By Senators Chambliss, Waggoner, Gudger, Jones, Price, Roberts, Scofield, Williams, Allen, Elliott, Weaver, Livingston, Hovey, Carnley, Givhan, Sessions, Albritton, Melson, Bell, Chesteen

RFD: Judiciary
First Read: 12-Apr-23

2023 Regular Session
Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3 vote unless: it comes within one of a number of specified exceptions; it is approved by the affected entity; or the Legislature appropriates funds, or provides a local source of revenue, to the entity for the purpose.

The purpose or effect of this bill would be to require a new or increased expenditure of local funds within the meaning of the amendment. However, the bill does not require approval of a local governmental entity or enactment by a 2/3 vote to become effective because it comes within one of the specified exceptions contained in the amendment.

A BILL
TO BE ENTITLED
AN ACT

Relating to crimes and offenses; to create the Retail Theft Crime Prevention Act; to provide for the crime of retail theft in various degrees; to provide for the crime of organized retail theft; to provide criminal penalties for a
violation; and in connection therewith would have as its purpose or effect the requirement of a new or increased expenditure of local funds within the meaning of Section 111.05 of the Constitution of Alabama of 2022.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. Article 11, commencing with Section 13A-8-220, is added to Chapter 8 of Title 13A, Code of Alabama 1975, to read as follows:

Article 11

§13A-8-220

This article shall be known and may be cited as the Retail Theft Crime Prevention Act.

§13A-8-221

As used in this article, the following terms have the following meanings:

(1) CONCEAL. To place merchandise in a manner that is not visible through ordinary observation.

(2) ORGANIZED RETAIL THEFT. Obtaining or exerting unauthorized control over retail merchandise from a retail merchant, retail establishment, or premises of a retail establishment with the intent to deprive the owner or retail merchant of his or her property or reselling, distributing, or otherwise reentering the retail merchandise in commerce, including the transfer of the stolen retail merchandise to another retail merchant or to any other person, whether in person, through the mail, or through any electronic medium, including the Internet, in exchange for anything of value.

(3) PREMISES OF A RETAIL ESTABLISHMENT. The retail
SB206 Engrossed

establishment, common use areas in shopping centers, and
parking areas designated by a merchant or on behalf of a
merchant for the parking of motor vehicles for the convenience
of the patrons of the retail establishment or where stored for
delivery or transport to a retail establishment.

(4) RETAIL ESTABLISHMENT. Any place where merchandise
is displayed, held, stored, or offered for sale to the public.

(5) RETAIL MERCHANDISE. Any article, product,
commodity, component, or items of tangible personal property
displayed, held, stored, or offered for sale within a retail
establishment.

(6) RETAIL MERCHANT. An owner or operator of a retail
establishment or an agent, employee, lessee, officer, or
director of the owner or operator.

(7) RETAIL VALUE. The actual retail price of
merchandise prior to the commission of the subject criminal
offense.

§13A-8-222

A person commits the crime of retail theft if, with the
intent to obtain or exert unauthorized control over retail
merchandise from a retail merchant, retail establishment, or
premises of a retail establishment, or with the intent to
deprive the owner or retail merchant of his or her retail
merchandise of all or some part of the value thereof or
without paying for the retail merchandise, he or she knowingly
does any of the following:

(1) Conceals upon his or her person or in another
manner and takes possession of two or more items of retail
merchandise of the retail establishment.

(2) Alters, transfers, or removes the label, price tag, marking, indicia of value, or any other markings that aid in determining the value affixed to retail merchandise in a retail establishment, and purchases, or attempts to purchase, the merchandise at less than its value.

(3) Transfers retail merchandise in a retail establishment from one container to another with the intent to purchase the merchandise at less than its retail value.

(4) Causes the cash register or other sales recording device to reflect less than the retail value of the retail merchandise of a retail establishment.

(5) Fails to scan the barcode and pay for retail merchandise at a cash register or self-checkout register.

(6) Causes the amount paid to be less than the retail merchant's stated price for the retail merchandise.

(7) Alters, bypasses, disabling, shields, or removes any security or alarm device attached to or housing retail merchandise prior to the purchase of the merchandise.

(8) Removes or causes the removal of retail merchandise from the premises of a retail establishment.

(9) Collaborates with an employee of the retail establishment to commit any form of retail theft described in this section.

§13A-8-223

(a)(1) Retail theft that exceeds two thousand five hundred dollars ($2,500) in retail value constitutes retail theft in the first degree.
(2) Retail theft of one or more items of retail merchandise during a 180-day period, the aggregate value of which is one thousand dollars ($1,000) or more constitutes retail theft in the first degree.

(3) Theft of a firearm, rifle, or shotgun, regardless of its value, from a retail merchant constitutes retail theft in the first degree.

(b) Retail theft in the first degree is a Class B felony.

§13A-8-224

(a) Retail theft that exceeds five hundred dollars ($500) in retail value, but does not exceed two thousand five hundred dollars ($2,500) in retail value, constitutes retail theft in the second degree.

(b) Retail theft in the second degree is a Class C felony.

§13A-8-225

(a) Retail theft that does not exceed five hundred dollars ($500) in retail value constitutes retail theft in the third degree.

(b) Retail theft in the third degree is a Class A misdemeanor.

(c) A fourth or subsequent conviction for an offense under this article is a Class C felony.

§13A-8-226

(a) A person commits the crime of organized retail theft when the person, in association with one or more other persons, knowingly does any of the following:
(1) Organizes, supervises, finances, participates, directs, solicits, or otherwise manages or assists another person in committing organized retail theft.

(2) Removes, destroys, deactivates, or knowingly evades any component of an antishoplifting or inventory control device to prevent the activation of that device or to facilitate another person in committing organized retail theft.

