

# HB288 INTRODUCED



1 LE3SYY-1

2 By Representatives Treadaway, Faulkner, Kitchens

3 RFD: Judiciary

4 First Read: 11-Apr-23

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SYNOPSIS:

Under existing law, theft of property is a crime that is committed when a person commits a trespassory taking and carrying away of property belonging to another, with the intent to permanently deprive the owner of the property. The penalty for a violation is contingent upon the value of the property stolen and other factors.

This bill would establish the crime of retail theft that is committed when a person uses various means to deprive a merchant of all or part of the value of merchandise, including concealing merchandise on his or her person; altering or removing price tags; concealing merchandise in other containers; failing to scan items or otherwise pay for items at self-checkout registers; and other means. Penalties for a violation would be contingent upon the aggregate value of the items stolen.

This bill would also establish the crime of organized retail theft to establish an aggravated form of retail theft.

Section 111.05 of the Constitution of Alabama of 2022, prohibits a general law whose purpose or effect would be to require a new or increased expenditure of local funds from becoming effective with regard to a local governmental entity without enactment by a 2/3



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29 vote unless: it comes within one of a number of  
30 specified exceptions; it is approved by the affected  
31 entity; or the Legislature appropriates funds, or  
32 provides a local source of revenue, to the entity for  
33 the purpose.

34 The purpose or effect of this bill would be to  
35 require a new or increased expenditure of local funds  
36 within the meaning of the amendment. However, the bill  
37 does not require approval of a local governmental  
38 entity or enactment by a 2/3 vote to become effective  
39 because it comes within one of the specified exceptions  
40 contained in the amendment.

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A BILL

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TO BE ENTITLED

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AN ACT

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46 Relating to crimes and offenses; to create the Retail  
47 Theft Crime Prevention Act; to provide for the crime of retail  
48 theft in various degrees; to provide for the crime of  
49 organized retail theft; to provide criminal penalties for a  
50 violation; and in connection therewith would have as its  
51 purpose or effect the requirement of a new or increased  
52 expenditure of local funds within the meaning of Section  
53 111.05 of the Constitution of Alabama of 2022.

54 BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

55 Section 1. Article 11, commencing with Section

56 13A-8-220, is added to Chapter 8 of Title 13A, Code of Alabama



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57 1975, to read as follows:

58 Article 11

59 §13A-8-220

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

62 §13A-8-221

63 As used in this article, the following terms have the  
64 following meanings:

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

67 (2) ORGANIZED RETAIL THEFT. Obtaining or exerting  
68 unauthorized control over retail merchandise from a retail  
69 merchant, retail establishment, or premises of a retail  
70 establishment with the intent to deprive the owner or retail  
71 merchant of his or her property or reselling, distributing, or  
72 otherwise reentering the retail merchandise in commerce,  
73 including the transfer of the stolen retail merchandise to  
74 another retail merchant or to any other person, whether in  
75 person, through the mail, or through any electronic medium,  
76 including the Internet, in exchange for anything of value.

77 (3) PREMISES OF A RETAIL ESTABLISHMENT. The retail  
78 establishment, common use areas in shopping centers, and  
79 parking areas designated by a merchant or on behalf of a  
80 merchant for the parking of motor vehicles for the convenience  
81 of the patrons of the retail establishment or where stored for  
82 delivery or transport to a retail establishment.

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



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85 (5) RETAIL MERCHANDISE. Any article, product,  
86 commodity, component, or items of tangible personal property  
87 displayed, held, stored, or offered for sale within a retail  
88 establishment.

89 (6) RETAIL MERCHANT. An owner or operator of a retail  
90 establishment or an agent, employee, lessee, officer, or  
91 director of the owner or operator.

92 (7) RETAIL VALUE. The actual retail price of  
93 merchandise prior to the commission of the subject criminal  
94 offense.

