

**SENATE . . . . . No. 2346**

Senate, Thursday, July 31, 2014 -- Text of the Senate amendment (Senator Brownsberger) to the House Bill to improve criminal laws relative to organized retail theft (House, No. 1474, amended).

**The Commonwealth of Massachusetts**

**In the Year Two Thousand Fourteen**

1 SECTION 1. Chapter 231 of the General Laws is hereby amended by striking out section  
2 85R½, as appearing in the 2012 Official Edition, and inserting in place thereof the following  
3 section:-

4 Section 85R½. Whoever: causes damage to the property of a person as a result of a  
5 larceny or attempted larceny of said property as set forth in section 30A of chapter 266; commits  
6 or attempts to commit a larceny of goods for sale on the premises of a merchant; or commits or  
7 attempts to commit a larceny of the personal property of employees or customers or others  
8 present on such premises shall be liable in tort to the merchant for damages. The damages shall  
9 be: not more than \$50 in addition to any actual damages incurred if the value of the property is  
10 less than \$50; not more than \$250 in addition to any actual damage incurred if the value of the  
11 property is more than \$50 but less than \$250; and not more than \$500 in addition to any actual  
12 damages incurred if the value of the property is more than \$250. An action for recovery may be  
13 commenced under sections 21 to 25, inclusive, of chapter 218.

14 Any correspondence by a merchant, its agents or attorneys that asserts a claim against an  
15 individual arising under this section shall identify in detail all of the pertinent information on  
16 which the merchant bases its claim. Any person who solicits payment that exceeds the  
17 limitations provided by this section shall be subject to a fine of not more than \$500.

18 SECTION 2. Chapter 266 of the General Laws is hereby amended by inserting after  
19 section 30A the following 3 sections:-

20 Section 30B. (a) A person shall be guilty of unlawful distribution of a theft detection  
21 shielding device if the person knowingly manufactures, sells, offers for sale or distributes a  
22 laminated or coated bag or other device intended to shield merchandise from detection by an  
23 electronic or magnetic theft detector.

24 (b) A person shall be guilty of unlawful possession of a theft detection shielding device if  
25 the person, with the intent to commit, aid or abet a theft, knowingly possesses a laminated or

26 coated bag or device intended to shield merchandise from detection by an electronic or magnetic  
27 theft detector.

28 (c) A person shall be guilty of unlawful possession of a theft detection device deactivator  
29 or remover if the person knowingly possesses any tool or device designed or adapted to either: (i)  
30 allow the deactivation of a theft detection device, with the intent to use such tool or device to  
31 deactivate a theft detection device on merchandise without the permission of the merchant or  
32 person owning or lawfully holding said merchandise; or (ii) allow the removal of a theft  
33 detection device from merchandise, with the intent to use such tool or device to remove a theft  
34 detection device from merchandise without the permission of the merchant or person owning or  
35 lawfully holding said merchandise.

36 (d) A person shall be guilty of unlawful distribution of a theft detection device  
37 deactivator or remover if the person knowingly manufacturers, sells, offers for sale or distributes  
38 a tool or device designed or adapted to allow the deactivation of a theft detection device or to  
39 allow the or removal of a theft detection device from merchandise, without the permission of the  
40 merchant or person owning or lawfully holding said merchandise.

41 (e) A person shall be guilty of unlawful deactivation or removal of a theft detection  
42 device if the person intentionally deactivates or removes a theft detection device from  
43 merchandise prior to purchase, in a retail establishment, with the intent to steal said merchandise.

44 (f) A violation of this section shall be punished by imprisonment in a house of correction  
45 for not more than 2½ years or by imprisonment in the state prison for not more than 5 years or  
46 by a fine of not more than \$25,000, or by both such fine and imprisonment.

47 Section 30C. A person who, with intent to cheat or defraud a retailer, possesses, uses,  
48 utters, transfers, makes, alters, counterfeits or reproduces a retail sales or return receipt, price  
49 ticket or universal product code label shall be punished by imprisonment in a house of correction  
50 for not more than 2 ½ years or by imprisonment in the state prison for not more than 5 years or  
51 by a fine of not more than \$10,000, or by both such fine and imprisonment.

