

HOUSE No. 3330

By Mr. Linsky of Natick, a petition (accompanied by bill, House, No. 3330) of David Paul Linsky and others relative to the criminal penalties for organized retail theft. The Judiciary.

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

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

8 SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended
9 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. Said section 1 of chapter 101, as so appearing, is hereby further amended by
13 inserting after the last line the following words: -

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

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

26 The term Unused Property Market shall not mean and shall not apply to an event which is
27 organized for the exclusive benefit of any community chest, fund, foundation, association, or
28 corporation organized and operated for religious, educational, or charitable purposes, provided
29 that no part of any admission fee or parking fee charged vendors or prospective purchasers or the
30 gross receipts or net earnings from the sale or exchange of personal property, whether in the
31 form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of
32 any private shareholder or person participating in the organization or conduct of the event; or any
33 event at which all of the personal property offered for sale or displayed is new, and all persons
34 selling, exchanging or offering or displaying personal property for sale or exchange, are
35 manufacturers or authorized representatives of manufacturers or distributors.

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

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

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

51 ?Nonprescription Drug? (may also be referred to as ?Over the Counter Drug") any non-
52 narcotic medicine or drug that may be sold without a prescription and is prepackaged for use by
53 the consumer, prepared by the manufacturer or producer for use by the consumer, and should be
54 properly labeled and unadulterated in accordance with the requirements of the state food and
55 drug laws and the federal ?Food, Drug and Cosmetic Act". The term ?Nonprescription Drug?
56 shall not include herbal products, dietary supplements, botanical extracts or vitamins.

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

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

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

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

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

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

- 83 1. date of the transaction;
- 84 2. name and address of the person, corporation, or entity from whom the New and
85 Unused Property was acquired;
- 86 3. an identification and description of the New and Unused Property acquired;
- 87 4. the price paid for such New and Unused Property;

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

- 90 1. falsely create, alter, obliterate or destroy such receipts;
- 91 2. refuse or fail upon request to make such receipts available for inspection within a
92 period of time which is reasonable under the individual circumstances surrounding such request;
93 provided, however, nothing contained within the provisions of this section shall be construed to
94 require the Unused Property Merchant to possess such receipt on or about his or her person
95 without reasonable notice; or
- 96 3. fail to maintain the receipts required by this section for at an appropriate time.

97 The provisions of this Act shall not apply to:

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

100 2. the sale of a motor vehicle or trailer that is required to be registered or is subject
101 to the certificate of title laws of this state;

102 3. the sale of wood for fuel, ice, or livestock;

103 4. business conducted in any industry or association trade show;

104 5. property, although never used, whose style, packaging or material, clearly
105 indicates that such property was not produced or manufactured within recent times;

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

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

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

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

116 This Act shall apply to all New and Unused Property purchased or acquired on or after
117 January 1, 2012.

118 SECTION 7. Section 3 of said chapter 101, as appearing in the 2008 Official Edition, is
119 hereby amended in line 1 by inserting after the word "vendor" the following:-unused property
120 merchant or second hand dealer so called,

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

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

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

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

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

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

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

150 A person is guilty of unlawful distribution of a theft detection shielding device when he
151 knowingly manufactures, sells, offers for sale or distributes in any way laminated or a coated bag
152 or other devise intended to shield merchandise from detection by an electronic or magnetic theft
153 detector.

154 A person is guilty of unlawful possession of a theft detection shielding device when he
155 knowingly possesses any laminated or coated bags or devices intended to shield merchandise
156 from detection by an electronic or magnetic theft detector, with the intent to commit (or aid or
157 abet) theft.

158 A person is guilty of unlawful possession of a theft detection device deactivator or
159 remover when he knowingly possesses any tool or device designed or adapted to allow, or is
160 capable of allowing, the deactivation, or removal from any merchandise, of any theft detection
161 device, with the intent to use such tool or device to deactivate any theft detection device on, or to

162 remove any theft detection device from, any merchandise without the permission of the merchant
163 or person owning or lawfully holding said merchandise.

164 A person is guilty of unlawful distribution of a theft detection device deactivator or
165 remover when he knowingly manufacturers, sells, offers for sale or distributes in any way tool or
166 device designed or adapted to allow, or capable of allowing, the deactivation, or removal from
167 any merchandise, of any theft detection device without the permission of the merchant or person
168 owning or lawfully holding said merchandise.

169 A person is guilty of unlawful deactivation or removal of a theft detection device when
170 he intentionally deactivates with intent to steal in a retail establishment a theft detection device
171 on, or removes a theft detection device from, merchandise prior to purchase.

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

177

178 The activation of an anti-shoplifting or inventory control device as a result of a person
179 exiting the establishment or a protected security device within the area within the establishment
180 shall constitute reasonable cause for the detention of the person so exiting by the owner or
181 operator of the establishment or by an agent or employee of the owner or operator, provided
182 notice has been posted to advise the patrons that the establishment utilizes anti-shoplifting or
183 inventory control devices. Each such detention shall be made only in a reasonable manner and

184 only for a reasonable period of time sufficient for any inquiry into the circumstances surrounding
185 the activation of the device and/or for the recovery of goods. Such taking into custody and
186 detention by a law enforcement officer, security officer, merchant, merchant's employee or agent,
187 if done in compliance with all the requirements of the foregoing subsection, shall not render such
188 law enforcement officer, security officer, merchant, merchant's employee or agent, criminally or
189 civilly liable, including any liability for false arrest, false imprisonment, unlawful detention,
190 malicious prosecution, intentional infliction of emotional distress or defamation.

