

S T A T E O F N E W Y O R K

10326--A

I N A S S E M B L Y

May 22, 2012

Introduced by M. of A. CUSICK, P. RIVERA, GUNTHER, MAGNARELLI, GOTTFRIED, TITONE, SCARBOROUGH, CRESPO, ZEBROWSKI, WEPRIN -- Multi-Sponsored by -- M. of A. CLARK, GIBSON, MAGEE, REILLY, SIMANOWITZ -- read once and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend 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 penal law is amended by adding a new section 155.50 to
2 read as follows:
3 S 155.50 LEADING AN ORGANIZED RETAIL THEFT ENTERPRISE.
4 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS
5 SHALL HAVE THE FOLLOWING MEANINGS:
6 (A) "ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE COUNTERMEASURE"
7 SHALL MEAN ANY ITEM OR DEVICE WHICH IS DESIGNED, MANUFACTURED, MODIFIED,
8 OR ALTERED TO DEFEAT ANY ANTI-SHOPLIFTING OR INVENTORY CONTROL DEVICE;
9 (B) "CONCEAL" SHALL MEAN TO HIDE, COVER, OR OTHERWISE DISGUISE
10 MERCHANDISE SO THAT, ALTHOUGH THERE MAY BE SOME NOTICE OF ITS PRESENCE,
11 IT IS NOT VISIBLE THROUGH ORDINARY OBSERVATION;
12 (C) "FULL RETAIL VALUE" SHALL MEAN THE MERCHANT'S STATED OR ADVERTISED
13 PRICE OF THE MERCHANDISE;
14 (D) "MERCHANDISE" SHALL MEAN ANY GOODS, CHATTELS, FOODSTUFFS OR WARES
15 OF ANY TYPE AND DESCRIPTION, REGARDLESS OF THE VALUE THEREOF;
16 (E) "MERCHANT" SHALL MEAN ANY OWNER OR OPERATOR OF ANY STORE OR OTHER
17 RETAIL MERCANTILE ESTABLISHMENT, OR ANY AGENT, EMPLOYEE, LESSEE,
18 CONSIGNEE, OFFICER, DIRECTOR, FRANCHISEE, OR INDEPENDENT CONTRACTOR OF
19 SUCH OWNER OR PROPRIETOR;
20 (F) "ORGANIZED RETAIL THEFT" SHALL MEAN (1) THE STEALING, EMBEZZLE-
21 MENT, OR OBTAINING BY FRAUD, FALSE PRETENSES, OR OTHER ILLEGAL MEANS, OF
22 RETAIL MERCHANDISE IN QUANTITIES THAT WOULD NOT NORMALLY BE PURCHASED
23 FOR PERSONAL USE OR CONSUMPTION FOR THE PURPOSE OF RESELLING OR OTHER-
24 WISE REENTERING SUCH RETAIL MERCHANDISE IN COMMERCE, OR (2) THE RECRUIT-

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

LBD15086-07-2

MENT OF PERSONS TO UNDERTAKE, OR THE COORDINATION, ORGANIZATION, OR FACILITATION OF, SUCH STEALING, EMBEZZLEMENT, OR OBTAINING BY FRAUD, FALSE PRETENSES, OR OTHER ILLEGAL MEANS;

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

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

(I) "PREMISES OF A STORE OR RETAIL MERCANTILE ESTABLISHMENT" SHALL MEAN AND INCLUDE BUT BE NOT LIMITED TO THE RETAIL MERCANTILE ESTABLISHMENT, ANY COMMON-USE AREAS IN SHOPPING CENTERS AND ALL PARKING AREAS SET ASIDE BY A MERCHANT OR ON BEHALF OF A MERCHANT FOR THE PARKING OF VEHICLES FOR THE CONVENIENCE OF THE PATRONS OF SUCH RETAIL MERCANTILE ESTABLISHMENT;

