

The House Committee on Judiciary Non-civil offers the following substitute to SB 382:

A BILL TO BE ENTITLED
AN ACT

1 To amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,
2 relating to theft, so as to provide for the crime of refund fraud; to provide for penalties; to
3 amend Code Sections 15-10-260, 35-3-37, and 36-32-9 and Title 51 of the Official Code of
4 Georgia Annotated, relating to jurisdiction for trials of certain misdemeanors in magistrate
5 courts, review of criminal history record information, municipal court jurisdiction of
6 misdemeanor theft by shoplifting, and torts, respectively, so as to provide for jurisdiction of
7 refund fraud cases for such courts; to provide for conformity with laws applicable to
8 shoplifting; to increase the liquidated damages amount for property that is willfully damaged
9 or taken; to provide for related matters; to provide for an effective date and for applicability;
10 to repeal conflicting laws; and for other purposes.

11 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

12 PART I
13 SECTION 1-1.

14 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,
15 is amended by adding a new Code section to read as follows:

16 "16-8-14.1.

17 (a)(1) It shall be unlawful for a person to give a false or fictitious name or address or to
18 give the name or address of another person without that person's approval or permission
19 for the purpose of obtaining a refund from a store or retail establishment for merchandise.

20 (2) It shall be unlawful for a person to obtain a refund in the form of cash, check, credit
21 on a credit or debit card, a merchant gift card, or credit in any other form from a store or
22 retail establishment using a driver's license not issued to such person, a driver's license
23 containing false information, an identification card containing false information, an
24 altered identification card, or an identification card not issued to such person.

25 (b) A person who violates subsection (a) of this Code section shall be guilty of refund
26 fraud and, upon conviction, except as provided in subsection (c) of this Code section, shall:
27 (1) When the property which was the subject of the fraud is \$500.00 or less in value, be
28 punished as for a misdemeanor;
29 (2) When the property which was the subject of the fraud exceeds \$500.00 in value, be
30 guilty of a felony and shall be punished by imprisonment for not less than one nor more
31 than ten years;
32 (3) When the property which was the subject of the fraud is taken from three separate
33 stores or retail establishments within one county during a period of seven days or less and
34 when the aggregate value of the property which was the subject of each fraud exceeds
35 \$500.00 in value, be guilty of a felony and shall be punished by imprisonment for not less
36 than one nor more than ten years; and
37 (4) When the property which was the subject of the fraud is taken during a period of
38 180 days and when the aggregate value of the property which was the subject of each
39 fraud exceeds \$500.00 in value, be guilty of a felony and shall be punished by
40 imprisonment for not less than one nor more than ten years.
41 (c)(1) Upon conviction of a second offense for a violation of any provision of this Code
42 section, in addition to or in lieu of any imprisonment which might be imposed, the
43 defendant shall be fined not less than \$500.00, and the fine shall not be suspended or
44 probated;
45 (2) Upon conviction of a third offense for a violation of any provision of this Code
46 section, the defendant shall be guilty of a felony and, in addition to or in lieu of any fine
47 which might be imposed, the defendant shall be punished by imprisonment for not less
48 than 30 days or confinement in a 'special alternative incarceration–probation boot camp,'
49 probation detention center, diversion center, or other community correctional facility of
50 the Department of Corrections for a period of 120 days or shall be sentenced to monitored
51 house arrest for a period of 120 days and, in addition to either such types of confinement,
52 may be required to undergo psychological evaluation and treatment to be paid for by the
53 defendant; and such sentence of imprisonment or confinement shall not be suspended,
54 probated, deferred, or withheld; and
55 (3) Upon conviction of a fourth or subsequent offense for a violation of any provision
56 of this Code section, the defendant shall be guilty of a felony and shall be punished by
57 imprisonment for not less than one nor more than ten years; and the first year of such
58 sentence shall not be suspended, probated, deferred, or withheld;
59 (d) In all cases involving refund fraud, the term 'value' means the actual retail price of the
60 property at the time and place of the offense. The unaltered price tag or other marking on

61 property, or duly identified photographs thereof, shall be prima-facie evidence of value and
 62 ownership of the property.

