HOUSE DOCKET, NO. 1972 FILED ON: 1/20/2011

HOUSE . . . . . No. 1006

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to secondhand dealers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert F. Fennell	*10th Essex*

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HOUSE . . . . . No. 1006

By Mr. Fennell of Lynn, a petition (accompanied by bill, House, No. 1006) of Robert F. Fennell relative to regulating secondhand dealers. Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. *243* OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to secondhand dealers.

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

SECTION 1. Section 1 of chapter 101 of the General Laws, as appearing in the 2008 Official Edition, is hereby amended by inserting the following words after the definition of "Deputy director":- "Second hand dealer", any person, either principal or agent who engages in the business in the commonwealth of selling used goods, used wares or used merchandise.

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

SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended by inserting after the word "months," in line 12, the following words: - Provided, however, that a

10 flea market, so called, whether held inside such tent, booth, building or other structure or in the
11 open shall be considered a temporary or transient business.

12 SECTION 4. Section 3 of said chapter 101, as appearing in the 2002 Official Edition, is
13 hereby amended in line 1 by inserting after the word “vendor” the following:-or second hand
14 dealer

15 SECTION 5. Section 3 of said chapter 101, as so appearing, is hereby amended by
16 striking the second sentence and inserting in place thereof the following:-

17 Thereupon, upon the payment of a fee, as determined annually by the commissioner of
18 administration under the provision of section three B of chapter seven, the deputy director shall
19 issue to him a state license authorizing him to do business as a transient vendor or second hand
20 dealer, subject to such local rules and regulations as may be made in a city by the mayor and city
21 council and in a town by the selectmen. Such fee shall be a dedicated fee which will fund, in
22 part, the record keeping system within the department of public safety as established by section
23 3A of this chapter.

24 SECTION 6. Said chapter 101 is hereby amended by inserting after section 3, as so
25 appearing, the following section:-

26 Section 3A. (a) A transient vendor selling merchandise at a flea market, so called, or a
27 second hand dealer shall be registered with the department of revenue and shall have a sales tax
28 identification number issued by said department.

29 (b) Such vendor shall keep a record of all purchases and sales of goods, wares and
30 merchandise, including the source from which such merchandise was obtained and shall issue

31 sales receipts for all such sales and such receipts shall contain the name, license number and
32 sales tax identification number of such vendor.

33 (c) The true name, address, license number and sales tax identification number shall be
34 posted by such vendor at the place where such vendor is conducting business.

35 (d) Whoever leases or rents space to transient vendors at a flea market so called, or a
36 second hand dealer shall maintain a record of the date of such lease or rental, and the name,
37 license number and sales tax identification numbers of each such vendor. Such record shall be a
38 public record and may be viewed or copied upon request during regular business hours.

39 (e) the Department of Public Safety shall implement a record keeping system for transient
40 vendors and second hand dealers of goods, wares, merchandise acquired and sold at the
41 registered place of business.

42 SECTION 7. Section 30 of chapter 266 of the General Laws, as appearing in the 2002
43 Official Edition, is hereby amended by adding at the end thereof the following new paragraph:-

44 (6) whoever commits a violation of this section by intentionally altering, transferring, or
45 removing any label, price tag or marking indicia of value or any other markings which aid in
46 determining value affixed to any merchandise displayed, held, stored, or offered for sale by any
47 store or other retail mercantile establishment and attempting to purchase such merchandise
48 personally or in consort with another at less than the full retail value with the intention of
49 depriving the merchant of all or part of the retail value thereof; or by intentionally transferring
50 any merchandise displayed, held, stored, or offered for sale by any sale or other retail mercantile
51 establishment from the container in or on which the same shall be displayed to any other
52 container the intent to deprive the merchant of all or part of the retail value thereof; or by

53 intentionally recording a value for the merchandise which is less than the actual retail value with
54 the intention of depriving the merchant of the full value thereof shall be punished for a first
55 offense by imprisonment in the house of correction for not more than two and one-half years or
56 by a fine of not more than five thousand dollars or by both such fine and imprisonment, and for a
57 second or subsequent offense by imprisonment in the state prison for not more than five years, or
58 by a fine of not more than twenty-five thousand dollars or by both such fine and imprisonment.