(3) Attempts, solicits, or conspires with another person to commit organized retail theft.

(4) Receives, purchases, or possesses retail merchandise for sale or resale knowing or believing the retail merchandise to be stolen is from a retail merchant.

(5) Uses any fraud, artifice, instrument, container, device, or other article to facilitate the commission of organized retail theft.

(6) Remains unlawfully inside a retail establishment after business hours, with the intent to commit a retail theft therein.

(7) Uses a wireless telecommunication device or other digital or electronic device to facilitate the theft of retail merchandise.

(8) Uses a rental or stolen motor vehicle or vehicle of another in the course of committing retail theft for the purposes of the concealment of his or her identity.

(9) Receives, retains, or disposes of retail merchandise knowing that it has been stolen or having reasonable grounds to believe it has been stolen.
(b) It shall be prima facie evidence that a person who violates this section acts knowingly when any of the following apply:

(1) On two or more separate occasions within a year prior of the commission of the instant offense of organized retail theft, the person is found in possession or control of stolen retail merchandise.

(2) The person possesses retail merchandise which has been recently stolen.

(3) The person regularly buys, sells, uses, or handles in the course of business retail merchandise of the sort received, and acquired the retail merchandise without making reasonable inquiry whether the individual selling or delivering the retail merchandise to him or her had a legal right to do so.

(c) The fact that the person or persons who acted in association with the person charged under this article have not been charged, convicted, apprehended, or identified is not a defense to a charge of organized retail theft.

(d) Organized retail theft is a Class B felony.

§13A-8-227

(a) Any proceeds, property obtained by proceeds, or instruments of the crimes of organized retail theft or retail theft may be subject to forfeiture pursuant to the procedures set forth in Section 20-2-93.

(b) When a person is convicted of organized retail theft or retail theft, upon request of the district attorney, the court shall order the defendant to make restitution as
follows:

(1) To the retail merchant victim, pursuant to the procedures set forth in Section 15-18-67.

(2) To the primary investigative law enforcement and prosecutorial entities for any legitimate cost incurred in the course of the investigation or prosecution, pursuant to the procedures set forth in Section 20-2-190(j), or an amount agreed upon by the district attorney.

§13A-8-228

It is not a defense to a charge under this article that the property was not stolen, embezzled, or converted property at the time of the violation if the property was explicitly represented to the accused person as being stolen, embezzled, or converted property.

§13A-8-229

Nothing in this article prohibits a person from being charged with, convicted of, or sentenced for any violation of law arising out of the same criminal transaction that violates this article.

§13A-8-230

(a) Any violation of this article may only be prosecuted in the circuit or district court.

(b) In any criminal proceeding brought pursuant to this article, the crime shall be considered to be committed in any county in which any part of the crime took place, regardless of whether the defendant was ever actually present in that county, or in the county of residence of the person who is the subject of the theft by retail theft or organized retail
theft.

(c) Any arrest or detention by a retail merchant shall be subject to the requirements and protections as provided in Section 15-10-14.

§13A-8-231

(a) The fact that a person conceals merchandise for which he or she has not paid the full value, and the retail merchandise has been taken beyond the area within the retail establishment or premises of a retail establishment where payment for it is to be made, shall be prima facie evidence that the person has possessed, carried away, or transferred the retail merchandise with the intention of depriving the retail merchant of all or part of the full value of the retail merchandise without paying the full value of the retail merchandise in violation of this article.

(b)(1) A violation of this article shall be deemed prima facie evidence that the person intended to deprive the merchant of all or part of the full retail value of the merchandise without paying the full value of the merchandise.

(2) The unaltered price tag or other marking on the merchandise, or duly identified photographs of the merchandise, shall be prima facie evidence of the merchandise's actual retail value and ownership.

(c) Nothing in this subsection shall be construed to provide that the mere possession of goods or the production by shoppers of improperly priced merchandise for checkout shall constitute prima facie evidence of guilt.

§13A-8-232
(a) A warrant for the crime of retail theft or organized retail theft may be sworn and issued by a magistrate remotely, digitally, via video link, or by telephone. The physical presence of the affiant before the magistrate is not required.

(b) Other methods of technology not specifically described in subsection (a) may be used to facilitate the oath and issuance of a criminal warrant pursuant to this article upon the approval of the technology by the presiding judge and district attorney of the judicial circuit.

§13A-8-233

The Office of Prosecution Services, Office of the Attorney General, Alabama State Law Enforcement Agency, Alabama Association of Chiefs of Police, Alabama Sheriffs Association, Alabama Grocers Association, and Alabama Retail Association shall make reasonable coordinated efforts to develop training for prosecutors and law enforcement agencies throughout the state to combat organized retail crime, violations of Chapter 41 of Title 8, and other crimes negatively impacting small and large businesses in Alabama and make recommendations to the Alabama Legislature and Governor regarding public safety and the prevention of organized retail crime, enforcement and prosecution of this article and Chapter 41 of Title 8, as well as the impact of organized retail thefts on Alabama businesses and the public.

Section 2. Although this bill would have as its purpose or effect the requirement of a new or increased expenditure of local funds, the bill is excluded from further requirements
and application under Section 111.05 of the Constitution of Alabama of 2022, because the bill defines a new crime or amends the definition of an existing crime.

Section 3. This act shall become effective on the first day of the third month following its passage and approval by the Governor, or its otherwise becoming law.
Read for the first time and referred ...............12-Apr-23
to the Senate committee on Judiciary

Read for the second time and placed ...............27-Apr-23
on the calendar:
0 amendments

Read for the third time and passed ...............11-May-23
as amended
    Yeas 34
    Nays 0
    Abstains 0

Patrick Harris,
Secretary.