

HOUSE No. 1344

The Commonwealth of Massachusetts

In the Year Two Thousand Nine

An Act to improve criminal laws relative to organized retail theft..

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 AN ACT TO IMPROVE CRIMINAL LAWS RELATIVE TO ORGANIZED RETAIL
2 THEFT

3 SECTION 1. Section 1 of chapter 101 of the General Laws, as appearing in the 2002
4 Official Edition, is hereby amended by inserting the following words after the definition of
5 “Deputy director”:- “Second hand dealer”, any person, either principal or agent who engages in
6 the business in the commonwealth of selling used goods, used wares or used merchandise.

7 SECTION 2. Said section 1 of chapter 101 of the General Laws, as so appearing, is
8 hereby amended by inserting after the word "place," in line 8, the following words: - , including
9 selling goods, wares or merchandise at an unused property market or flea market so-called.

10 SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended
11 by inserting after the word "months," in line 12, the following words: - Provided, however, that a
12 flea market, so called, whether held inside such tent, booth, building or other structure or in the
13 open shall be considered a temporary or transient business.

SECTION 4. Said section 1 of chapter 101, as so appearing, is hereby further amended by inserting after the last line the following words: -

“Unused Property Market” any event at which two (2) or more persons offer personal property for sale or exchange, at which a fee is charged for sale or exchange of personal property, or at which a fee is charged to prospective buyers for admission to the area at which personal property is offered or displayed for sale or exchange; or regardless of the number of persons offering or displaying personal property or the absence of fees at which personal property is offered or displayed for sale or exchange if the event is held more than six (6) times in any twelve (12) month period.

The term Unused Property Market is interchangeable with and applicable to “Swap Meet”, “Indoor Swap Meet”, “Flea Market”, or other similar terms regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

The term Unused Property Market shall not mean and shall not apply to an event which is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipts or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event; or any event at which all of the personal property offered for sale or displayed is new, and all persons

selling, exchanging or offering or displaying personal property for sale or exchange, are manufacturers or authorized representatives of manufacturers or distributors.

“Unused Property Merchant” any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot or other Unused Property Market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail, except a person who offers five or less items of the same new and unused merchandise for sale or exchange at an Unused Property Market.

“New and Unused Property” tangible personal property that was acquired by the Unused Property Merchant directly from the producer, manufacturer, wholesaler or retailer in the ordinary course of business which has never been used since its production or manufacturing or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured. New and Unused Property does not include property the sale of which is already considered "used" under existing federal or state law or regulation.

“Baby Food” or “Infant Formula” any food manufactured, packaged and labeled specifically for sale for consumption by a child under the age of 2.

“Nonprescription Drug” (may also be referred to as “Over the Counter Drug”) any non-narcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and should be properly labeled and unadulterated in accordance with the requirements of the state food and

drug laws and the federal “Food, Drug and Cosmetic Act”. The term “Nonprescription Drug” shall not include herbal products, dietary supplements, botanical extracts or vitamins.

“Medical Device” any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component part or accessory, required under federal law to bear the label “Caution: Federal law requires dispensing by or on the order of a physician”; or which is defined by federal law as a medical device and which is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in man or animals or is intended to affect the structure or any function of the body of man or animals, which does not achieve any of its principal intended purposes through chemical action within or on the body of man or animals and which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

SECTION 5. Said section 18A of chapter 101, as so appearing, is hereby replaced by the following words:-

No Unused Property Merchant shall offer at an Unused Property Market for sale or knowingly permit the sale of Baby Food, Infant Formula, cosmetics or personal care products, or any Nonprescription Drug or Medical Device as defined in this Chapter or in section one of Chapter ninety-four. This section shall not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product, as long as the authorization is not false, fraudulent, or fraudulently obtained.

Any person violating the provisions of this section shall be punished by a fine of not more than one hundred dollars for each item so offered for sale or sold.

SECTION 6. Said chapter 101, as so appearing, is hereby amended by inserting the following words after the last line in section 34: -

Section 35. Every Unused Property Merchant shall maintain receipts for the purchase of New and Unused Property, as defined above. Receipts shall contain all of the following information:

date of the transaction;

name and address of the person, corporation, or entity from whom the New and Unused Property was acquired;

an identification and description of the New and Unused Property acquired;

the price paid for such New and Unused Property;

It is a violation of this Act for an Unused Property Merchant required to maintain receipts under the provisions contained herein to knowingly:

falsely create, alter, obliterate or destroy such receipts;

refuse or fail upon request to make such receipts available for inspection within a period of time which is reasonable under the individual circumstances surrounding such request; provided, however, nothing contained within the provisions of this section shall be construed to require the Unused Property Merchant to possess such receipt on or about his or her person without reasonable notice; or

98 fail to maintain the receipts required by this section for at an appropriate time.