63 (e) Subsection (b) of this Code section shall not affect the authority of a judge to provide
 64 for a sentence to be served on weekends or during the nonworking hours of the defendant
 65 as provided in Code Section 17-10-3, relative to punishment for misdemeanors."

66 PART II

67 SECTION 2-1.

68 Code Section 15-10-260 of the Official Code of Georgia Annotated, relating to jurisdiction
 69 and penalties for trials of certain misdemeanors in magistrate courts, is amended by revising
 70 subsections (a) and (c) as follows:

71 "(a) This article governs trials of misdemeanor violations of Code Sections 16-13-30, and
 72 16-13-2, ~~relating to possession of less than one ounce of marijuana; Code Section 16-8-14,~~
 73 16-8-14.1, relating to misdemeanor theft by shoplifting; Code Section 3-3-23, relating to
 74 furnishing alcoholic beverages to, and purchase and possession of alcoholic beverages by,
 75 a person under 21 years of age; and Code Section 16-7-21, relating to criminal trespass."

76 "(c) A person convicted of violation of a misdemeanor specified in subsection (a) of this
 77 Code section shall be punished as provided in paragraphs (1) through (4) of this subsection
 78 as follows:

79 (1) For possession of less than one ounce of marijuana, as provided in subsection (b) of
 80 Code Section 16-13-2;

81 (2) For misdemeanor theft by shoplifting, as provided in paragraph (1) of subsection (b)
 82 of Code Section 16-8-14;

83 (3) For misdemeanor refund fraud, as provided in paragraph (1) of subsection (b) of
 84 Code Section 16-8-14.1;

85 (4) (3) For furnishing alcoholic beverages to, and purchase and possession of alcoholic
 86 beverages by, a person under 21 years of age, as provided in Code Section 3-3-23.1; and

87 (5) (4) For criminal trespass, as provided in subsection (d) of Code Section 16-7-21."

88 SECTION 2-2.

89 Code Section 35-3-37 of the Official Code of Georgia Annotated, relating to review of
 90 individual's criminal history record information, is amended by revising division
 91 (j)(4)(B)(xi), as follows:

92 "(xi) Theft in violation of Chapter 8 of Title 16; provided, however, that such
 93 prohibition shall not apply to a misdemeanor conviction of shoplifting or refund fraud
 94 in violation of Code Section 16-8-14 or 16-8-14.1, as applicable; or"

SECTION 2-3.

95

96 Code Section 36-32-9 of the Official Code of Georgia Annotated, relating to municipal court
 97 jurisdiction of misdemeanor theft by shoplifting, is amended by revising subsections (a)
 98 through (c) as follows:

99 "(a) The municipal court is granted jurisdiction to try and dispose of cases in which a
 100 person is charged with a misdemeanor theft by shoplifting or misdemeanor refund fraud
 101 if the offense occurred within the corporate limits of the municipality. The jurisdiction of
 102 such court shall be concurrent with the jurisdiction of any other courts within the county
 103 having jurisdiction to try and dispose of such cases.

104 (b) Any person charged in a municipal court with misdemeanor theft by shoplifting or
 105 misdemeanor refund fraud shall be entitled upon request to have the case against him or
 106 her transferred to the court having general misdemeanor jurisdiction in the county in which
 107 the alleged offense occurred.

108 (c)(1) A person convicted in a municipal court of misdemeanor theft by shoplifting shall
 109 be punished as provided in paragraph (1) of subsection (b) of Code Section 16-8-14,
 110 provided that nothing in this Code section or Code Section 16-8-14 shall be construed to
 111 give any municipality the right to impose a fine or punishment by imprisonment in excess
 112 of the limits as set forth in the municipality's charter.

113 (2) A person convicted in a municipal court of misdemeanor refund fraud shall be
 114 punished as provided in the misdemeanor penalties set forth in Code Section 16-8-14.1,
 115 provided that nothing in this Code section or Code Section 16-8-14.1 shall be construed
 116 to give any municipality the right to impose a fine or punishment by imprisonment in
 117 excess of the limits as set forth in the municipality's charter."

SECTION 2-4.

118

119 Title 51 of the Official Code of Georgia Annotated, relating to torts, is amended by revising
 120 Code Section 51-7-60, relating to preclusion of recovery for detention or arrest of person
 121 suspected of shoplifting under certain circumstances, as follows:

122 "51-7-60.

