

Senate Bill 151

By: Senators Albers of the 56th, Mullis of the 53rd, Dugan of the 30th, Jones II of the 22nd, Strickland of the 17th 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 provide for certain record-keeping and reporting  
5 requirements for the sale of goods by third-party sellers on online marketplaces; to provide  
6 for penalties for failure to comply; to provide for confidentiality; to amend Article 1 of  
7 Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft, so as to  
8 define certain terms relating to retail property fencing, shoplifting, and refund fraud; to  
9 provide for the crime of organized retail theft; to provide for penalties for violations; to  
10 provide a short title; to provide for related matters; to repeal conflicting laws; and for other  
11 purposes.

12 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

13 **PART ONE**  
14 **SECTION 1-1.**

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

16

**PAR TWO**

17

**SECTION 2-1.**

18 Chapter 1 of Title 10 of the Official Code of Georgia Annotated, relating to selling and other  
19 trade practices, is amended by revising Article 12, which was previously reserved, as  
20 follows:

21

**"ARTICLE 12**

22 10-1-310.

23 (a) As used in this article, the term:24 (1) 'Corporate authorized reseller' means any person authorized to sell the stored value  
25 cards of a corporate issuer.26 (2) 'Corporate issuer' means a retail store that sells stored value cards, directly or through  
27 corporate authorized resellers, which may be used by the cardholder to purchase goods  
28 or services at the retail locations of the corporate issuer or online from the corporate  
29 issuer.30 (3) 'Stored value card' means any 'gift certificate' or 'store gift card,' as such terms are  
31 defined in subparagraph (b)(33)(B) of Code Section 10-1-393, issued with or without a  
32 fee for the use of the cardholder to obtain money, goods, services, or anything else of  
33 value. The term shall not include a 'general use gift card' as such term is defined in  
34 subparagraph (b)(33)(B) of Code Section 10-1-393, demand deposit account, share draft  
35 account, savings account, prepaid debit card, or any card sold by a financial institution  
36 or access device associated therewith.37 (b) Any sale or purchase of stored value cards by merchants, other than the corporate  
38 issuer or the corporate authorized reseller, including any transaction that occurs in this  
39 state, shall require that the appropriate information contained in this Code section be  
40 recorded and that a copy of the record be maintained for at least three years.

41 (c) Any merchant purchaser of stored value cards shall maintain a permanent record book  
42 in which shall be entered in legible English at the time of each purchase:

43 (1) The date of the transaction;

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

45 (3) The name, age, and address of the seller; a description of the general appearance of  
46 the customer; and the distinctive number from the customer's driver's license or other  
47 similar identification card;

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

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

51 (6) The price paid; and

52 (7) The signature of the customer.

53 (d) Entries shall appear in ink and shall be in chronological order. No blank lines may be  
54 left between entries. No obliterations, alterations, or erasures may be made. Corrections  
55 shall be made by drawing a line of ink through the entry without destroying its legibility.  
56 The book shall be open to the inspection of any duly authorized law enforcement officer  
57 during the ordinary hours of business or at any reasonable time.

58 (e) Any merchant purchaser of stored value cards and any clerk, agent, or employee of  
59 such merchant who knowingly:

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

61 (2) Makes any false entry therein;

62 (3) Falsifies, obliterates, destroys, or removes from his or her place of business such  
63 permanent record book;

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

68 (5) Fails to maintain a record of each stored value card transaction for at least four years;  
69 shall be guilty of a misdemeanor.  
70 (f) Upon filing an official report to a law enforcement agency of competent jurisdiction  
71 by any person alleging to be a victim of theft of one or more stored value cards with an  
72 aggregate value exceeding \$500.00, such law enforcement agency shall request that the  
73 issuer or issuer's agent preserve and provide to law enforcement all relevant evidence  
74 reasonably foreseeable to assist in future criminal actions in accordance with the laws of  
75 evidence in criminal proceedings Reserved."

76 **PART THREE**

77 **SECTION 3-1.**

78 Said chapter is further amended by adding a new article to read as follows:

79 "ARTICLE 35

80 10-1-930.

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

82 (1) 'Consumer product' means any tangible personal property which is distributed in  
83 commerce and which is normally used for personal, family, or household purposes.

84 (2) 'High-volume third-party seller' means a participant in an online marketplace who is  
85 a third-party seller and who, in any continuous 12 month period during the previous 24  
86 months, has entered into 200 or more discrete sales or transactions of new or unused  
87 consumer products resulting in the accumulation of an aggregate total of \$5,000.00 or  
88 more in gross revenues.

89 (3) 'Online marketplace' means any electronically based or accessed platform that  
90 includes features that allow for, facilitate, or enable third-party sellers to engage in the

91 sale, purchase, payment, storage, shipping, or delivery of a consumer product in the  
92 United States; and hosts one or more third-party sellers.

