

House Bill 327 (AS PASSED HOUSE AND SENATE)

By: Representatives Momtahan of the 17th, Kelley of the 16th, Efstoration of the 104th, Reeves of the 34th, Allen of the 40th, and others

A BILL TO BE ENTITLED
AN ACT

1 To prevent organized retail crime; to amend Chapter 1 of Title 10 of the Official Code of
2 Georgia Annotated, relating to selling and other trade practices, so as to provide for
3 definitions; to provide for certain record-keeping and reporting requirements for the sale and
4 purchase of stored value cards; to provide for penalties for failure to comply; to amend
5 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
6 so as to define certain terms relating to retail property fencing, shoplifting, and refund fraud;
7 to provide for the crime of organized retail theft; to provide for penalties for violations; to
8 provide a short title; to provide for related matters; to repeal conflicting laws; and for other
9 purposes.

10 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

11 **PART ONE**
12 **SECTION 1-1.**

13 This Act shall be known and may be cited as the "Organized Retail Crime Prevention Act."

PART TWO**SECTION 2-1.**

Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other trade practices, is amended by revising Article 12, which was previously reserved, as follows:

"ARTICLE 12

10-1-310.

(a) As used in this article, the term:

(1) 'Corporate authorized reseller' means any person or entity authorized by the corporate issuer or a corporate issuer agent to sell the stored value cards of a corporate issuer.

(2) 'Corporate issuer' means a company that issues or contracts with an affiliate or third party to issue stored value cards that may be used by the cardholder to purchase goods or services at the retail locations of the corporate issuer or its affiliates or online from the corporate issuer or its affiliates.

(3) 'Corporate issuer agent' means a third party authorized by the corporate issuer to facilitate the sale of its stored value cards by corporate authorized resellers.

(4) 'Stored value card' means any 'gift certificate' or 'store gift card,' as such terms are defined in subparagraph (b)(33)(B) of Code Section 10-1-393, issued with or without a fee for the use of the cardholder to obtain money, goods, services, or anything else of value. The term shall not include a 'general use gift card' as such term is defined in subparagraph (b)(33)(B) of Code Section 10-1-393, demand deposit account, share draft account, savings account, prepaid debit card, or any card sold by a financial institution or access device associated therewith.

37 (5) 'Third party card' means a stored value card for which the merchant buying or selling
38 the card is neither the corporate issuer, a corporate issuer agent, nor a corporate
39 authorized reseller.

40 (6) 'Third party card dealer' means a merchant in the business of buying and selling third
41 party cards.

42 (b) When a third party card dealer makes a sale or purchase of a stored value card,
43 including any transaction that occurs in this state, such third party card dealer shall record
44 the information provided for in subsection (c) of this Code section and maintain a copy of
45 such record for at least three years.

46 (c) Third party card dealers shall maintain a permanent record in which shall be entered
47 in legible English at the time of each purchase of a third party card:

48 (1) The date of the transaction;

49 (2) The name of the person conducting the transaction;

50 (3) The name, age, and address of the seller and the distinctive number from the
51 customer's driver's license or other similar identification card;

52 (4) An identification of the purchased stored value card, including the retailer for which
53 the stored value card is intended and the stored value card number;

54 (5) The amount of stored value on the stored value card;

55 (6) The price paid; and

56 (7) The signature of the customer.

57 (d) Entries shall appear in ink or be logged into a secure data base, software system, or
58 other technology platform and shall be in chronological order. No obliterations, alterations,
59 or erasures may be made. If handwritten corrections are made, such corrections shall be
60 made by drawing a line of ink through the entry without destroying its legibility. The
61 permanent record shall be open to the inspection of any duly authorized law enforcement
62 officer during the ordinary hours of business or at any reasonable time.

63 (e) Any third party card dealer and any clerk, agent, or employee of such third party card
 64 dealer who knowingly:

65 (1) Fails to make an entry of any material matter in his or her permanent record;

66 (2) Makes any false entry therein;

67 (3) Falsifies, obliterates, destroys, or removes from his or her place of business such
 68 permanent record;

69 (4) Refuses to allow any duly authorized law enforcement officer who is certified by the
 70 Georgia Peace Officer Standards and Training Council, or who is a federal officer, to
 71 inspect his or her permanent record or any stored value cards in his or her possession
 72 during the ordinary hours of business or at any reasonable time; or

73 (5) Fails to maintain a record of each stored value card transaction for at least three years
 74 shall be guilty of a misdemeanor.

