

6959--A

I N S E N A T E

April 16, 2012

Introduced by Sen. ZELDIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law and the penal law, in relation to creating a crime of leading a retail theft enterprise

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

1 Section 1. The general business law is amended by adding a new section
2 393-e to read as follows:
3 S 393-E. LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE. 1. A PERSON IS
4 GUILTY OF LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE IF HE OR SHE
5 CONSPIRES WITH OTHERS AS AN ORGANIZER, SUPERVISOR, FINANCIER OR MANAGER,
6 TO ENGAGE FOR PROFIT IN ORGANIZED RETAIL CRIME OR IN A SCHEME OR COURSE
7 OF CONDUCT TO EFFECTUATE THE TRANSFER OR SALE OF SHOPLIFTED MERCHANDISE.
8 LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE CONSTITUTES LARCENY IN THE
9 SECOND DEGREE. NOTWITHSTANDING THE PROVISIONS OF SECTION 80.00 OF THE
10 PENAL LAW, THE COURT MAY IMPOSE A FINE NOT TO EXCEED TWO HUNDRED FIFTY
11 THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE MERCHANDISE
12 SEIZED AT THE TIME OF THE ARREST, WHICHEVER IS GREATER.
13 2. NOTWITHSTANDING THE PROVISIONS OF SECTION 70.35 OF THE PENAL LAW, A
14 CONVICTION OF LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE SHALL NOT
15 MERGE WITH THE CONVICTION FOR ANY OFFENSE WHICH IS THE OBJECT OF THE
16 CONSPIRACY. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT THE COURT
17 FROM IMPOSING AN EXTENDED TERM PURSUANT TO ARTICLE SEVENTY OF THE PENAL
18 LAW; NOR SHALL THIS SECTION BE CONSTRUED IN ANY WAY TO PRECLUDE OR LIMIT
19 THE PROSECUTION OR CONVICTION OF ANY PERSON FOR CONSPIRACY UNDER ARTICLE
20 ONE HUNDRED FIVE OF THE PENAL LAW, OR ANY PROSECUTION OR CONVICTION FOR
21 ANY OTHER OFFENSE.
22 3. IT SHALL NOT BE NECESSARY IN ANY PROSECUTION UNDER THIS SECTION FOR
23 THE STATE TO PROVE THAT ANY INTENDED PROFIT WAS ACTUALLY REALIZED. THE
24 TRIER OF FACT MAY INFER THAT A PARTICULAR SCHEME OR COURSE OF CONDUCT
25 WAS UNDERTAKEN FOR PROFIT FROM ALL OF THE ATTENDING CIRCUMSTANCES,
26 INCLUDING BUT NOT LIMITED TO THE NUMBER OF PERSONS INVOLVED IN THE

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

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1 SCHEME OR COURSE OF CONDUCT, THE ACTOR'S NET WORTH AND HIS OR HER
2 EXPENDITURES IN RELATION TO HIS OR HER LEGITIMATE SOURCES OF INCOME, THE
3 AMOUNT OF MERCHANDISE INVOLVED, OR THE AMOUNT OF CASH OR CURRENCY
4 INVOLVED.

5 4. IT SHALL NOT BE A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT
6 ANY SHOPLIFTED MERCHANDISE WAS BROUGHT INTO OR TRANSPORTED IN THIS STATE
7 SOLELY FOR ULTIMATE DISTRIBUTION IN ANOTHER JURISDICTION; NOR SHALL IT
8 BE A DEFENSE THAT ANY PROFIT WAS INTENDED TO BE MADE IN ANOTHER JURIS-
9 DICTION.

10 5. LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE IS A CLASS C FELONY.

11 S 2. The penal law is amended by adding a new section 155.50 to read
12 as follows:

13 S 155.50 LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE.

14 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS
15 SHALL HAVE THE FOLLOWING MEANINGS:

16 (A) "ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE COUNTERMEASURE"
17 SHALL MEAN ANY ITEM OR DEVICE WHICH IS DESIGNED, MANUFACTURED, MODIFIED,
18 OR ALTERED TO DEFEAT ANY ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE;

19 (B) "CONCEAL" SHALL MEAN TO HIDE, COVER, OR OTHERWISE DISGUISE
20 MERCHANDISE SO THAT, ALTHOUGH THERE MAY BE SOME NOTICE OF ITS PRESENCE,
21 IT IS NOT VISIBLE THROUGH ORDINARY OBSERVATION;

22 (C) "FULL RETAIL VALUE" SHALL MEAN THE MERCHANT'S STATED OR ADVERTISED
23 PRICE OF THE MERCHANDISE;

24 (D) "MERCHANDISE" SHALL MEAN ANY GOODS, CHATTELS, FOODSTUFFS OR WARES
25 OF ANY TYPE AND DESCRIPTION, REGARDLESS OF THE VALUE THEREOF;