93 (4) 'Seller' means a person who sells, offers to sell, or contracts to sell a consumer  
94 product through an online marketplace.

95 (5) 'Third-party seller' means any seller, independent of an operator, facilitator, or owner  
96 of an online marketplace, who sells, offers to sell, or contracts to sell a consumer product  
97 in the United States through an online marketplace.

98 (6) 'Verify' means to confirm information provided to an online marketplace pursuant to  
99 this article by the use of a third-party or proprietary identity verification system that has  
100 the capability to confirm a seller's name, email address, physical address, and phone  
101 number; or a combination of two-factor authentication, public records search, and the  
102 presentation of a government issued identification.

103 (b) Any online marketplace doing business in the State of Georgia shall require that any  
104 seller doing business on the online marketplace provide to the online marketplace the  
105 following information within 24 hours of meeting the definition of 'high-volume third-party  
106 seller':

107 (1) Bank account information, which shall be:

108 (A) Accurately confirmed by the online marketplace, by a payment processor, or by  
109 another other third-party contracted by such online marketplace; or

110 (B) If the high-volume third-party seller does not have a bank account, the name of the  
111 payee for payments issued by the online marketplace to the high-volume third-party  
112 seller;

113 (2) Contact information, which shall include a valid email address and working phone  
114 number for the high-volume third-party seller, as well as:

115 (A) If the high-volume third-party seller is an individual, a copy of a valid government  
116 issued photo identification for the individual that includes the individual's name and  
117 physical address; or

118 (B) If the high-volume third-party seller is not an individual, either a copy of a  
119 government issued photo identification for an individual acting on behalf of such  
120 high-volume third-party seller that includes such individual's name and physical address  
121 or a copy of a government issued record or tax document that includes the business  
122 name and physical address of the high-volume third-party seller;

123 (3) A business tax identification number or, if the high-volume third-party seller does not  
124 have a business tax identification number, a taxpayer identification number; and

125 (4) Whether the high-volume third-party seller is exclusively advertising or offering the  
126 consumer product or products exclusively on the online marketplace, or if the  
127 high-volume third-party seller is currently advertising or offering for sale the same  
128 consumer product or products on any other websites other than the online marketplace.

129 (c)(1) The online marketplace shall verify the information provided in paragraph (1) of  
130 subsection (b) of this Code section within three days and shall verify within three days  
131 any changes to such information that is provided to the marketplace by a high-volume  
132 third-party seller. If a high-volume third-party seller provides a copy of a valid  
133 government issued tax document, information contained within such tax document shall  
134 be presumed to be verified as of the date of issuance of such record or document.

135 (2) The online marketplace shall on at least an annual basis send a notification to each  
136 high-volume third-party seller and require each high-volume third-party seller to inform  
137 the online marketplace of:

138 (A) Any changes to the information previously provided by the high-volume  
139 third-party seller pursuant to subsection (b) of this Code section within three days of  
140 receiving the notification. Such notification shall require the third-party high-volume  
141 seller to electronically certify either that the high-volume third-party seller's  
142 information is unchanged or that the high-volume third-party seller is providing  
143 changes to the information; and

144 (B) If the online marketplace becomes aware that a high-volume third-party seller has  
145 neither certified that such high-volume third-party seller's information is unchanged nor  
146 has not provided such changed information within three days of receiving such  
147 notification, the online marketplace shall suspend the high-volume third-party seller's  
148 participation on the marketplace until the high-volume third-party seller has either  
149 certified that the high-volume third-party seller's information is unchanged or has  
150 provided such changed information and the information has been verified.

151 (d) Any online marketplace shall require a high-volume third-party seller in an online  
152 marketplace to disclose to consumers in a conspicuous manner identifying information  
153 either on the product listing or, for information other than the high-volume third-party  
154 seller's full name, through a conspicuously placed link on the product listing, the following  
155 information:

156 (1) The full name of the high-volume third-party seller;

157 (2) The full physical address of the high-volume third-party seller;

158 (3) Whether the high-volume third-party seller also engages in the manufacturing,  
159 importing, or reselling of consumer products;

160 (4) Contact information for the high-volume third-party seller, including a working  
161 phone number and working email address. Such working email address may be provided  
162 to the high-volume third-party seller by the online marketplace; and

163 (5) Any other information determined to be necessary to address circumvention or  
164 evasion of the requirements of this subsection, provided that the additional information  
165 is limited to what is necessary to address such circumvention or evasion.

