

SENATE BILL 1095

By Southerland

AN ACT to amend Tennessee Code Annotated, Title 39,
Chapter 14 and Title 40, relative to theft.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 39, Chapter 14, Part 1, is amended by adding the following as a new section:

39-14-155.

(a) As used in this section, unless the context otherwise requires:

(1) "Anti-shoplifting or inventory control device" means a mechanism or other device designed and operated for the purpose of detecting the removal from a mercantile establishment or similar enclosure, of specially marked or tagged merchandise. "Anti-shoplifting or inventory control device" includes any electronic or digital imaging or any video recording or other film used for security purposes and the cash register tape or other record made of the register receipt;

(2) "Anti-shoplifting or inventory control device countermeasure" means any item or device which is designed, manufactured, modified, or altered to defeat any anti-shoplifting or inventory control device;

(3) "Merchandise" means any property, capable of manual delivery, displayed, held, or offered for retail sale by a merchant;

(4) "Merchant" means an owner or operator, or the agent, consignee, employee, lessee, or officer of an owner or operator, of any premises or apparatus used for retail purchase or sale of any merchandise;

(5) "Retail theft" means the taking possession of or carrying away of property, money, or negotiable documents; altering or removing a label, universal product code, or price, transferring merchandise from one container to another, or removing a shopping cart, with intent to deprive the merchant of possession, use, benefit, or full retail value;

(6) "Trespass" has the same meaning as the offense "criminal trespass", described in § 39-14-405; and

(7) "Value of merchandise" means the sales price of the merchandise at the time it was stolen or otherwise removed, depriving the owner of the lawful right to ownership and sale of the merchandise.

(b)

(1) A law enforcement officer, a merchant, or agent who has probable cause to believe that a retail theft or trespass, or unlawful use or attempted use of any anti-shoplifting or inventory control device countermeasure, has been committed by a person and, in the case of retail theft, that the property can be recovered by taking the offender into custody may, for the purpose of attempting to recover the property or for prosecution, take the offender into custody and detain the offender in a reasonable manner for a reasonable length of time. In the event the merchant, merchant's employee, or agent takes the person into custody, a law enforcement officer shall be called to the scene immediately after the person has been taken into custody.

(2) The activation of an anti-shoplifting or inventory control device as a result of a person exiting an establishment or protected area within an establishment shall constitute reasonable cause for the detention of the person so exiting by the owner or operator of the establishment or by any agent or

employee of the owner or operator, provided sufficient notice has been posted to advise the patrons that such device is being utilized. Any such detention must be made in a reasonable manner and only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding the activation of the device.

(3) The taking into custody and detention by a law enforcement officer, merchant, merchant's employee, or agent if done in compliance with all requirements of this subsection, shall not render such law enforcement officer, merchant, merchant's employee, or agent, criminally or civilly liable for false arrest, false imprisonment, or unlawful detention.

(c) Any law enforcement officer may arrest either on or off the premises and without warrant, any person the officer has probable cause to believe unlawfully possesses, or is unlawfully using or attempting to use, any anti-shoplifting or inventory control device countermeasure, or has committed theft in a retail or wholesale establishment, or trespass.

(d) A merchant, merchant's employee, or agent who takes a person into custody, as provided in subsection (b), or who causes an arrest, as provided in subsection (c), of a person for retail theft or trespass shall not be criminally or civilly liable for false arrest or false imprisonment when the merchant, merchant's employee, or agent has probable cause to believe that the person committed retail theft or trespass.

(e) It is unlawful to possess, or use or attempt to use any anti-shoplifting or inventory control device countermeasure within any premises used for the retail purchase or sale of any merchandise. Any person who possesses any anti-shoplifting or inventory control device countermeasure within any premises used for retail purchase or sale of any merchandise commits a class E felony.

(f) Except as provided in subsection (g), retail theft is a class E felony if the value of the merchandise exceeds three hundred dollars (\$300) and the person:

(1) Individually or in concert with one (1) or more persons, coordinates the activities of one (1) or more individuals in committing the offense, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(2) Commits theft from more than one (1) location within a forty-eight hour period, in which case the amount of each individual theft is aggregated to determine the value of the property stolen;

(3) Acts in concert with one (1) or more other individuals with one (1) or more establishments to distract the merchant, merchants employee, agent, or law enforcement officer in order to carry out the offense, or acts in other ways to coordinate efforts to carry out the offense; or

(4) Commits the offense through the purchase of merchandise in package or box that contains merchandise other than, or in addition to, the merchandise purported to be contained in package or box.

(g) A second or subsequent conviction for retail theft is a Class D felony if the stolen property has a value in excess of nine hundred ninety-nine dollars and ninety-nine cents (\$999.99). In lieu of the fine authorized by § 40-35-111, the court may require the offender to perform public service as designated by court. In no event shall an offender be required to perform fewer than the number of hours necessary to satisfy the fine assessed by the court, as provided by this subsection (g), at the minimum wage prevailing in the state at the time of sentencing.

(h) Retail theft shall be punished as theft under § 39-14-105 if the value of the merchandise is three hundred dollars (\$300) or less.

SECTION 2. This act shall take effect July 1, 2011, the public welfare requiring it.