75 (f) Upon filing an official report to a law enforcement agency of competent jurisdiction
 76 by any person alleging to be a victim of theft of one or more stored value cards with an
 77 aggregate value exceeding \$500.00, such law enforcement agency may request that the
 78 issuer or its agents preserve and provide to law enforcement all relevant evidence
 79 reasonably foreseeable to assist in future criminal actions in accordance with the laws of
 80 evidence in criminal proceedings Reserved."

81 **PART THREE**

82 **SECTION 3-1.**

83 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
 84 is amended by revising paragraph (1) of subsection (a) of Code Section 16-8-5.2, relating to
 85 retail property fencing, civil forfeiture, and related matters, as follows:

86 "(1) 'Retail property' means any ~~new~~ article, product, commodity, item, or component
 87 intended to be sold in retail commerce."

88 **SECTION 3-2.**

89 Said article is further amended by revising subparagraph (b)(1)(C) of Code Section 16-8-14,
90 relating to theft by shoplifting, as follows:

91 "(C)(i) As used in this subparagraph, the term 'conviction' shall include a plea of nolo
92 contendere.

93 (ii) Upon conviction of a fourth or subsequent offense for shoplifting, where when
94 the prior convictions are either felonies or misdemeanors, or any combination of
95 felonies and misdemeanors, as defined by this Code section, the defendant commits
96 shall be guilty of a felony and shall be punished by imprisonment for not less than one
97 nor more than ten years; and the first year of such sentence shall not be suspended,
98 probated, deferred, or withheld; provided, however, that, in the court's discretion, the
99 court may depart from such mandatory minimum sentence when the prosecuting
100 attorney and defendant have agreed to a sentence that is below such mandatory
101 sentence."

102 **SECTION 3-3.**

103 Said article is further amended by revising paragraph (3) of subsection (c) of Code
104 Section 16-8-14.1, relating to refund fraud, as follows:

105 "(3)(A) As used in this paragraph, the term 'conviction' shall include a plea of nolo
106 contendere.

107 (B) Upon conviction of a fourth or subsequent offense for a violation of any provision
108 of this Code section, the defendant shall be guilty of a felony and shall be punished by
109 imprisonment for not less than one nor more than ten years; and the first year of such
110 sentence shall not be suspended, probated, deferred, or withheld; provided, however,
111 that, in the court's discretion, the court may depart from such mandatory minimum
112 sentence when the prosecuting attorney and defendant have agreed to a sentence that
113 is below such mandatory sentence."

114 **SECTION 3-4.**

115 Said article is further amended by adding a new Code section to read as follows:

116 "16-8-14.2.

117 (a) A person commits the offense of organized retail theft when such person intentionally
118 organizes, plans, finances, directs, manages, or supervises one or more other persons to
119 appropriate property of a store or retail establishment to his or her own use without paying
120 for such property or to deprive the owner of the property of the value thereof, in whole or
121 in part, and when such property is taken from one or more stores or retail establishments
122 over a period of 180 days with the intent to sell such property for monetary or other gain
123 and when the aggregate value of the property which was the subject of the theft has a value
124 exceeding \$24,999.99 and is placed or is to be placed in the control of a retail property
125 fence as defined in Code Section 16-8-5.2 or other person in exchange for consideration.

126 (b) In all cases involving organized retail theft, the term 'value' means the actual retail
127 price of the property at the time and place of the offense. The unaltered price tag or other
128 marking on property, or duly identified photographs thereof, shall be prima-facie evidence
129 of value and ownership of the property.

130 (c) In any criminal proceeding pursuant to this Code section, the crime shall be considered
131 to have been committed in any county in which an incident of organized retail theft
132 occurred.

133 (d) A person convicted of a violation of this Code section shall be guilty of a felony and
134 shall be punished by imprisonment for not less than three nor more than 20 years, a fine not
135 to exceed \$50,000.00, or both."

136 **PART FOUR**137 **SECTION 4-1.**

138 All laws and parts of laws in conflict with this Act are repealed.