26 (E) "MERCHANT" SHALL MEAN ANY OWNER OR OPERATOR OF ANY STORE OR OTHER
27 RETAIL MERCANTILE ESTABLISHMENT, OR ANY AGENT, EMPLOYEE, LESSEE,
28 CONSIGNEE, OFFICER, DIRECTOR, FRANCHISEE, OR INDEPENDENT CONTRACTOR OF
29 SUCH OWNER OR PROPRIETOR;

30 (F) "ORGANIZED RETAIL THEFT" SHALL MEAN (1) THE STEALING, EMBEZZLE-
31 MENT, OR OBTAINING BY FRAUD, FALSE PRETENSES, OR OTHER ILLEGAL MEANS, OF
32 RETAIL MERCHANDISE IN QUANTITIES THAT WOULD NOT NORMALLY BE PURCHASED
33 FOR PERSONAL USE OR CONSUMPTION FOR THE PURPOSE OF RESELLING OR OTHER-
34 WISE REENTERING SUCH RETAIL MERCHANDISE IN COMMERCE, OR (2) THE RECRUIT-
35 MENT OF PERSONS TO UNDERTAKE, OR THE COORDINATION, ORGANIZATION, OR
36 FACILITATION OF, SUCH STEALING, EMBEZZLEMENT, OR OBTAINING BY FRAUD,
37 FALSE PRETENSES, OR OTHER ILLEGAL MEANS;

38 (G) "ORGANIZED RETAIL THEFT ENTERPRISE" SHALL MEAN ANY ASSOCIATION OF
39 TWO OR MORE PERSONS WHO ENGAGE IN THE CONDUCT OF OR ARE ASSOCIATED FOR
40 THE PURPOSE OF EFFECTUATING ORGANIZED RETAIL THEFT OR ANY OTHER TRANSFER
41 OR SALE OF SHOPLIFTED MERCHANDISE;

42 (H) "PERSON" SHALL MEAN ANY INDIVIDUAL OR INDIVIDUALS, INCLUDING AN
43 AGENT, OR EMPLOYEE OF A MERCHANT WHERE THE FACTS OF THE SITUATION SO
44 REQUIRE;

45 (I) "PREMISES OF A STORE OR RETAIL MERCANTILE ESTABLISHMENT" SHALL
46 MEAN AND INCLUDE BUT BE NOT LIMITED TO THE RETAIL MERCANTILE ESTABLISH-
47 MENT, ANY COMMON-USE AREAS IN SHOPPING CENTERS AND ALL PARKING AREAS SET
48 ASIDE BY A MERCHANT OR ON BEHALF OF A MERCHANT FOR THE PARKING OF VEHI-
49 CLES FOR THE CONVENIENCE OF THE PATRONS OF SUCH RETAIL MERCANTILE ESTAB-
50 LISHMENT;

51 (J) "SHOPLIFTING" SHALL MEAN TO (1) PURPOSELY TAKE POSSESSION OF,
52 CARRY AWAY, TRANSFER OR CAUSE TO BE TRANSFERRED ANY MERCHANDISE
53 DISPLAYED, HELD, STORED, OR OFFERED FOR SALE BY ANY STORE OR OTHER
54 RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING THE
55 MERCHANT OF THE POSSESSION, USE OR BENEFIT OF SUCH MERCHANDISE OR
56 CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE

1 MERCHANT THE VALUE THEREOF; (2) PURPOSELY TO CONCEAL UPON HIS OR HER
2 PERSON OR OTHERWISE ANY MERCHANDISE OFFERED FOR SALE BY ANY STORE OR
3 OTHER RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING
4 THE MERCHANT OF THE PROCESSES, USE OR BENEFIT OF SUCH MERCHANDISE OR
5 CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE
6 MERCHANT THE FULL RETAIL VALUE THEREOF; (3) PURPOSELY AND WITH THE
7 INTENT TO DEFRAUD, TO ALTER, TRANSFER OR REMOVE ANY LABEL, PRICE TAG OR
8 MARKING INDICIA OF VALUE OR ANY OTHER MARKINGS WHICH AID IN DETERMINING
9 VALUE AFFIXED TO ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR
10 SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT AND TO
11 ATTEMPT TO PURCHASE SUCH MERCHANDISE PERSONALLY OR IN CONSORT WITH
12 ANOTHER AT LESS THAN THE FULL RETAIL VALUE WITH THE INTENTION OF DEPRIV-
13 ING THE MERCHANT OF ALL OR SOME PART OF THE VALUE THEREOF; (4) PURPOSELY
14 TO TRANSFER ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR SALE
15 BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT FROM THE CONTAINER
16 IN OR ON WHICH THE SAME SHALL BE DISPLAYED TO ANY OTHER CONTAINER WITH
17 INTENT TO DEPRIVE THE MERCHANT OF ALL OR SOME PART OF THE RETAIL VALUE
18 THEREOF; OR (5) PURPOSELY TO UNDER-RING WITH THE INTENTION OF DEPRIVING
19 THE MERCHANT OF THE FULL RETAIL VALUE THEREOF;

20 (K) "STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT" SHALL MEAN A
21 PLACE WHERE MERCHANDISE IS DISPLAYED, HELD, STORED, OR OFFERED TO THE
22 PUBLIC FOR SALE; AND

23 (L) "UNDER-RING" SHALL MEAN TO CAUSE THE CASH REGISTER OR OTHER SALE
24 RECORDING DEVICE TO REFLECT LESS THAN THE FULL RETAIL VALUE OF THE
25 MERCHANDISE.

