

House Bill 327 (COMMITTEE SUBSTITUTE)

By: Representatives Momtahan of the 17<sup>th</sup>, Kelley of the 16<sup>th</sup>, Efstoration of the 104<sup>th</sup>, Reeves of the 34<sup>th</sup>, Allen of the 40<sup>th</sup>, 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 amend Article 1 of Chapter 8 of Title 16 of the Official  
5 Code of Georgia Annotated, relating to theft, so as to define certain terms relating to retail  
6 property fencing, shoplifting, and refund fraud; to provide for the crime of organized retail  
7 theft; to provide for penalties for violations; to provide a short title; to provide for related  
8 matters; to repeal conflicting laws; and for other purposes.

9 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

10 **PART ONE**

11 **SECTION 1-1.**

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

H. B. 327 (SUB)

**PART TWO****SECTION 2-1.**

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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:

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**"ARTICLE 12**

19 10-1-310.

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

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

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

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

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

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

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

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

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

47 (1) The date of the transaction;

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

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

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

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

54 (6) The price paid; and

55 (7) The signature of the customer.

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

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

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

65 (2) Makes any false entry therein;

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

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

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

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

80 **PART THREE**

81 **SECTION 3-1.**

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

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

87 **SECTION 3-2.**

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

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

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

101 **SECTION 3-3.**

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

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

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

**SECTION 3-4.**

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

115 "16-8-14.2.116 (a) A person commits the offense of organized retail theft when such person intentionally117 organizes, plans, finances, directs, manages, or supervises one or more other persons to118 appropriate property of a store or retail establishment to his or her own use without paying119 for such property or to deprive the owner of the property of the value thereof, in whole or120 in part, and when such property is taken from one or more stores or retail establishments121 over a period of 180 days with the intent to sell such property for monetary or other gain122 and when the aggregate value of the property which was the subject of the theft has a value123 exceeding \$24,999.99 and is placed or is to be placed in the control of a retail property124 fence as defined in Code Section 16-8-5.2 or other person in exchange for consideration.125 (b) In all cases involving organized retail theft, the term 'value' means the actual retail126 price of the property at the time and place of the offense. The unaltered price tag or other127 marking on property, or duly identified photographs thereof, shall be prima-facie evidence128 of value and ownership of the property.129 (c) In any criminal proceeding pursuant to this Code section, the crime shall be considered130 to have been committed in any county in which an incident of organized retail theft131 occurred.132 (d) A person convicted of a violation of this Code section shall be guilty of a felony and133 shall be punished by imprisonment for not less than three nor more than 20 years, a fine not134 to exceed \$50,000.00, or both."

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**PART FOUR**

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**SECTION 4-1.**

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