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I N   A S S E M B L Y

May 15, 2014

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Introduced by M. of A. SEPULVEDA -- read once and referred to the  
Committee on Economic Development

AN ACT to amend the general business law, in relation to mercantile  
establishments and the defense of lawful detention

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. 1. Defense of lawful detention. In any action for false  
4     arrest, 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 authorized employee or agent,  
18    and that such officer, owner, employee or agent had reasonable grounds  
19    to believe that the person so detained was guilty of criminal possession  
20    of an anti-security item as defined in section 170.47 of the penal law  
21    or was committing or attempting to commit larceny on such premises of  
22    such merchandise or was engaged in the unauthorized operation of a  
23    recording device in a motion picture theater.  
24    2. As used in this section, "reasonable grounds" shall include, but  
25    not be limited to, knowledge that a person [(i)] (A) has concealed  
26    possession of unpurchased merchandise of a retail mercantile establish-  
27    ment, or [(ii)] (B) has possession of an item designed for the purpose  
28    of overcoming detection of security markings attachments placed on

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

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1 merchandise offered for sale at such an establishment, or [(iii)] (C)  
2 has possession of a recording device in a theater in which a motion  
3 picture is being exhibited [and a].

4 3. A "reasonable time" shall mean the PERIOD OF time [necessary to  
5 permit the person detained to make a statement or to refuse to make a  
6 statement, and the time necessary], NOT TO EXCEED ONE HOUR, to examine  
7 employees and records of the mercantile establishment relative to the  
8 ownership of the merchandise, or possession of such an item or device.

9 4. UNDER NO CIRCUMSTANCES SHALL "REASONABLE TIME" INCLUDE, NOR SHALL  
10 THE RELEASE FROM DETENTION BY A MERCANTILE ESTABLISHMENT BE CONDITIONED  
11 UPON, ANY REQUIREMENT THAT THE PERSON DETAINED FOR THE ALLEGED COMMIS-  
12 SION OF A LARCENY, OR HIS OR HER PARENT OR LEGAL GUARDIAN, ENTER INTO  
13 ANY AGREEMENT TO PAY, DIRECTLY OR THROUGH THE EXTENSION OF CREDIT, THE  
14 CIVIL DAMAGES AND PENALTIES PROVIDED FOR IN SECTION 11-105 OF THE GENER-  
15 AL OBLIGATIONS LAW; OR SIGN ANY PAPERWORK WHATSOEVER PRESENTED TO THAT  
16 INDIVIDUAL DETAINED OR SIGN ANY PAPERWORK WHATSOEVER PRESENTED TO HIS OR  
17 HER PARENT OR LEGAL GUARDIAN, PARTICULARLY THE PREPARED FORM THAT  
18 STATES, IN ESSENCE: "THE MERCANTILE ESTABLISHMENT DIDN'T COERCE YOU IN  
19 ANY WAY INTO SIGNING ANYTHING, YOU SIGNED VOLUNTARILY." EVERY PERSON WHO  
20 IS DETAINED PURSUANT TO THIS SECTION, AND, IF, DURING SUCH DETENTION  
21 MAKES AN ORAL STATEMENT OR SIGNS ANY STATEMENT OR DOCUMENTS, OR HIS OR  
22 HER PARENT OR LEGAL GUARDIAN SIGNS ANY STATEMENT OR DOCUMENTS, SHALL  
23 UPON HIS OR HER RELEASE BE PROVIDED WITH A WRITTEN TRANSCRIPT OF SUCH  
24 ORAL STATEMENT AND COPIES OF ANY STATEMENT OR DOCUMENTS SO SIGNED.

25 5. Such detention at such vicinity shall not authorize the taking of  
26 such person's fingerprints at such vicinity unless the taking of finger-  
27 prints is otherwise authorized by section 160.10 of the criminal proce-  
28 dure law and are taken by the arresting or other appropriate police  
29 officer or agency described therein in accordance with section 140.20 or  
30 140.27 of such law. Whenever fingerprints are taken, the requirements of  
31 article one hundred sixty of the criminal procedure law shall apply as  
32 if fully set forth herein.

33 S 2. This act shall take effect immediately.