95 (8) SHOPPING CART. Push carts of the type commonly  
96 provided by grocery stores, drug stores, or other retail  
97 establishments for the use of the public in transporting  
98 commodities on or from the premises of the retail  
99 establishment.

100 §13A-8-222

101 A person commits the crime of retail theft if, with the  
102 intent to obtain or exert unauthorized control over retail  
103 merchandise from a retail merchant, retail establishment, or  
104 premises of a retail establishment, or with the intent to  
105 deprive the owner or retail merchant of his or her retail  
106 merchandise of all or some part of the value thereof or  
107 without paying for the retail merchandise, he or she knowingly  
108 does any of the following:

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

112 (2) Alters, transfers, or removes the label, price tag,



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113 marking, indicia of value, or any other markings that aid in  
114 determining the value affixed to retail merchandise in a  
115 retail establishment, and purchases, or attempts to purchase,  
116 the merchandise at less than its value.

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

120 (4) Causes the cash register or other sales recording  
121 device to reflect less than the retail value of the retail  
122 merchandise of a retail establishment.

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

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

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

130 (8) Removes or causes the removal of retail merchandise  
131 from the premises of a retail establishment or beyond the last  
132 station for payment.

133 (9) Removes a shopping cart from the premises of a  
134 retail establishment without the consent of the retail  
135 merchant given at the time of the removal with the intention  
136 of depriving the retail merchant of the possession, use, or  
137 benefit of the cart.

138 (10) Collaborates with an employee of the retail  
139 establishment to commit any form of retail theft described in  
140 this section.



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141 §13A-8-223

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

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

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

152 (b) Retail theft in the first degree is a Class B  
153 felony.

154 §13A-8-224

155 (a) Retail theft that exceeds five hundred dollars  
156 (\$500) in retail value, but does not exceed two thousand five  
157 hundred dollars (\$2,500) in retail value, constitutes retail  
158 theft in the second degree.

159 (b) Retail theft in the second degree is a Class C  
160 felony.

161 §13A-8-225

162 (a) Retail theft that does not exceed five hundred  
163 dollars (\$500) in retail value constitutes retail theft in the  
164 third degree.

165 (b) Retail theft in the third degree is a Class A  
166 misdemeanor.

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



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169 §13A-8-226

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

173 (1) Organizes, supervises, finances, participates,  
174 directs, solicits, or otherwise manages or assists another  
175 person in committing organized retail theft.

176 (2) Removes, destroys, deactivates, or knowingly evades  
177 any component of an antishoplifting or inventory control  
178 device to prevent the activation of that device or to  
179 facilitate another person in committing organized retail  
180 theft.

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

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

186 (5) Uses any fraud, artifice, instrument, container,  
187 device, or other article to facilitate the commission of  
188 organized retail theft.

189 (6) Remains unlawfully inside a retail establishment  
190 after business hours, with the intent to commit a retail theft  
191 therein.

192 (7) Uses a wireless telecommunication device or other  
193 digital or electronic device to facilitate the theft of retail  
194 merchandise.

195 (8) Uses a rental or stolen motor vehicle or vehicle of  
196 another in the course of committing retail theft for the





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197 purposes of the concealment of his or her identity.

198 (9) Receives, retains, or disposes of retail  
199 merchandise knowing that it has been stolen or having  
200 reasonable grounds to believe it has been stolen.

201 (b) It shall be prima facie evidence that a person who  
202 violates this section acts knowingly when any of the following  
203 apply:

204 (1) On two or more separate occasions within a year  
205 prior of the commission of the instant offense of organized  
206 retail theft, the person is found in possession or control of  
207 stolen retail merchandise.

208 (2) The person possesses retail merchandise which has  
209 been recently stolen.

210 (3) The person regularly buys, sells, uses, or handles  
211 in the course of business retail merchandise of the sort  
212 received, and acquired the retail merchandise without making  
213 reasonable inquiry whether the individual selling or  
214 delivering the retail merchandise to him or her had a legal  
215 right to do so.

