

STATE OF NEW YORK

2061

2017-2018 Regular Sessions

IN ASSEMBLY

January 17, 2017

Introduced by M. of A. SEPULVEDA, RAIA, RODRIGUEZ, STECK, JEAN-PIERRE --
Multi-Sponsored by -- M. of A. COOK -- 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 § 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 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 opera-
23 tion of a recording device in a motion picture theater.

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

LBD07383-02-7

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

9 3. A "reasonable time" shall mean the time necessary, not to exceed
10 one hour, except for extraordinary circumstances, to permit the person
11 detained to make a statement or to refuse to make a statement[7] and the
12 time necessary to examine employees and records of the mercantile estab-
13 lishment relative to the ownership of the merchandise, or possession of
14 such an item or device.

15 4. The release from detention shall not be conditioned upon any
16 requirement that, the person detained pursuant to subdivision one of
17 this section, or his or her parent or legal guardian, sign any docu-
18 ments, statements, or agreements to pay damages. Any documents presented
19 shall not contain any message stating that such document or statement is
20 being signed voluntarily and without coercion. Any person detained, or
21 his or her parent or legal guardian, who signs any statement or docu-
22 ments, shall, upon release, be provided with copies of such statements
23 or documents so signed. A minor, under the age of eighteen, detained
24 pursuant to this section, should immediately be afforded the ability to
25 contact his or her parents or legal guardian.

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

34 § 2. This act shall take effect immediately.