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

193 Section 30C. Theft Using Emergency Exit to Avoid Apprehension or Detection

194 A person commits theft by emergency exit if that person intentionally takes possession
195 of, carries away, transfer or causes to be transferred, any merchandise displayed, held, stored or
196 offered by sale by any store or other retail mercantile establishment with the intent of depriving
197 the merchant of the possession, use of benefit of such merchandise or converting the same to the
198 use of such person without paying to the merchant the value thereof and the person leaves a store
199 by use of a designated emergency exit.

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

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

209

210 Section 60. Whoever buys, receives or aids in the concealment of stolen or embezzled
211 property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys,
212 receives or aids in the concealment of property, knowing it to have been obtained from a person
213 by a false pretense of carrying on business in the ordinary course of trade or whoever obtains or
214 exerts control over property in the custody of any law enforcement agency, or any individual
215 acting on behalf of a law enforcement agency, which is explicitly represented to him by any law
216 enforcement officer or any individual acting on behalf of a law enforcement agency as being
217 stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of
218 said property shall, if the value of such property does not exceed two hundred and fifty dollars,
219 be punished for a first offense by imprisonment in a jail or house of correction for not more than
220 two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
221 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be
222 punished by imprisonment in a state prison for not more than five years, or by a fine of five
223 thousand dollars, or by both a fine and imprisonment. It shall not be a defense that the property
224 was obtained by means other than through the commission of a theft offense if the property was
225 explicitly represented to the accused as having been obtained through the commission of a theft
226 offense.

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

229 Section 30D. Enhanced Theft ? Receiving & Concealing

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

233

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

236 Section 30E. Fraudulent/Bogus Receipts & Universal Product Codes

237 A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers,
238 makes, alters, counterfeits, or reproduces a retail sales or return receipt, price ticket or a
239 Universal Product Code Label, shall be punished for a first offense by imprisonment in the house
240 of correction for not more than two and one half years or by a fine of not more than five hundred
241 dollars or by both such fine and imprisonment, and for a second offense shall be punished by
242 imprisonment in a house of corrections for not more than two and one half years or by a fine of
243 not more than two thousand dollars or by both fine and imprisonment and subsequent offenses
244 shall be punished by imprisonment in the state prison for not more than five years, or by a fine of
245 not more than ten thousand dollars or by both such fine and imprisonment.

246 A person who, with intent to cheat or defraud a retailer, possesses *fifteen (15) or more
247 fraudulent retail sales or return receipts, price tickets, Universal Product Code Labels or

248 possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal
249 Product Code Labels, shall be punished by imprisonment in the state prison for not more than
250 five years, or by a fine of not more than ten thousand dollars or by both such fine and
251 imprisonment.

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

254 Section 60C. Pattern of Criminal Offenses

255 Venue for criminal actions to enforce the provisions of this Section, including criminal
256 actions with respect to each of the alleged offenses included within a pattern of criminal
257 offenses, as defined in this Section, that have allegedly been committed, attempted or conspired
258 to be committed by a person or persons, shall be in any county in which at least one alleged
259 criminal offense has occurred that constitutes part of the alleged pattern of criminal offenses, it
260 being the intent of this section that one district court may have jurisdiction over all the conduct,
261 persons and property which are part of, or are directly related to, each and all of the alleged
262 criminal offenses forming part of the alleged pattern of criminal offenses. It is discretionary, not
263 mandatory, to bring all criminal actions in one county when an alleged pattern of criminal
264 offenses involves two or more counties.

265 Any person who engages in a pattern of criminal offenses in two or more counties in this
266 state or who attempts or conspires with others to engage in a pattern of criminal offenses shall,
267 upon conviction, be punishable by imprisonment in the house of corrections for a term not
268 exceeding two years, or imprisonment in the house of corrections for a term not exceeding one
269 year, or by a fine in an amount not more than twenty-five thousand dollars, or by both such fine

270 and imprisonment. Such punishment shall be in addition to and imprisoned on and after any
271 penalty imposed for any offense involved in the pattern of criminal offenses.

272 For purposes of this act, "pattern of criminal offenses" means: Two or more criminal
273 offenses are committed that are part of the same plan, scheme, or adventure; or a sequence of
274 two or more of the same criminal offenses are committed and are not separated by an interval of
275 more than thirty (30) days between the first and second offense, the second and third, and so on;
276 or two or more criminal offenses are committed, each proceeding from or having as an
277 antecedent element a single prior incident or pattern of fraud, robbery, burglary, theft, identity
278 theft, receipt of stolen property, false personating, false pretenses, obtaining property by trick or
279 deception, taking a credit or debit card without consent, or the making, transferring or receiving
280 of a false or fraudulent identification card.

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

283

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

286 Section 30F. Organized Retail Crime

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

291 the coordination, organization, or facilitation of, such stealing, embezzlement, or obtaining by
292 fraud, false pretenses, or other illegal means.

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

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

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

300 10 years, if the aggregated value of the property or services involved in all crimes
301 commitment by the individual or co-conspirators in an organized retail crime ring within the past
302 one hundred and eighty days is at least \$2,500 but less than \$10,000; or (2) by imprisonment in a
303 state prison of not less than 2 years and a maximum term of not more than 15 years, if the
304 aggregated value of the property or services involved in all crimes commitment by the individual
305 or co-conspirators in an organized retail crime ring within the past one hundred and eighty days
306 is at least \$10,000 or more.

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

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

313 Leader of Organized Retail Crime Enterprise.

314

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