAIL VALUE THEREOF;

46 17. "STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT" SHALL MEAN A
47 PLACE WHERE MERCHANDISE IS DISPLAYED, HELD, STORED, OR OFFERED TO THE
48 PUBLIC FOR SALE;

49 18. "TRAFFIC" SHALL MEAN TRANSFER, OR OTHERWISE DISPOSE OF, TO ANOTHER
50 IN A FRAUDULENT MANNER, OR OBTAIN CONTROL OF WITH INTENT TO FRAUDULENTLY
51 TRANSFER OR DISPOSE OF;

52 19. "UNAUTHORIZED ACCESS DEVICE" SHALL MEAN ANY ACCESS DEVICE THAT IS
53 LOST, STOLEN, EXPIRED, REVOKED, CANCELED, OR OBTAINED WITH INTENT TO
54 DEFRAUD;

1 20. "UNDER-RING" SHALL MEAN TO CAUSE THE CASH REGISTER OR OTHER SALE
2 RECORDING DEVICE TO REFLECT LESS THAN THE FULL RETAIL VALUE OF THE
3 MERCHANDISE; AND

4 21. "UNIFORM PRODUCT CODE LABEL" SHALL MEAN ANY BAR CODE OR OTHER
5 CODING SYSTEM DESIGNED TO BE READ BY COMPUTER WHICH CONTAINS PRICING
6 INFORMATION AND OTHER RELATED INFORMATION USED BY A RETAILER AND READ BY
7 A COMPUTER AT POINT OF PURCHASE FOR PURPOSES OF ESTABLISHING THE SALE
8 PRICE OF A GOOD.

9 (B) ORGANIZED RETAIL CRIME. THE PRACTICE OF ORGANIZED RETAIL CRIME,
10 INCLUDING ORGANIZED RETAIL THEFT, LEADING AN ORGANIZED RETAIL THEFT
11 ENTERPRISE, AND CRIMINAL PRACTICES WITH AN ACCESS DEVICE SHALL BE
12 PROHIBITED AND UNLAWFUL UNDER THIS ARTICLE AND PURSUANT TO ARTICLES ONE
13 HUNDRED FIFTY-FIVE AND ONE HUNDRED SIXTY-FIVE OF THE PENAL LAW.

14 S 527-B. ORGANIZED RETAIL THEFT WITH AGGREGATE VALUE OF ONE THOUSAND
15 DOLLARS OR MORE. A PERSON SHALL BE GUILTY OF ORGANIZED RETAIL THEFT
16 WHEN:

17 (A) THE PROPERTY IS STOLEN FROM A RETAIL MERCANTILE ESTABLISHMENT AS
18 DEFINED IN SECTION TWO HUNDRED SEVENTEEN OF THIS CHAPTER AND THE AGGRE-
19 GATED VALUE OF PRICE TAGS, STICKER TAGS, OR OTHERWISE ADVERTISED RETAIL
20 PRICES OF SUCH PROPERTY EXCEEDS ONE THOUSAND DOLLARS.

21 (B) THE PROPERTY IS STOLEN BY ONE PERSON, OR BY TWO OR MORE PERSONS
22 WORKING IN ASSOCIATION, FROM ONE OR MORE THAN ONE RETAIL MERCANTILE
23 ESTABLISHMENT AS DEFINED IN SECTION TWO HUNDRED SEVENTEEN OF THIS CHAP-
24 TER WITHIN A PERIOD OF THIRTY DAYS OR LESS BETWEEN THE FIRST AND SECOND
25 EPISODE, THE SECOND AND THIRD EPISODE, OR BETWEEN ANY SUCCEEDING
26 EPISODES, AND THE AGGREGATED VALUE OF PRICE TAGS, STICKER PRICES, OR
27 OTHERWISE ADVERTISED RETAIL PRICES OF SUCH PROPERTY EXCEEDS ONE THOUSAND
28 DOLLARS.

29 ORGANIZED RETAIL THEFT WITH AGGREGATE VALUE OF ONE THOUSAND DOLLARS OR
30 MORE SHALL BE A CLASS E FELONY.

31 S 2. Section 155.30 of the penal law is amended by adding two new
32 subdivisions 12 and 13 to read as follows:

33 12. THE PROPERTY IS STOLEN FROM A RETAIL MERCANTILE ESTABLISHMENT AS
34 DEFINED IN SECTION TWO HUNDRED SEVENTEEN OF THE GENERAL BUSINESS LAW AND
35 THE AGGREGATED VALUE OF PRICE TAGS, STICKER TAGS, OR OTHERWISE ADVER-
36 TISED RETAIL PRICES OF SUCH PROPERTY EXCEEDS ONE THOUSAND DOLLARS.

37 13. THE PROPERTY IS STOLEN BY ONE PERSON, OR BY TWO OR MORE PERSONS
38 WORKING IN ASSOCIATION, FROM ONE OR MORE THAN ONE RETAIL MERCANTILE
39 ESTABLISHMENT AS DEFINED IN SECTION TWO HUNDRED SEVENTEEN OF THE GENERAL
40 BUSINESS LAW WITHIN A PERIOD OF THIRTY DAYS OR LESS BETWEEN THE FIRST
41 AND SECOND EPISODE, THE SECOND AND THIRD EPISODE, OR BETWEEN ANY
42 SUCCEEDING EPISODES, AND THE AGGREGATED VALUE OF PRICE TAGS, STICKER
43 PRICES, OR OTHERWISE ADVERTISED RETAIL PRICES OF SUCH PROPERTY EXCEEDS
44 ONE THOUSAND DOLLARS.

45 S 3. This act shall take effect on the first of November next succeed-
46 ing the date on which it shall have become a law.