

4059

2011-2012 Regular Sessions

I N S E N A T E

March 16, 2011

Introduced by Sen. 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 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 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-security
9 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 operation
12 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 investigation
15 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 operation
23 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

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

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

28 S 2. Subdivisions 5, 6 and 8 of section 11-105 of the general obli-
29 gations law, as added by chapter 724 of the laws of 1991, are amended
30 and two new subdivisions 2-a and 8-a are added to read as follows:

31 2-A. WHEN USED IN THIS SECTION, THE TERM "ACTUAL SALES PRICE" SHALL
32 MEAN THE PRICE OF THE MERCHANDISE OFFERED FOR SALE TO THE PUBLIC AT THE
33 SPECIFIC PLACE, ON THE SPECIFIC DAY AND AT THE SPECIFIC TIME OF THE
34 ALLEGED LARCENY.

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

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

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

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

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

53 (b) a penalty not to exceed the greater of [five] THREE times the
54 [retail] ACTUAL SALES price of the merchandise or [seventy-five] TWEN-
55 TY-FIVE dollars; provided, however, that in no event shall such penalty
56 exceed five hundred dollars.

1 8. The fact that an operator of a mercantile establishment may bring
2 an action against an individual as provided in this section shall not
3 limit the right of such merchant to [demand, orally or] ASK in writing,
4 that a person who is liable for damages and penalties under this section
5 remit the damages and penalties prior to the commencement of any legal
6 action. PROVIDED, HOWEVER, UNDER NO CIRCUMSTANCES SHALL THE PROVISIONS
7 OF THIS SUBDIVISION BE DEEMED TO AUTHORIZE THE OPERATOR OF A MERCANTILE
8 ESTABLISHMENT TO DETAIN ANY PERSON IN VIOLATION OF SECTION TWO HUNDRED
9 EIGHTEEN OF THE GENERAL BUSINESS LAW FOR THE PURPOSE OF RECOVERING THE
10 DAMAGES AND PENALTIES ESTABLISHED PURSUANT TO THIS SECTION. ANY OPERATOR
11 OF A MERCANTILE ESTABLISHMENT WHO SO DETAINS ANY PERSON IN VIOLATION OF
12 SUCH SECTION OF THE GENERAL BUSINESS LAW SHALL FORFEIT HIS OR HER RIGHT
13 TO DAMAGES AND PENALTIES PURSUANT TO THIS SECTION, AND SHALL REMAIN
14 CIVILLY LIABLE TO THE PERSON DETAINED FOR FALSE ARREST, FALSE IMPRISON-
15 MENT, UNLAWFUL DETENTION, DEFAMATION OF CHARACTER, ASSAULT, TRESPASS
16 AND/OR INVASION OF CIVIL RIGHTS.

17 8-A. IN ANY ACTION BROUGHT PURSUANT TO SUBDIVISION FIVE OR SIX OF THIS
18 SECTION, THE COURT SHALL CONSIDER IN THE INTEREST OF JUSTICE, AS A MITI-
19 GATING CIRCUMSTANCE, ANY CREDIBLE EVIDENCE OFFERED BY THE DEFENDANT OF
20 MENTAL DISEASE OR DEFECT, AS DEFINED IN SECTION 40.15 OF THE PENAL LAW,
21 SUFFERED BY SUCH DEFENDANT.

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