216 (c) The fact that the person or persons who acted in  
217 association with the person charged under this article have  
218 not been charged, convicted, apprehended, or identified is not  
219 a defense to a charge of organized retail theft.

220 (d) Organized retail theft is a Class B felony.

221 §13A-8-227

222 (a) Any proceeds, property obtained by proceeds, or  
223 instruments of the crimes of organized retail theft or retail  
224 theft may be subject to forfeiture pursuant to the procedures



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225 set forth in Section 20-2-93.

226 (b) When a person is convicted of organized retail  
227 theft or retail theft, upon request of the district attorney,  
228 the court shall order the defendant to make restitution as  
229 follows:

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

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

237 §13A-8-228

238 It is not a defense to a charge under this article that  
239 the property was not stolen, embezzled, or converted property  
240 at the time of the violation if the property was explicitly  
241 represented to the accused person as being stolen, embezzled,  
242 or converted property.

243 §13A-8-229

244 Nothing in this article prohibits a person from being  
245 charged with, convicted of, or sentenced for any violation of  
246 law arising out of the same criminal transaction that violates  
247 this article.

248 §13A-8-230

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

251 (b) In any criminal proceeding brought pursuant to this  
252 article, the crime shall be considered to be committed in any



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253 county in which any part of the crime took place, regardless  
254 of whether the defendant was ever actually present in that  
255 county, or in the county of residence of the person who is the  
256 subject of the theft by retail theft or organized retail  
257 theft.

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

261 §13A-8-231

262 (a) The fact that a person conceals merchandise for  
263 which he or she has not paid the full value, and the retail  
264 merchandise has been taken beyond the area within the retail  
265 establishment or premises of a retail establishment where  
266 payment for it is to be made, shall be prima facie evidence  
267 that the person has possessed, carried away, or transferred  
268 the retail merchandise with the intention of depriving the  
269 retail merchant of all or part of the full value of the retail  
270 merchandise without paying the full value of the retail  
271 merchandise in violation of this article.

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

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

280 (c) Nothing in this subsection shall be construed to



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281 provide that the mere possession of goods or the production by  
282 shoppers of improperly priced merchandise for checkout shall  
283 constitute prima facie evidence of guilt.

284 §13A-8-232

285 (a) A warrant for the crime of retail theft or  
286 organized retail theft may be sworn and issued by a magistrate  
287 remotely, digitally, via video link, or by telephone. The  
288 physical presence of the affiant before the magistrate is not  
289 required.

290 (b) Other methods of technology not specifically  
291 described in subsection (a) may be used to facilitate the oath  
292 and issuance of a criminal warrant pursuant to this article  
293 upon the approval of the technology by the presiding judge and  
294 district attorney of the judicial circuit.

295 §13A-8-233

296 The Office of Prosecution Services, Office of the  
297 Attorney General, Alabama State Law Enforcement Agency,  
298 Alabama Association of Chiefs of Police, Alabama Sheriffs  
299 Association, Alabama Grocers Association, and Alabama Retail  
300 Association shall make reasonable coordinated efforts to  
301 develop training for prosecutors and law enforcement agencies  
302 throughout the state to combat organized retail crime,  
303 violations of Chapter 41 of Title 8, and other crimes  
304 negatively impacting small and large businesses in Alabama and  
305 make recommendations to the Alabama Legislature and Governor  
306 regarding public safety and the prevention of organized retail  
307 crime, enforcement and prosecution of this article and Chapter  
308 41 of Title 8, as well as the impact of organized retail



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309 thefts on Alabama businesses and the public.

310           Section 2. Although this bill would have as its purpose  
311 or effect the requirement of a new or increased expenditure of  
312 local funds, the bill is excluded from further requirements  
313 and application under Section 111.05 of the Constitution of  
314 Alabama of 2022, because the bill defines a new crime or  
315 amends the definition of an existing crime.

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