99 The provisions of this Act shall not apply to:

100 the sale of any item regulated by federal, state, or local law, statute, act of legislature,
101 regulation, or ordinance, and sold in compliance with those provisions.

102 the sale of a motor vehicle or trailer that is required to be registered or is subject to the
103 certificate of title laws of this state;

104 the sale of wood for fuel, ice, or livestock;

105 business conducted in any industry or association trade show;

106 property, although never used, whose style, packaging or material, clearly indicates that
107 such property was not produced or manufactured within recent times;

108 anyone who sells by sample, catalog or brochure for future delivery.

109 the sale of arts or crafts or other merchandise by a person who produces such arts or
110 crafts or merchandise or by a person or persons acting on their behalf.

111 persons who make sales presentations pursuant to a prior, individualized invitation issued
112 to the consumer by the owner or legal occupant of the premises.

113 A violation of this Act shall be punished for a first offense by imprisonment in the house
114 of correction for not more than two and one half years or by a fine of not more than five
115 thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense
116 by imprisonment in the state prison for not more than five years, or by a fine of not more than
117 twenty-five thousand dollars or by both such fine and imprisonment.

118 This Act shall apply to all New and Unused Property purchased or acquired on or after
119 January 1, 2010.

120 SECTION 7. Section 3 of said chapter 101, as appearing in the 2002 Official Edition, is
121 hereby amended in line 1 by inserting after the word “vendor” the following:-unused property
122 merchant or second hand dealer so called,

123 SECTION 8. Section 3 of said chapter 101, as so appearing, is hereby amended by
124 striking the second sentence and inserting in place thereof the following:-

125 Thereupon, upon the payment of a fee, as determined annually by the commissioner of
126 administration under the provision of section three B of chapter seven, the deputy director shall
127 issue to him a state license authorizing him to do business as a transient vendor, unused property
128 merchant or second hand dealer, subject to such local rules and regulations as may be made in a
129 city by the mayor and city council and in a town by the selectmen. Such fee shall be a dedicated
130 fee which will fund, in part, the record keeping system within the department of public safety as
131 established by section 3A of this chapter.

132 SECTION 9. Said chapter 101 is hereby amended by inserting after section 3, as so
133 appearing, the following section: -

134 Section 3A. A transient vendor, unused property merchant or second hand dealer selling
135 merchandise at an unused property market or a flea market, so called, shall be registered with the
136 department of revenue and shall have a sales tax identification number issued by said
137 department. Such vendor shall keep a record of all purchases and sales of goods, wares and
138 merchandise, including the source from which such merchandise was obtained and shall issue
139 sales receipts for all such sales and such receipts shall contain the name, license number and

sales tax identification number of such vendor. The true name, address, license number and sales tax identification number shall be posted by such vendor at the place where such vendor is conducting business. Whoever leases or rents space to transient vendors, unused property merchant or second hand dealer at an unused property market or flea market so called, shall maintain a record of the date of such lease or rental, and the name, license number and sales tax identification numbers of each such vendor. Such record shall be a public record and may be viewed or copied upon request during regular business hours. The Department of Public Safety shall implement a record keeping system for transient vendors and second hand dealers of goods, wares, merchandise acquired and sold at the registered place of business.

SECTION 10. Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:-

Section 30B. Unlawful Use of Theft Detection Shielding or Deactivation Devices

A person is guilty of unlawful distribution of a theft detection shielding device when he knowingly manufactures, sells, offers for sale or distributes in any way laminated or a coated bag or other device intended to shield merchandise from detection by an electronic or magnetic theft detector. A person is guilty of unlawful possession of a theft detection shielding device when he knowingly possesses any laminated or coated bags or devices intended to shield merchandise from detection by an electronic or magnetic theft detector, with the intent to commit (or aid or abet) theft. A person is guilty of unlawful possession of a theft detection device deactivator or remover when he knowingly possesses any tool or device designed or adapted to allow, or is capable of allowing, the deactivation, or removal from any merchandise, of any theft detection device, with the intent to use such tool or device to deactivate any theft detection device on, or to

remove any theft detection device from, any merchandise without the permission of the merchant or person owning or lawfully holding said merchandise. A person is guilty of unlawful distribution of a theft detection device deactivator or remover when he knowingly manufactures, sells, offers for sale or distributes in any way tool or device designed or adapted to allow, or capable of allowing, the deactivation, or removal from any merchandise, of any theft detection device without the permission of the merchant or person owning or lawfully holding said merchandise. A person is guilty of unlawful deactivation or removal of a theft detection device when he intentionally deactivates with intent to steal in a retail establishment a theft detection device on, or removes a theft detection device from, merchandise prior to purchase.