26 2. A PERSON IS A LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE IF HE
27 OR SHE CONSPIRES WITH OTHERS AS AN ORGANIZER, SUPERVISOR, FINANCIER OR
28 MANAGER, TO ENGAGE FOR PROFIT IN ORGANIZED RETAIL CRIME OR IN A SCHEME
29 OR COURSE OF CONDUCT TO EFFECTUATE THE TRANSFER OR SALE OF SHOPLIFTED
30 MERCHANDISE. LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE CONSTITUTES
31 LARCENY IN THE SECOND DEGREE. NOTWITHSTANDING THE PROVISIONS OF SECTION
32 80.00 OF THIS CHAPTER, THE COURT MAY IMPOSE A FINE NOT TO EXCEED TWO
33 HUNDRED FIFTY THOUSAND DOLLARS OR FIVE TIMES THE RETAIL VALUE OF THE
34 MERCHANDISE SEIZED AT THE TIME OF THE ARREST, WHICHEVER IS GREATER.

35 3. NOTWITHSTANDING THE PROVISIONS OF SECTION 70.35 OF THIS CHAPTER, A
36 CONVICTION OF LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE SHALL NOT
37 MERGE WITH THE CONVICTION FOR ANY OFFENSE WHICH IS THE OBJECT OF THE
38 CONSPIRACY. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT THE COURT
39 FROM IMPOSING AN EXTENDED TERM PURSUANT TO ARTICLE SEVENTY OF THIS CHAP-
40 TER; NOR SHALL THIS SECTION BE CONSTRUED IN ANY WAY TO PRECLUDE OR LIMIT
41 THE PROSECUTION OR CONVICTION OF ANY PERSON FOR CONSPIRACY UNDER ARTICLE
42 ONE HUNDRED FIVE OF THIS CHAPTER, OR ANY PROSECUTION OR CONVICTION FOR
43 ANY OTHER OFFENSE.

44 4. IT SHALL NOT BE NECESSARY IN ANY PROSECUTION UNDER THIS SECTION FOR
45 THE STATE TO PROVE THAT ANY INTENDED PROFIT WAS ACTUALLY REALIZED. THE
46 TRIER OF FACT MAY INFER THAT A PARTICULAR SCHEME OR COURSE OF CONDUCT
47 WAS UNDERTAKEN FOR PROFIT FROM ALL OF THE ATTENDING CIRCUMSTANCES,
48 INCLUDING BUT NOT LIMITED TO THE NUMBER OF PERSONS INVOLVED IN THE
49 SCHEME OR COURSE OF CONDUCT, THE ACTOR'S NET WORTH AND HIS OR HER
50 EXPENDITURES IN RELATION TO HIS OR HER LEGITIMATE SOURCES OF INCOME, THE
51 AMOUNT OF MERCHANDISE INVOLVED, OR THE AMOUNT OF CASH OR CURRENCY
52 INVOLVED.

53 5. IT SHALL NOT BE A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT
54 ANY SHOPLIFTED MERCHANDISE WAS BROUGHT INTO OR TRANSPORTED IN THIS STATE
55 SOLELY FOR ULTIMATE DISTRIBUTION IN ANOTHER JURISDICTION; NOR SHALL IT

1 BE A DEFENSE THAT ANY PROFIT WAS INTENDED TO BE MADE IN ANOTHER JURIS-
2 DICTION.

3 S 3. Section 155.40 of the penal law, as amended by chapter 515 of
4 the laws of 1986, is amended to read as follows:

5 S 155.40 Grand larceny in the second degree.

6 A person is guilty of grand larceny in the second degree when he
7 steals property and when:

8 1. [The] THE value of the property exceeds fifty thousand dollars;
9 [or]

10 2. [The] THE property, regardless of its nature and value, is obtained
11 by extortion committed by instilling in the victim a fear that the actor
12 or another person will (a) cause physical injury to some person in the
13 future, or (b) cause damage to property, or (c) use or abuse his OR HER
14 position as a public servant by engaging in conduct within or related to
15 his OR HER official duties, or by failing or refusing to perform an
16 official duty, in such manner as to affect some person adversely; OR

17 3. THE PERSON IS A LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE AS
18 PROVIDED IN SECTION 155.50 OF THIS ARTICLE.

19 Grand larceny in the second degree is a class C felony.

20 S 4. This act shall take effect on the first of November next succeed-
21 ing the date on which it shall have become a law.