52 Section 30D. (a) For purposes of this section, "retail merchandise" shall mean 1 or more  
53 items of tangible personal property displayed, held, stored or offered for sale in a retail  
54 establishment or merchandise.

55 (b) A person commits an organized retail crime if the person, acting in concert with 2 or  
56 more persons and within a 180 day period steals, embezzles or obtains by fraud, false pretense or  
57 other illegal means retail merchandise valued at more than \$2,500 to resell or otherwise reenter  
58 such retail merchandise into commerce; provided, that a series of thefts from 1 or more  
59 mercantile establishments may be aggregated; provided further, that said person may be  
60 prosecuted in any county where a theft from a mercantile establishment occurred.

61 A violation of this subsection shall be punished by imprisonment in a state prison for not  
62 more than 10 years.

63 (c) A person commits an aggravated organized retail crime if the person, acting in concert  
64 with 2 or more persons and within a 180 day period, steals, embezzles or obtains by fraud, false  
65 pretense or other illegal means retail merchandise valued at more than \$10,000 to resell or  
66 otherwise reenter such retail merchandise into commerce; provided, that a series of thefts from 1  
67 or more mercantile establishments may be aggregated; provided further, that said person may be  
68 prosecuted in any county where a theft from a mercantile establishment occurred.

69 A violation of this subsection shall be punished by imprisonment in a state prison for not  
70 more than 15 years.

71 (d) A person shall be a leader of an organized retail theft enterprise if the person  
72 conspires with others as an organizer, supervisor, financier or manager, to commit an organized  
73 retail crime or an aggravated organized retail crime. A leader of organized retail crime may be  
74 punished by a fine of not more than \$250,000 or 5 times the retail value of the merchandise  
75 seized at the time of the arrest, whichever is greater, or imprisonment in state prison for not more  
76 than 20 years, or both such fine and imprisonment.

77 SECTION 3. Said chapter 266 is hereby further amended by striking out section 60, as  
78 appearing in the 2012 Official Edition, and inserting in place thereof the following section:-

79 Section 60. Whoever buys, receives or aids in the concealment of stolen or embezzled  
80 property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys,  
81 receives or aids in the concealment of property, knowing it to have been obtained from a person  
82 by a false pretense of carrying on business in the ordinary course of trade or whoever obtains or  
83 exerts control over property in the custody of any law enforcement agency, or any individual  
84 acting on behalf of a law enforcement agency, which is explicitly represented to such person by  
85 any law enforcement officer or any individual acting on behalf of a law enforcement agency as  
86 being stolen and who intends to deprive its rightful owner permanently of the use and enjoyment  
87 of said property shall be punished as follows: if the value of such property does not exceed \$250,  
88 for a first offense by imprisonment in a jail or house of correction for not more than 2½ years or  
89 by a fine of not more than \$1,000; if the value of such property does not exceed \$250, for a  
90 second or subsequent offense by imprisonment in a state prison for not more than 5 years, or by a  
91 fine of \$5,000, or by both such fine and imprisonment; or if the value of such property exceeds  
92 \$250 by imprisonment in a state prison for not more than 5 years or by a fine of \$5,000, or by  
93 both such fine and imprisonment.

94 It shall not be a defense that the property was obtained by means other than through the  
95 commission of a theft offense if the property was explicitly represented to the accused as having  
96 been obtained through the commission of a theft offense.

97           SECTION 4. Said chapter 266 is hereby further amended by inserting after section 60A  
98 the following section:-

99           Section 60B. Crimes committed in different counties or the territorial jurisdiction of  
100 different courts in violation of this chapter, if the crimes may be joined for trial under the  
101 Massachusetts Rules of Criminal Procedure but for venue and jurisdiction, may be charged and  
102 prosecuted in any court having jurisdiction of at least 1 of the crimes.