A violation of this Act shall be punished for a first offense by imprisonment in the house of correction for not more than two and one half years or by a fine of not more than one thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars or by both such fine and imprisonment.

The activation of an anti-shoplifting or inventory control device as a result of a person exiting the establishment or a protected security device within the area within the establishment shall constitute reasonable cause for the detention of the person so exiting by the owner or operator of the establishment or by an agent or employee of the owner or operator, provided notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting or inventory control devices. Each such detention shall be made only 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 and/or for the recovery of goods. Such taking into custody and detention by a law enforcement officer, security officer, merchant, merchant's employee or agent,

if done in compliance with all the requirements of the foregoing subsection, shall not render such law enforcement officer, security officer, merchant, merchant's employee or agent, criminally or civilly liable, including any liability for false arrest, false imprisonment, unlawful detention, malicious prosecution, intentional infliction of emotional distress or defamation.

SECTION 11. Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following new section:-

Section 30B. Theft Using Emergency Exit to Avoid Apprehension or DetectionA person commits theft by emergency exit if that person intentionally takes possession of, carries away, transfer or causes to be transferred, any merchandise displayed, held, stored or offered by sale by any store or other retail mercantile establishment with the intent of depriving the merchant of the possession, use of benefit of such merchandise or converting the same to the use of such person without paying to the merchant the value thereof and the person leaves a store by use of a designated emergency exit.

A violation of this Act shall be punished for a first offense by a fine of not less than two hundred and fifty dollars and not more than five hundred dollars, and for a second offense by imprisonment in the house of correction for not more than two and one half years or a fine not to exceed two thousand dollars, or by both fine and imprisonment and for subsequent offenses by imprisonment in the state prison for not more than five years, or by a fine of not more than five thousand dollars or by both such fine and imprisonment.

SECTION 12. Section 60 of chapter 266 of the general laws, as so appearing, is hereby amended by striking out the entire section and inserting in place thereof the following new section: -

207 Whoever buys, receives or aids in the concealment of stolen or embezzled property,
208 knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or
209 aids in the concealment of property, knowing it to have been obtained from a person by a false
210 pretense of carrying on business in the ordinary course of trade or whoever obtains or exerts
211 control over property in the custody of any law enforcement agency, or any individual acting on
212 behalf of a law enforcement agency, which is explicitly represented to him by any law
213 enforcement officer or any individual acting on behalf of a law enforcement agency as being
214 stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of
215 said property shall, if the value of such property does not exceed two hundred and fifty dollars,
216 be punished for a first offense by imprisonment in a jail or house of correction for not more than
217 two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
218 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be
219 punished by imprisonment in a state prison for not more than five years, or by a fine of five
220 thousand dollars, or by both a fine and imprisonment. It shall not be a defense that the property
221 was obtained by means other than through the commission of a theft offense if the property was
222 explicitly represented to the accused as having been obtained through the commission of a theft
223 offense.

224 SECTION 13. Said Chapter 266 of the General Laws, as so appearing is hereby amended
225 by inserting the following new section:-

226 Section 30E. Theft with intent to resell on an Online Marketplace, Facilitation and
227 Forfeiture

“Online Marketplace” means any website used to facilitate the sale of goods and services, including an Online auction site, operated by any buyer, seller or third party intermediary.

Theft with the intent to resell on an Online Marketplace. Any person who sells, attempts to sell, or possesses with intent to resell any stolen or fraudulently obtained property on an Online Marketplace with an aggregate value of less than two hundred and fifty dollars shall be guilty of theft with intent to resell on an online marketplace. Any person who is guilty of theft with intent to resell on an online marketplace shall be punished for a first offense by imprisonment in a jail or house of correction for not more than two and one half years, or by a fine of not more than one thousand dollars; or if for a second or subsequent offense be punished by imprisonment in a state prison for not more than five years, or by a fine of five thousand dollars, or by both a fine and imprisonment. Any person who sells, attempts to sell, or possesses with intent to resell any stolen or fraudulently obtained property on an Online Marketplace with an aggregate value of more than two hundred and fifty dollars shall be guilty of larceny with intent to resell on an online marketplace. Any person who is guilty of larceny with intent to resell on an online marketplace shall be punished for a first offense by imprisonment in a jail or house of correction for not more than two and one half years, or by a fine of not more than two thousand dollars; or if for a second or subsequent offense be punished by imprisonment in a state prison for not more than ten years, or by a fine of twenty-five thousand dollars, or by both a fine and imprisonment.

