

1 HB646  
2 213363-2  
3 By Representative Isbell  
4 RFD: Judiciary  
5 First Read: 27-APR-21

8 SYNOPSIS: This bill would establish the crime of theft  
9 by shoplifting and would prescribe criminal  
10 penalties based on the monetary value of the  
11 property taken.

12 This bill would provide for the crime of  
13 organized retail theft.

14 This bill would also provide for certain  
15 record keeping requirements for the sale and  
16 purchase of stored value cards.

17 Amendment 621 of the Constitution of Alabama  
18 of 1901, as amended by Amendment 890, now appearing  
19 as Section 111.05 of the Official Recompilation of  
20 the Constitution of Alabama of 1901, as amended,  
21 prohibits a general law whose purpose or effect  
22 would be to require a new or increased expenditure  
23 of local funds from becoming effective with regard  
24 to a local governmental entity without enactment by  
25 a 2/3 vote unless: it comes within one of a number  
26 of specified exceptions; it is approved by the  
27 affected entity; or the Legislature appropriates

1 funds, or provides a local source of revenue, to  
2 the entity for the purpose.

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

10  
11 A BILL  
12 TO BE ENTITLED  
13 AN ACT  
14

15 Relating to crimes and offenses; to create the  
16 Retail Crime Prevention Act; to provide for the crime of theft  
17 by shoplifting; to provide for the crime of organized retail  
18 theft; to provide for certain record keeping requirements for  
19 the sale and purchase of stored value cards; to provide  
20 criminal penalties; and in connection therewith would have as  
21 its purpose or effect the requirement of a new or increased  
22 expenditure of local funds within the meaning of Amendment 621  
23 of the Constitution of Alabama of 1901, as amended by  
24 Amendment 890, now appearing as Section 111.05 of the Official  
25 Recompilation of the Constitution of Alabama of 1901, as  
26 amended. Relating to crimes and offenses; to establish the  
27 crime of theft by shoplifting; and in connection therewith

1 would have as its purpose or effect the requirement of a new  
2 or increased expenditure of local funds within the meaning of  
3 Amendment 621 of the Constitution of Alabama of 1901, now  
4 appearing as Section 111.05 of the Official Recompilation of  
5 the Constitution of Alabama of 1901, as amended.

6 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

7 Section 1. This act shall be known and may be cited  
8 as the Retail Crime Prevention Act.

9 Section 2. As used in this act, the following terms  
10 shall have the following meanings:

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

13 (2) CORPORATE AUTHORIZED RESELLER. Any person  
14 authorized by the corporate issuer, or a corporate issuer  
15 agent, to sell the stored value cards of a corporate issuer.

16 (3) CORPORATE ISSUER. A business entity that issues,  
17 or contracts with an affiliate or third party to issue, stored  
18 value cards that may be used by the cardholder to purchase  
19 goods or services at the retail locations of the corporate  
20 issuer or its affiliates or online from the corporate issuer  
21 or its affiliates.

22 (4) CORPORATE ISSUER AGENT. A third party authorized  
23 by the corporate issuer to facilitate the sale of its stored  
24 value cards by corporate authorized resellers.

25 (5) MERCHANDISE. An item of tangible personal  
26 property that is displayed, held, stored, or offered for sale  
27 within a retail establishment.

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

4           (7) PREMISES OF A RETAIL ESTABLISHMENT. The retail  
5 establishment, common use areas in shopping centers, and  
6 parking areas designated by a merchant or on behalf of a  
7 merchant for the parking of motor vehicles for the convenience  
8 of the patrons of the retail establishment.

9           (8) STORED VALUE CARD. Any gift certificate or store  
10 gift card issued with or without a fee for the use of the  
11 cardholder to obtain money, goods, services, or anything else  
12 of value. The term does not include a general use gift card,  
13 demand deposit account, share draft account, savings account,  
14 prepaid debit card, or any card sold by a financial  
15 institution.

16           (9) THIRD PARTY CARD. A stored value card for which  
17 the merchant buying or selling the card is not the corporate  
18 issuer and is not a corporate issuer agent or a corporate  
19 authorized reseller.

20           (10) THIRD PARTY CARD DEALER. A merchant in the  
21 business of buying and selling third party cards.

22           (11) VALUE. The actual retail price of merchandise  
23 prior to the commission of the subject criminal offense.

24           Section 3. (a) A person commits the crime of theft  
25 by shoplifting when the person, acting alone or in concert  
26 with another person, with the intent to appropriate  
27 merchandise of a retail establishment without paying for the

1 merchandise or to deprive the merchant of the retail  
2 establishment of the merchandise of all or part of the value  
3 of the merchandise, knowingly does any of the following:

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

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

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

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

18 (5) Fails to scan the barcode and pay for  
19 merchandise at a self-checkout register.

20 (6) Alters, bypasses, disables, shields, or removes  
21 any security or alarm device attached to or housing  
22 merchandise prior to the purchase of the merchandise.

23 (b) (1) A violation of subsection (a) shall be deemed  
24 prima facie evidence that the person intended to deprive the  
25 merchant of all or part of the full value of the merchandise  
26 without paying the full value of the merchandise.

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

5           Section 4. (a) Theft by shoplifting of merchandise  
6 which exceeds two thousand five hundred dollars (\$2,500) in  
7 value constitutes theft by shoplifting in the first degree.

8           (b) Theft by shoplifting in the first degree is a  
9 Class B felony.

