

SB206 ENROLLED



1 9321BP-3
2 By Senators Chambliss, Waggoner, Gudger, Jones, Price,
3 Roberts, Scofield, Williams, Allen, Elliott, Weaver,
4 Livingston, Hovey, Carnley, Givhan, Sessions, Albritton,
5 Melson, Bell, Chesteen
6 RFD: Judiciary
7 First Read: 12-Apr-23
8 2023 Regular Session



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1 Enrolled, An Act,

2

3 Relating to crimes and offenses; to create the Retail
4 Theft Crime Prevention Act; to provide for the crime of retail
5 theft in various degrees; to provide for the crime of
6 organized retail theft; to provide criminal penalties for a
7 violation; and in connection therewith would have as its
8 purpose or effect the requirement of a new or increased
9 expenditure of local funds within the meaning of Section
10 111.05 of the Constitution of Alabama of 2022.

11 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

12 Section 1. Article 11, commencing with Section
13 13A-8-220, is added to Chapter 8 of Title 13A, Code of Alabama
14 1975, to read as follows:

15 Article 11

16 §13A-8-220

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

19 §13A-8-221

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

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

24 (2) ORGANIZED RETAIL THEFT. Obtaining or exerting
25 unauthorized control over retail merchandise from a retail
26 merchant, retail establishment, or premises of a retail
27 establishment with the intent to deprive the owner or retail
28 merchant of his or her property or reselling, distributing, or



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29 otherwise reentering the retail merchandise in commerce,
30 including the transfer of the stolen retail merchandise to
31 another retail merchant or to any other person, whether in
32 person, through the mail, or through any electronic medium,
33 including the Internet, in exchange for anything of value.

34 (3) PREMISES OF A RETAIL ESTABLISHMENT. The retail
35 establishment, common use areas in shopping centers, and
36 parking areas designated by a merchant or on behalf of a
37 merchant for the parking of motor vehicles for the convenience
38 of the patrons of the retail establishment or where stored for
39 delivery or transport to a retail establishment.

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

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

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

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

52 §13A-8-222

53 A person commits the crime of retail theft if, with the
54 intent to obtain or exert unauthorized control over retail
55 merchandise from a retail merchant, retail establishment, or
56 premises of a retail establishment, or with the intent to



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57 deprive the owner or retail merchant of his or her retail
58 merchandise of all or some part of the value thereof or
59 without paying for the retail merchandise, he or she knowingly
60 does any of the following:

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

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

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

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

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

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

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

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

84 (9) Collaborates with an employee of the retail



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85 establishment to commit any form of retail theft described in
86 this section.

87 §13A-8-223

88 (a) (1) Retail theft that exceeds two thousand five
89 hundred dollars (\$2,500) in retail value constitutes retail
90 theft in the first degree.

91 (2) Retail theft of one or more items of retail
92 merchandise during a 180-day period, the aggregate value of
93 which is one thousand dollars (\$1,000) or more constitutes
94 retail theft in the first degree.

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

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

100 §13A-8-224

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

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

107 §13A-8-225

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

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



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

115 §13A-8-226

116 (a) A person commits the crime of organized retail
117 theft when the person, in association with one or more other
118 persons, knowingly does any of the following:

119 (1) Organizes, supervises, finances, participates,
120 directs, solicits, or otherwise manages or assists another
121 person in committing organized retail theft.

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

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

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

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

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

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



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

144 (9) Receives, retains, or disposes of retail
145 merchandise knowing that it has been stolen or having
146 reasonable grounds to believe it has been stolen.

147 (b) (1) Theft of one or more items of retail
148 merchandise, the aggregate value of which exceeds two thousand
149 five hundred dollars (\$2,500) in retail value during a
150 one-year or longer period, constitutes organized retail theft.

151 (2) Theft of retail merchandise consisting of one or
152 more items of retail merchandise during a 180-day period, the
153 aggregate value of which is one thousand dollars (\$1,000) or
154 more, constitutes organized retail theft.

155 (3) Theft of retail merchandise consisting of one or
156 more items of retail merchandise during a 30-day period, the
157 aggregate value of which is five hundred dollars (\$500) or
158 more, constitutes organized retail theft.

159 (c) It shall be prima facie evidence that a person who
160 violates this section acts knowingly when any of the following
161 apply:

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

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

168 (3) The person regularly buys, sells, uses, or handles



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169 in the course of business retail merchandise of the sort
170 received, and acquired the retail merchandise without making
171 reasonable inquiry whether the individual selling or
172 delivering the retail merchandise to him or her had a legal
173 right to do so.

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

178 (e) Organized retail theft is a Class B felony.

179 §13A-8-227

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

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

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

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

194 §13A-8-228

195 It is not a defense to a charge under this article that
196 the property was not stolen, embezzled, or converted property



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197 at the time of the violation if the property was explicitly
198 represented to the accused person as being stolen, embezzled,
199 or converted property.

200 §13A-8-229

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

205 §13A-8-230

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

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

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

218 §13A-8-231

219 (a) The fact that a person conceals merchandise for
220 which he or she has not paid the full value, and the retail
221 merchandise has been taken beyond the area within the retail
222 establishment or premises of a retail establishment where
223 payment for it is to be made, shall be prima facie evidence
224 that the person has possessed, carried away, or transferred



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225 the retail merchandise with the intention of depriving the
226 retail merchant of all or part of the full value of the retail
227 merchandise without paying the full value of the retail
228 merchandise in violation of this article.

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

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

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

241 §13A-8-232

242 (a) A warrant for the crime of retail theft or
243 organized retail theft may be sworn and issued by a judge or
244 magistrate remotely, digitally, via video link, or by
245 telephone. The physical presence of the affiant before the
246 judge or magistrate is not required.

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

252 §13A-8-233



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253 The Office of Prosecution Services, Office of the
254 Attorney General, Alabama State Law Enforcement Agency,
255 Alabama Association of Chiefs of Police, Alabama Sheriffs
256 Association, Alabama Grocers Association, and Alabama Retail
257 Association shall make reasonable coordinated efforts to
258 develop training for prosecutors and law enforcement agencies
259 throughout the state to combat organized retail crime,
260 violations of Chapter 41 of Title 8, and other crimes
261 negatively impacting small and large businesses in Alabama and
262 make recommendations to the Alabama Legislature and Governor
263 regarding public safety and the prevention of organized retail
264 crime, enforcement and prosecution of this article and Chapter
265 41 of Title 8, as well as the impact of organized retail
266 thefts on Alabama businesses and the public.

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

273 Section 3. This act shall become effective on the first
274 day of the third month following its passage and approval by
275 the Governor, or its otherwise becoming law.



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President and Presiding Officer of the Senate

Speaker of the House of Representatives

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Senate 11-May-23

I hereby certify that the within Act originated in and passed the Senate, as amended.

Patrick Harris,
Secretary.

House of Representatives
Amended and passed: 31-May-23

Senate concurred in House amendment 31-May-23

By: Senator Chambliss