Facilitation of the sale of stolen or fraudulently obtained goods on an Online Marketplace.

Any person who facilitates, aids or abets, by ownership or operation of an Online Marketplace, the sale or attempted sale of any stolen or fraudulently obtained property on an Online Marketplace with an aggregate value of less than two hundred and fifty dollars where he knew or should have known that the property was stolen is guilty of facilitating the crime of theft with the intent to resell on an online marketplace. for a first offense by imprisonment in a jail or house of correction for not more than two and one half years, or by a fine of not more than one thousand dollars; or if for a second or subsequent offense be punished by imprisonment in a state prison for not more than five years, or by a fine of five thousand dollars, or by both a fine and imprisonment. Any person who facilitates, aids or abets, by ownership or operation of an Online Marketplace, the sale or attempted sale of any stolen or fraudulently obtained property on an Online Marketplace with an aggregate value of more than two hundred and fifty dollars where he knew or should have known that the property was stolen is guilty of facilitating the crime of larceny with the intent to resell on an online marketplace. for a first offense by imprisonment in a jail or house of correction for not more than two and one half years, or by a fine of not more than two thousand dollars; or if for a second or subsequent offense be punished by imprisonment in a state prison for not more than ten years, or by a fine of twenty-five thousand dollars, or by both a fine and imprisonment.

The owner or operator of an Online Marketplace shall immediately terminate the sale of any stolen or fraudulently obtained property upon receipt of information that provides a reasonable basis to conclude that the sale or auction constitutes a violation of this section.

The owner or operator of an Online Marketplace shall not be deemed liable for a violation of this section if he affirmatively demonstrates that he was presented with a written or electronic record of the purchase of that property which specifically identifies the property being

272 sold. It is an affirmative defense that the owner or operator of an Online Marketplace has failed
273 to terminate the sale of stolen or fraudulently obtained property due to mistake or technical
274 problem.

275 Forfeiture - Any property used, or intended to be used, in any manner or part, to commit
276 or facilitate, aid or abet the commission [or attempted commission] of a violation of this section
277 shall be subject to forfeiture to the Commonwealth of Massachusetts and no property right shall
278 exist in such property.

279 SECTION 14. Said Chapter 266 of the General Laws, as so appearing is hereby amended
280 by inserting the following new section:-

281 Section 30F. Enhanced Theft – Receiving & Concealing

282 It is not a defense to a charge of receiving stolen property that the property was obtained
283 by means other than through the commission of a theft offense if the property was explicitly
284 represented to the accused person as being obtained through the commission of a theft offense.

285 SECTION 15. Said Chapter 266 of the General Laws, as so appearing is hereby amended
286 by inserting the following new section:-

287 Section 30G. Fraudulent/Bogus Receipts & Universal Product Codes

288 A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers,
289 makes, alters, counterfeits, or reproduces a retail sales or return receipt, price ticket or a
290 Universal Product Code Label, shall be punished for a first offense by imprisonment in the house
291 of correction for not more than two and one half years or by a fine of not more than five hundred
292 dollars or by both such fine and imprisonment, and for a second offense shall be punished by

293 imprisonment in a house of corrections for not more than two and one half years or by a fine of
294 not more than two thousand dollars or by both fine and imprisonment and subsequent offenses
295 shall be punished by imprisonment in the state prison for not more than five years, or by a fine of
296 not more than ten thousand dollars or by both such fine and imprisonment.

297 A person who, with intent to cheat or defraud a retailer, possesses *fifteen (15) or more
298 fraudulent retail sales or return receipts, price tickets, Universal Product Code Labels or
299 possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal
300 Product Code Labels, shall be punished by imprisonment in the state prison for not more than
301 five years, or by a fine of not more than ten thousand dollars or by both such fine and
302 imprisonment.