10          Section 5. (a) Theft by shoplifting of merchandise  
11 which exceeds one thousand five hundred dollars (\$1,500) in  
12 value but does not exceed two thousand five hundred dollars  
13 (\$2,500) in value constitutes theft by shoplifting in the  
14 second degree.

15          (b) Theft by shoplifting of a firearm, rifle, or  
16 shotgun which does not exceed two thousand five hundred  
17 dollars (\$2,500) in value constitutes theft by shoplifting in  
18 the second degree.

19          (c) Theft by shoplifting in the second degree is a  
20 Class C felony.

21          Section 6. (a) Theft by shoplifting of merchandise  
22 which exceeds five hundred dollars (\$500) in value but does  
23 not exceed one thousand five hundred dollars (\$1,500) in value  
24 constitutes theft by shoplifting in the third degree.

25          (b) Theft by shoplifting in the third degree is a  
26 Class D felony.

1           Section 7. (a) Theft by shoplifting of merchandise  
2 which does not exceed five hundred dollars (\$500) in value  
3 constitutes theft by shoplifting in the fourth degree.

4           (b) Theft by shoplifting in the fourth degree is a  
5 Class A misdemeanor.

6           Section 8. (a) A person commits the offense of  
7 organized retail theft when the person does all of the  
8 following:

9           (1) Intentionally organizes, plans, finances,  
10 directs, manages, or supervises one or more persons to do any  
11 of the following over a period of 180 calendar days:

12           a. Appropriate property of one or more stores or  
13 retail establishments to his or her own use without paying for  
14 the property.

15           b. Deprive the owner of a store or retail  
16 establishment of the property of the value of the property, in  
17 whole or in part.

18           (2) The person has the intent to sell the property  
19 for monetary or other gain.

20           (3) The aggregate value of the property that was the  
21 subject of the theft has a value of twenty-five thousand  
22 dollars (\$25,000) or more.

23           (4) The property is placed, or is to be placed, in  
24 the control of a retail property fence or other person in  
25 exchange for consideration.

26           (b) The unaltered price tag or other marking on the  
27 property, or duly identified photographs of the property,

1 shall be prima facie evidence of value and ownership of the  
2 property.

3 (c) A violation of this section is a Class C felony.

4 Section 9. (a) When a third party card dealer makes  
5 a sale or purchase of a stored value card, including any  
6 transaction that occurs in this state, the third party card  
7 dealer shall record the information provided for in subsection  
8 (b) and maintain a copy of the record for at least three  
9 years.

10 (b) Third party card dealers shall maintain a  
11 permanent record in which shall be entered in legible English  
12 at the time of each purchase of a third party card all of the  
13 following:

14 (1) The date of the transaction.

15 (2) The name of the person conducting the  
16 transaction.

17 (3) The name, age, and address of the seller and the  
18 distinctive number from the customer's driver license or other  
19 similar identification card.

20 (4) An identification of the purchased stored value  
21 card, including the retailer for which the stored value card  
22 is intended and the stored value card number.

23 (5) The amount of stored value on the stored value  
24 card.

25 (6) The price paid.

26 (7) The signature of the customer.

1 (c) Entries shall appear in ink or be logged into a  
2 secure database, software system, or other technology platform  
3 and shall be in chronological order. No obliterations,  
4 alterations, or erasures may be made. If handwritten  
5 corrections are made, the corrections shall be made by drawing  
6 a line of ink through the entry without destroying its  
7 legibility. The permanent records shall be open to the  
8 inspection of any duly authorized law enforcement officer  
9 during the ordinary hours of business or at any reasonable  
10 time.

11 (d) Any third party card dealer and any clerk,  
12 agent, or employee of the third party card dealer, who  
13 intentionally does any of the following, shall be guilty of a  
14 Class C misdemeanor:

15 (1) Fails to make an entry of any material matter in  
16 his or her permanent record.

17 (2) Makes any false entry into his or her permanent  
18 record.

19 (3) Falsifies, obliterates, destroys, or removes  
20 from his or her place of business his or her permanent record.

21 (4) Refuses to allow any duly authorized law  
22 enforcement officer who is certified by the Alabama Peace  
23 Officers' Standards and Training Commission, or who is a  
24 federal law enforcement officer, to inspect his or her  
25 permanent record or any stored value cards in his or her  
26 possession during the ordinary hours of business or at any  
27 reasonable time.

1           (5) Fails to maintain a record of each stored value  
2 card transaction for at least three years.

3           (e) Upon the filing of an official report to a law  
4 enforcement agency of competent jurisdiction by any person  
5 alleging to be a victim of theft of one or more stored value  
6 cards with an aggregate value of more than five hundred  
7 dollars (\$500), the law enforcement agency may request that  
8 the issuer or its agents preserve and provide the law  
9 enforcement agency all relevant evidence reasonably  
10 foreseeable to assist in future criminal actions in accordance  
11 with the laws of evidence in criminal proceedings.

12           Section 10. Although this bill would have as its  
13 purpose or effect the requirement of a new or increased  
14 expenditure of local funds, the bill is excluded from further  
15 requirements and application under Amendment 621, as amended  
16 by Amendment 890, now appearing as Section 111.05 of the  
17 Official Recompilation of the Constitution of Alabama of 1901,  
18 as amended, because the bill defines a new crime or amends the  
19 definition of an existing crime.

20           Section 11. This act shall become effective on the  
21 first day of the third month following its passage and  
22 approval by the Governor, or its otherwise becoming law.