166 (e) Upon the request of a high-volume third-party seller, an online marketplace may  
167 provide for partial disclosure of the identity information required under paragraph (5) of  
168 subsection (d) of this Code section in the following situations:

169 (1) If the high-volume third-party seller demonstrates to the online marketplace that the  
170 high-volume third-party seller does not have a business address and only has a residential

171 street address, the online marketplace may direct such high-volume third-party seller to  
172 disclose on the product listing only the country and, if applicable, the state in which such  
173 high-volume third-party seller resides and may inform consumers that there is no business  
174 address available for the high-volume third-party seller and that consumer inquiries  
175 should be submitted to the high-volume third-party seller by telephone or email;

176 (2) If the high-volume third-party seller demonstrates to the online marketplace that such  
177 high-volume third-party seller is a business that has a physical address for product  
178 returns, the online marketplace may direct the high-volume third-party seller to disclose  
179 the high-volume third-party seller's physical address for product returns; and

180 (3) If a high-volume third-party seller demonstrates to the online marketplace that such  
181 high-volume third-party seller does not have a phone number other than a personal phone  
182 number, the online marketplace shall inform consumers that there is no phone number  
183 available for the high-volume third-party seller and that consumer inquiries should be  
184 submitted to the high-volume third-party seller's email address.

185 (f) If an online marketplace becomes aware that a high-volume third-party seller has made  
186 a false representation to such online marketplace in order to justify the provision of a  
187 partial disclosure under subsection (e) of this Code section or that a high-volume  
188 third-party seller who has requested and received a provision for a partial disclosure under  
189 subsection (e) of this Code section has not provided responses within a reasonable  
190 timeframe to consumer inquiries submitted to such high-volume third-party seller by  
191 telephone or email address, the online marketplace shall withdraw its provision for partial  
192 disclosure and require the full disclosure of the high-volume third-party seller's identity  
193 information required under subsection (e) of this Code section upon three business days'  
194 notice to the high-volume third-party seller.

195 (g) An online marketplace shall disclose to consumers, in a conspicuous manner on the  
196 product listing of any high-volume third-party seller, a reporting mechanism that allows  
197 for electronic and telephonic reporting of suspicious marketplace activity to the online



198 marketplace and a message encouraging individuals seeking goods for purchase to report  
199 suspicious activity to the online marketplace.

200 (h) In addition to the requirements of subsection (d) of this Code section, an online  
201 marketplace that warehouses, distributes, or otherwise fulfills a consumer product order  
202 shall disclose to the consumer the identification of any high-volume third-party seller  
203 supplying the consumer product if different than the high-volume third-party seller listed  
204 on the product listing page.

205 (i) A violation of this Code section shall be treated as a violation of Part 2 of Article 15 of  
206 this chapter, the 'Fair Business Practices Act of 1975.'

207 (j) The Consumer Protection Division of the Georgia Department of Law may promulgate  
208 regulations with respect to collecting and verifying information under this Code section."

209

#### **PART FOUR**

210

#### **SECTION 4-1.**

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

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

216

#### **SECTION 4-2.**

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

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

221 (ii) Upon conviction of a fourth or subsequent offense for shoplifting, ~~where~~ when  
222 the prior convictions are either felonies or misdemeanors, or any combination of

223 felonies and misdemeanors, as defined by this Code section, the defendant ~~commits~~  
224 shall be guilty of a felony and shall be punished by imprisonment for not less than one  
225 nor more than ten years; and the first year of such sentence shall not be suspended,  
226 probated, deferred, or withheld; provided, however, that, in the court's discretion, the  
227 court may depart from such mandatory minimum sentence when the prosecuting  
228 attorney and defendant have agreed to a sentence that is below such mandatory  
229 sentence."

230 **SECTION 4-3.**

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

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

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

242 **SECTION 4-4.**

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

244 "16-8-14.2.

245 (a) A person commits the offense of organized retail theft when such person intentionally  
246 organizes, plans, finances, directs, manages, or supervises one or more other persons to  
247 appropriate property of a store or retail establishment to his or her own use without paying  
248 for such property or deprives the owner of the property or the value thereof, in whole or in  
249 part, and when such property is taken from one or more stores or retail establishments over  
250 a period of 180 days with the intent to sell such property for monetary or other gain and  
251 when the aggregate value of the property which was the subject of the theft has a value  
252 exceeding \$24,999.99 and is placed or is to be placed in the control of a retail property  
253 fence as defined in Code Section 16-8-5.2 or other person in exchange for consideration.

254 (b) In all cases involving organized retail theft, the term 'value' means the actual retail  
255 price of the property at the time and place of the offense. The unaltered price tag or other  
256 marking on property, or duly identified photographs thereof, shall be prima-facie evidence  
257 of value and ownership of the property.

258 (c) In any criminal proceeding pursuant to this Code section, the crime shall be considered  
259 to have been committed in any county in which an incident of organized retail theft  
260 occurred.

261 (d) A person convicted of a violation of this Code section shall be guilty of a felony and  
262 shall be punished by imprisonment for not less than three nor more than 20 years, a fine not  
263 to exceed \$50,000.00, or both."

264

## **PART FIVE**

265

### **SECTION 5-1.**

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