59 SECTION 8. Section 30A of said chapter 266 of the General Laws, as so appearing, is
60 hereby amended by inserting after the eighth paragraph the following new paragraph:-

61 A violation of this section committed from three or more individual retail mercantile
62 establishments, notwithstanding whether the retail value of the goods obtained from each such
63 individual retail mercantile establishment is less than one hundred dollars, shall be punished for a
64 first offense by imprisonment in the house of correction for not more than two and one-half years
65 or by a fine of not more than one thousand dollars or by both such fine and imprisonment, and
66 for a second or subsequent offense by imprisonment in the state prison for not more than five
67 years, or by a fine of not more than twenty-five thousand dollars or by both such fine and
68 imprisonment. Apprehension with goods reasonably believed to have been stolen from three
69 separate retail mercantile establishments shall be prima facie evidence of a violation under this
70 paragraph.

71 SECTION 19. Said Chapter 266 of the General Laws, as so appearing is hereby amended
72 by inserting the following new section:-

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

74 Whoever knowingly manufactures, sells, offers for sale or distributes in any way a
75 laminated or coated bag intended to shield merchandise from detection by an electronic or
76 magnetic theft detector; or knowingly possesses any tool or device designed to allow, or capable
77 of allowing, the deactivation, or removal from any merchandise, of any theft detection device,
78 with the intent to use such tool or device to deactivate any theft detection device on, or to remove
79 any theft detection device from, any merchandise without the permission of the merchant or
80 person owning or lawfully holding said merchandise; or intentionally deactivates in a retail
81 establishment a theft detection device on, or removes a theft detection device from, merchandise
82 prior to purchase shall be punished for a first offense by imprisonment in the house of correction
83 for not more than two and one-half years or by a fine of not more than one thousand dollars or by
84 both such fine and imprisonment, and for a second or subsequent offense by imprisonment in the
85 state prison for not more than five years, or by a fine of not more than twenty-five thousand
86 dollars and imprisonment in jail for not more than two years.

87 SECTION 10. Section 60 of chapter 266 of the general laws, as so appearing, is hereby
88 amended by striking out the entire section and inserting in place thereof the following new
89 section: -

90 Whoever buys, receives or aids in the concealment of stolen or embezzled property,
91 knowing it to have been stolen or embezzled, or whoever with intent to defraud buys, receives or
92 aids in the concealment of property, knowing it to have been obtained from a person by a false
93 pretense of carrying on business in the ordinary course of trade or whoever obtains or exerts
94 control over property in the custody of any law enforcement agency, or any individual acting on
95 behalf of a law enforcement agency, which is explicitly represented to him by any law
96 enforcement officer or any individual acting on behalf of a law enforcement agency as being

97 stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of
98 said property shall, if the value of such property does not exceed two hundred and fifty dollars,
99 be punished for a first offense by imprisonment in a jail or house of correction for not more than
100 two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
101 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be
102 punished by imprisonment in a state prison for not more than five years, or by imprisonment in a
103 jail or house of correction for not more than two and one half years or by a fine of five thousand
104 dollars. It shall not be a defense that the property was obtained by means other than through the
105 commission of a theft offense if the property was explicitly represented to the accused as having
106 been obtained through the commission of a theft offense.

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

109 Section 60B Any transient vendor or second hand dealer, as defined in section one of
110 chapter one hundred and one of the General Laws, who buys, receives or aids in the concealment
111 of stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with
112 intent to defraud buys, receives or aids in the concealment of property, knowing it to have been
113 obtained from a person by a false pretense of carrying on business and dealing in the ordinary
114 course of trade, shall, be punished for a first offense by imprisonment in the house of correction
115 for not more than two and one-half years or by a fine of not more than five thousand dollars or
116 by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in
117 the state prison for not more than five years, or by a fine of not more than twenty-five thousand
118 dollars or by both such fine and imprisonment. There shall be no limitation of the time in which
119 the owner of such stolen property may make claim for such property. There shall be no

120 limitation of the time in which a transient vendor may be charged with the possession of such

121 stolen goods, wares or merchandise