303 SECTION 16. Chapter 266 of the General Laws, as so appearing, is hereby amended by
304 inserting the following new section:-

305 Section 60C. Pattern of Criminal Offenses

306 Venue for criminal actions to enforce the provisions of this Section, including criminal
307 actions with respect to each of the alleged offenses included within a pattern of criminal
308 offenses, as defined in this Section, that have allegedly been committed, attempted or conspired
309 to be committed by a person or persons, shall be in any county in which at least one alleged
310 criminal offense has occurred that constitutes part of the alleged pattern of criminal offenses, it
311 being the intent of this section that one district court may have jurisdiction over all the conduct,
312 persons and property which are part of, or are directly related to, each and all of the alleged
313 criminal offenses forming part of the alleged pattern of criminal offenses. It is discretionary, not

314 mandatory, to bring all criminal actions in one county when an alleged pattern of criminal
315 offenses involves two or more counties.

316 Any person who engages in a pattern of criminal offenses in two or more counties in this
317 state or who attempts or conspires with others to engage in a pattern of criminal offenses shall,
318 upon conviction, be punishable by imprisonment in the house of corrections for a term not
319 exceeding two years, or imprisonment in the house of corrections for a term not exceeding one
320 year, or by a fine in an amount not more than twenty-five thousand dollars, or by both such fine
321 and imprisonment. Such punishment shall be in addition to and imprisoned on and after any
322 penalty imposed for any offense involved in the pattern of criminal offenses.

323 For purposes of this act, “pattern of criminal offenses” means: Two or more criminal
324 offenses are committed that are part of the same plan, scheme, or adventure; or a sequence of
325 two or more of the same criminal offenses are committed and are not separated by an interval of
326 more than thirty (30) days between the first and second offense, the second and third, and so on;
327 or two or more criminal offenses are committed, each proceeding from or having as an
328 antecedent element a single prior incident or pattern of fraud, robbery, burglary, theft, identity
329 theft, receipt of stolen property, false personating, false pretenses, obtaining property by trick or
330 deception, taking a credit or debit card without consent, or the making, transferring or receiving
331 of a false or fraudulent identification card.

332 Jurisdiction and venue for a pattern of criminal offenses occurring in multiple counties in
333 this state shall be determined as provided in this Section.

334 SECTION 17. Chapter 266 of the General Laws, as so appearing, is hereby amended by
335 inserting the following new section:-

Section 30H. Organized Retail Crime

Organized retail crime shall be defined as the stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means, of retail merchandise in quantities that would not normally be purchased for personal use or consumption for the purpose of reselling or otherwise reentering such retail merchandise in commerce; or the recruitment of persons to undertake, or the coordination, organization, or facilitation of, such stealing, embezzlement, or obtaining by fraud, false pretenses, or other illegal means.

An Organized Retail Crime Ring is defined as three or more persons who associate for the purpose of engaging in the conduct of organized retail crime.

In this section, "retail merchandise" means one or more items of tangible personal property displayed, held, stored, or offered for sale in a retail establishment or merchandise explicitly represented to the person as being stolen retail merchandise.

A person who is guilty of organized retail crime shall be punished by imprisonment in a state prison for a minimum term of not less than 1 year and a maximum term of not more than

10 years, if the aggregated value of the property or services involved in all crimes commitment by the individual or co-conspirators in an organized retail crime ring within the past one hundred and eighty days is at least \$2,500 but less than \$10,000; or (2) by imprisonment in a state prison of not less than 2 years and a maximum term of not more than 15 years, if the aggregated value of the property or services involved in all crimes commitment by the individual or co-conspirators in an organized retail crime ring within the past one hundred and eighty days is at least \$10,000 or more.

357 For purposes of this section, a series of thefts committed by the same person from one or
358 more mercantile establishments over a period of one hundred eighty days may be aggregated in
359 one count and the sum of the value of all the property shall be the value considered in
360 determining the degree of the organized retail theft involved.

361 Thefts committed by the same person in different counties that have been aggregated in
362 one county may be prosecuted in any county in which one of the thefts occurred.

363 Leader of Organized Retail Crime Enterprise.

364 A person is a leader of an organized retail theft enterprise if he conspires with others as
365 an organizer, supervisor, financier or manager, to engage for profit in a scheme or course of
366 conduct to effectuate the transfer or sale of shoplifted merchandise. A leader of organized retail
367 crime may be punished by a fine of not more than \$250,000 or five times the retail value of the
368 merchandise seized at the time of the arrest, whichever is greater and/or imprisonment in state
369 prison for not more than twenty years.