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

5293--A

2015-2016 Regular Sessions

I N S E N A T E

May 12, 2015

Introduced by Sen. DIAZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- recommitted to the Committee on Consumer Protection in accordance with Senate Rule 6, sec. 8 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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 ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Section 218 of the general business law, as amended by chapter 374 of the laws of 1994, is amended to read as follows:

S 218. 1. Defense of lawful detention. In any action for false arrest, false imprisonment, unlawful detention, defamation of character, assault, trespass, or invasion of civil rights, brought by any person by reason of having been detained on or in the immediate vicinity of the premises of (a) a retail mercantile establishment for the purpose of investigation or questioning as to criminal possession of an anti-security item as defined in section 170.47 of the penal law or as to the ownership of any merchandise, or (b) a motion picture theater for the purposes of investigation or questioning as to the unauthorized operation of a recording device in a motion picture theater, it shall be a defense to such action that the person was detained in a reasonable manner and for not more than a reasonable time to permit such investigation or questioning by a peace officer acting pursuant to his special duties, police officer or by the owner of the retail mercantile establishment or motion picture theater, his authorized employee or agent, and that such officer, owner, employee or agent had reasonable grounds to believe that the person so detained was guilty of criminal possession of an anti-security item as defined in section 170.47 of the penal law or was committing or attempting to commit larceny on such premises of

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

LBD06502-03-6

such merchandise or was engaged in the unauthorized operation of a recording device in a motion picture theater.

2. As used in this section, "reasonable grounds" shall include, but not be limited to, knowledge that a person [(i)] (A) has concealed possession of unpurchased merchandise of a retail mercantile establishment, or [(ii)] (B) has possession of an item designed for the purpose of overcoming detection of security markings attachments placed on merchandise offered for sale at such an establishment, or [(iii)] (C) has possession of a recording device in a theater in which a motion picture is being exhibited [and a].

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

4. UNDER NO CIRCUMSTANCES SHALL "REASONABLE TIME" INCLUDE, NOR SHALL THE RELEASE FROM DETENTION BY A MERCANTILE ESTABLISHMENT BE CONDITIONED UPON, ANY REQUIREMENT THAT THE PERSON DETAINED FOR THE ALLEGED COMMISSION OF A LARCENY, OR HIS OR HER PARENT OR LEGAL GUARDIAN, ENTER INTO ANY AGREEMENT TO PAY, DIRECTLY OR THROUGH THE EXTENSION OF CREDIT, THE CIVIL DAMAGES AND PENALTIES PROVIDED FOR IN SECTION 11-105 OF THE GENERAL OBLIGATIONS LAW; OR SIGN ANY PAPERWORK WHATSOEVER PRESENTED TO THAT INDIVIDUAL DETAINED OR SIGN ANY PAPERWORK WHATSOEVER PRESENTED TO HIS OR HER PARENT OR LEGAL GUARDIAN, PARTICULARLY THE PREPARED FORM THAT STATES, IN ESSENCE: "THE MERCANTILE ESTABLISHMENT DIDN'T COERCE YOU IN ANY WAY INTO SIGNING ANYTHING, YOU SIGNED VOLUNTARILY." EVERY PERSON WHO IS DETAINED PURSUANT TO THIS SECTION, AND, IF, DURING SUCH DETENTION MAKES AN ORAL STATEMENT OR SIGNS ANY STATEMENT OR DOCUMENTS, OR HIS OR HER PARENT OR LEGAL GUARDIAN SIGNS ANY STATEMENT OR DOCUMENTS, SHALL UPON HIS OR HER RELEASE BE PROVIDED WITH A WRITTEN TRANSCRIPT OF SUCH ORAL STATEMENT AND COPIES OF ANY STATEMENT OR DOCUMENTS SO SIGNED. ANY STATEMENT DESCRIBED IN THIS SUBDIVISION, PRIOR TO IT BEING SIGNED, SHALL BE TRANSLATED INTO THE LANGUAGE SPOKEN BY THE PERSON DETAINED, OR IN THE CASE OF A MINOR, THE LANGUAGE SPOKEN BY SUCH DETAINEE'S PARENT OR LEGAL GUARDIAN.

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

S 2. This act shall take effect immediately.