123 Whenever the owner or operator of a mercantile establishment or any agent or employee
 124 of the owner or operator detains, arrests, or causes to be detained or arrested any person
 125 reasonably thought to be engaged in shoplifting or refund fraud and, as a result of the
 126 detention or arrest, the person so detained or arrested brings an action for false arrest or
 127 false imprisonment against the owner, operator, agent, or employee, no recovery shall be
 128 had by the plaintiff in such action where it is established by competent evidence:

129 (1) That the plaintiff had so conducted himself or herself or behaved in such manner as
 130 to cause a ~~man~~ person of reasonable prudence to believe that the plaintiff, at or

131 immediately prior to the time of the detention or arrest, was committing the offense of
 132 shoplifting, as defined by Code Section 16-8-14, or refund fraud as defined in Code
 133 Section 16-8-14; or

134 (2) That the manner of the detention or arrest and the length of time during which such
 135 plaintiff was detained was under all the circumstances reasonable."

136 **SECTION 2-5.**

137 Said title is further amended by revising paragraph (2) of subsection (a) and subsection (c)
 138 of Code Section 51-10-6, relating to owner's right of action for damage to or theft involving
 139 personal property, as follows:

140 "(2) In any such action in which the value of the total claim, including exemplary
 141 damages, is less than \$5,000.00, the property owner may recover compensatory damages,
 142 as described in paragraph (1) of this subsection, and additionally may recover liquidated
 143 exemplary damages equal to ~~\$150.00 or twice~~ \$300.00 or triple the amount of the entire
 144 loss sustained by the property owner as a result of the willful damage or theft offense,
 145 whichever is greater, and the cost of maintaining the civil action if all of the following
 146 apply:

147 (A) The property owner, at least 30 days prior to the filing of the action, provided
 148 written notice of a demand by personal delivery or certified mail or statutory overnight
 149 delivery, return receipt requested, for payment of the value of that personal property,
 150 the amount of any other loss sustained as a result of the willful damage or theft offense,
 151 and the liquidated exemplary damages set out in this paragraph upon the person who
 152 willfully damaged the property or who committed the theft offense;

153 (B) Either the person who willfully damaged the personal property or who committed
 154 the theft offense did not make payment to the property owner of the amount specified
 155 in the demand within 30 days after the date of receipt of the written demand or did not
 156 enter into an agreement with the property owner during that 30 day period for such
 157 payment, or the person who willfully damaged the personal property or who committed
 158 the theft offense entered into an agreement with the property owner during that 30 day
 159 period for such payment but the person did not make such payment in accordance with
 160 the terms of the agreement; and

161 (C) The property owner did not file a civil complaint against the person who willfully
 162 damaged the personal property or who committed the theft offense prior to the
 163 expiration of 30 days after the date of service of the written demand upon the person,
 164 or, if the person had entered into an agreement with the property owner during that 30
 165 day period for payment, prior to the day on which the person failed to make payment
 166 in accordance with the terms of the agreement, whichever is applicable."

167 "(c) For purposes of paragraph (2) of subsection (a) of this Code section, written notice of
168 demand for payment shall be substantially as follows:

169 'Upon reasonable cause, notice is given of (my) (our) demand for payment of damages
170 in the amount of (state amount claimed: total should be \$150.00 or twice \$300.00 or triple
171 the amount of the entire loss sustained by the property owner as a result of the willful
172 damage or theft offense, whichever is greater) arising out of your (willful damage, theft,
173 or unlawful conversion) of the following personal property owned by (the undersigned
174 or other owner):

175 (List affected property) _____
176 _____
177 _____

178 Pursuant to Code Section 51-10-6 of the Official Code of Georgia Annotated, you are
179 further notified that if the above-stated amount is not paid, or a written agreement as to
180 its payment is not reached, within 30 days of the date you receive this letter, (I) (we)
181 (other owner) intend to bring an action against you for such amount, plus attorney's fees,
182 plus court costs, and such other relief as the law provides.

183 _____"

184 **PART III**
185 **SECTION 3-1.**

186 This Act shall become effective on July 1, 2014, and shall apply to all conduct occurring on
187 or after such date.

188 **SECTION 3-2.**

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