(J) "SHOPLIFTING" SHALL MEAN TO (1) PURPOSELY TAKE POSSESSION OF, CARRY AWAY, TRANSFER OR CAUSE TO BE TRANSFERRED ANY MERCHANDISE DISPLAYED, HELD, STORED, OR OFFERED FOR SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING THE MERCHANT OF THE POSSESSION, USE OR BENEFIT OF SUCH MERCHANDISE OR CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE MERCHANT THE VALUE THEREOF; (2) PURPOSELY TO CONCEAL UPON HIS OR HER PERSON OR OTHERWISE ANY MERCHANDISE OFFERED FOR SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT WITH THE INTENTION OF DEPRIVING THE MERCHANT OF THE PROCESSES, USE OR BENEFIT OF SUCH MERCHANDISE OR CONVERTING THE SAME TO THE USE OF SUCH PERSON WITHOUT PAYING TO THE MERCHANT THE FULL RETAIL VALUE THEREOF; (3) PURPOSELY AND WITH THE INTENT TO DEFRAUD, TO ALTER, TRANSFER OR REMOVE ANY LABEL, PRICE TAG OR MARKING INDICIA OF VALUE OR ANY OTHER MARKINGS WHICH AID IN DETERMINING VALUE AFFIXED TO ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT AND TO ATTEMPT TO PURCHASE SUCH MERCHANDISE PERSONALLY OR IN CONSORT WITH ANOTHER AT LESS THAN THE FULL RETAIL VALUE WITH THE INTENTION OF DEPRIVING THE MERCHANT OF ALL OR SOME PART OF THE VALUE THEREOF; (4) PURPOSELY TO TRANSFER ANY MERCHANDISE DISPLAYED, HELD, STORED OR OFFERED FOR SALE BY ANY STORE OR OTHER RETAIL MERCANTILE ESTABLISHMENT FROM THE CONTAINER IN OR ON WHICH THE SAME SHALL BE DISPLAYED TO ANY OTHER CONTAINER WITH INTENT TO DEPRIVE THE MERCHANT OF ALL OR SOME PART OF THE RETAIL VALUE THEREOF; OR (5) PURPOSELY TO UNDER-RING WITH THE INTENTION OF DEPRIVING THE MERCHANT OF THE FULL RETAIL VALUE THEREOF;

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

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

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

1 3. NOTWITHSTANDING THE PROVISIONS OF SECTION 70.35 OF THIS CHAPTER, A
2 CONVICTION OF LEADER OF AN ORGANIZED RETAIL THEFT ENTERPRISE SHALL NOT
3 MERGE WITH THE CONVICTION FOR ANY OFFENSE WHICH IS THE OBJECT OF THE
4 CONSPIRACY. NOTHING CONTAINED IN THIS SECTION SHALL PROHIBIT THE COURT
5 FROM IMPOSING AN EXTENDED TERM PURSUANT TO ARTICLE SEVENTY OF THIS CHAP-
6 TER; NOR SHALL THIS SECTION BE CONSTRUED IN ANY WAY TO PRECLUDE OR LIMIT
7 THE PROSECUTION OR CONVICTION OF ANY PERSON FOR CONSPIRACY UNDER ARTICLE
8 ONE HUNDRED FIVE OF THIS CHAPTER, OR ANY PROSECUTION OR CONVICTION FOR
9 ANY OTHER OFFENSE.

10 4. IT SHALL NOT BE NECESSARY IN ANY PROSECUTION UNDER THIS SECTION FOR
11 THE STATE TO PROVE THAT ANY INTENDED PROFIT WAS ACTUALLY REALIZED. THE
12 TRIER OF FACT MAY INFER THAT A PARTICULAR SCHEME OR COURSE OF CONDUCT
13 WAS UNDERTAKEN FOR PROFIT FROM ALL OF THE ATTENDING CIRCUMSTANCES,
14 INCLUDING BUT NOT LIMITED TO THE NUMBER OF PERSONS INVOLVED IN THE
15 SCHEME OR COURSE OF CONDUCT, THE ACTOR'S NET WORTH AND HIS OR HER
16 EXPENDITURES IN RELATION TO HIS OR HER LEGITIMATE SOURCES OF INCOME, THE
17 AMOUNT OF MERCHANDISE INVOLVED, OR THE AMOUNT OF CASH OR CURRENCY
18 INVOLVED.

19 5. IT SHALL NOT BE A DEFENSE TO A PROSECUTION UNDER THIS SECTION THAT
20 ANY SHOPLIFTED MERCHANDISE WAS BROUGHT INTO OR TRANSPORTED IN THIS STATE
21 SOLELY FOR ULTIMATE DISTRIBUTION IN ANOTHER JURISDICTION; NOR SHALL IT
22 BE A DEFENSE THAT ANY PROFIT WAS INTENDED TO BE MADE IN ANOTHER JURIS-
23 DICTION.

24 S 2. Section 155.40 of the penal law, as amended by chapter 515 of
25 the laws of 1986, is amended to read as follows:

26 S 155.40 Grand larceny in the second degree.

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

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

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

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

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

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