

HOUSE No. 03330

The Commonwealth of Massachusetts

PRESENTED BY:

David Paul Linsky

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 passage of the accompanying bill:

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

PETITION OF:

NAME:	DISTRICT/ADDRESS:
<i>David Paul Linsky</i>	<i>5th Middlesex</i>
<i>Robert F. Fennell</i>	<i>10th Essex</i>
<i>Michael R. Knapik</i>	<i>Second Hampden and Hampshire</i>
<i>Richard T. Moore</i>	<i>Worcester and Norfolk</i>
<i>Alice Hanlon Peisch</i>	<i>14th Norfolk</i>
<i>Michael F. Kane</i>	<i>5th Hampden</i>
<i>Cory Atkins</i>	<i>14th Middlesex</i>
<i>James B. Eldridge</i>	<i>Middlesex and Worcester</i>
<i>Chris Walsh</i>	<i>6th Middlesex</i>
<i>Susan Williams Gifford</i>	<i>2nd Plymouth</i>
<i>James M. Cantwell</i>	<i>4th Plymouth</i>
<i>Kate Hogan</i>	<i>3rd Middlesex</i>
<i>David M. Torrisi</i>	<i>14th Essex</i>
<i>Colleen M. Garry</i>	<i>36th Middlesex</i>
<i>Denise Provost</i>	<i>27th Middlesex</i>

HOUSE No. 03330

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

5

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

9

10 SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended by
11 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.

14

15 SECTION 4. Said section 1 of chapter 101, as so appearing, is hereby further amended by

16 inserting after the last line the following words: -

17

18 "Unused Property Market" any event at which two (2) or more persons offer personal property

19 for sale or exchange, at which a fee is charged for sale or exchange of personal property, or at

20 which a fee is charged to prospective buyers for admission to the area at which personal property

21 is offered or displayed for sale or exchange; or regardless of the number of persons offering or

22 displaying personal property or the absence of fees at which personal property is offered or

23 displayed for sale or exchange if the event is held more than six (6) times in any twelve (12)

24 month period.

25

26 The term Unused Property Market is interchangeable with and applicable to "Swap Meet",

27 "Indoor Swap Meet", "Flea Market", or other similar terms regardless of whether these events

28 are held inside a building or outside in the open. The primary characteristic is that these

29 activities involve a series of sales sufficient in number, scope, and character to constitute a

30 regular course of business.

31

32 The term Unused Property Market shall not mean and shall not apply to an event which is

33 organized for the exclusive benefit of any community chest, fund, foundation, association, or

34 corporation organized and operated for religious, educational, or charitable purposes, provided

35 that no part of any admission fee or parking fee charged vendors or prospective purchasers or the

36 gross receipts or net earnings from the sale or exchange of personal property, whether in the
37 form of a percentage of the receipts or earnings, as salary, or otherwise, inures to the benefit of
38 any private shareholder or person participating in the organization or conduct of the event; or any
39 event at which all of the personal property offered for sale or displayed is new, and all persons
40 selling, exchanging or offering or displaying personal property for sale or exchange, are
41 manufacturers or authorized representatives of manufacturers or distributors.

42

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

49

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

57

58 ?Baby Food? or ?Infant Formula? any food manufactured, packaged and labeled specifically

59 for sale for consumption by a child under the age of 2.

60

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

67

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

77

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

80

81 No Unused Property Merchant shall offer at an Unused Property Market for sale or knowingly

82 permit the sale of Baby Food, Infant Formula, cosmetics or personal care products, or any
83 Nonprescription Drug or Medical Device as defined in this Chapter or in section one of Chapter
84 ninety-four. This section shall not apply to a person who keeps available for public inspection a
85 written authorization identifying that person as an authorized representative of the manufacturer
86 or distributor of such product, as long as the authorization is not false, fraudulent, or fraudulently
87 obtained.

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

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

92

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

95

96 1. date of the transaction;

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

99 3. an identification and description of the New and Unused Property acquired;

100 4. the price paid for such New and Unused Property;

101

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

104

- 105 1. falsely create, alter, obliterate or destroy such receipts;
- 106 2. refuse or fail upon request to make such receipts available for inspection within a period
- 107 of time which is reasonable under the individual circumstances surrounding such request;
- 108 provided, however, nothing contained within the provisions of this section shall be construed to
- 109 require the Unused Property Merchant to possess such receipt on or about his or her person
- 110 without reasonable notice; or
- 111 3. fail to maintain the receipts required by this section for at an appropriate time.
- 112
- 113 The provisions of this Act shall not apply to:
- 114
- 115 1. the sale of any item regulated by federal, state, or local law, statute, act of legislature,
- 116 regulation, or ordinance, and sold in compliance with those provisions.
- 117 2. the sale of a motor vehicle or trailer that is required to be registered or is subject to the
- 118 certificate of title laws of this state;
- 119 3. the sale of wood for fuel, ice, or livestock;
- 120 4. business conducted in any industry or association trade show;
- 121 5. property, although never used, whose style, packaging or material, clearly indicates that
- 122 such property was not produced or manufactured within recent times;
- 123 6. anyone who sells by sample, catalog or brochure for future delivery.
- 124 7. the sale of arts or crafts or other merchandise by a person who produces such arts or
- 125 crafts or merchandise or by a person or persons acting on their behalf.
- 126 8. persons who make sales presentations pursuant to a prior, individualized invitation issued
- 127 to the consumer by the owner or legal occupant of the premises.

128 □

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

134 □

135 □This Act shall apply to all New and Unused Property purchased or acquired on or after January
136 1, 2012.

137 □

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

141 □

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

144 □

145 □Thereupon, upon the payment of a fee, as determined annually by the commissioner of
146 administration under the provision of section three B of chapter seven, the deputy director shall
147 issue to him a state license authorizing him to do business as a transient vendor, unused property
148 merchant or second hand dealer, subject to such local rules and regulations as may be made in a
149 city by the mayor and city council and in a town by the selectmen. Such fee shall be a dedicated
150 fee which will fund, in part, the record keeping system within the department of public safety as

151 established by section 3A of this chapter.

152

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

155

156 Section 3A. A transient vendor, unused property merchant or second hand dealer selling
157 merchandise at an unused property market or a flea market, so called, shall be registered with the
158 department of revenue and shall have a sales tax identification number issued by said
159 department. Such vendor shall keep a record of all purchases and sales of goods, wares and
160 merchandise, including the source from which such merchandise was obtained and shall issue
161 sales receipts for all such sales and such receipts shall contain the name, license number and
162 sales tax identification number of such vendor. The true name, address, license number and sales
163 tax identification number shall be posted by such vendor at the place where such vendor is
164 conducting business. Whoever leases or rents space to transient vendors, unused property
165 merchant or second hand dealer at an unused property market or flea market so called, shall
166 maintain a record of the date of such lease or rental, and the name, license number and sales tax
167 identification numbers of each such vendor. Such record shall be a public record and may be
168 viewed or copied upon request during regular business hours. The Department of Public Safety
169 shall implement a record keeping system for transient vendors and second hand dealers of goods,
170 wares, merchandise acquired and sold at the registered place of business.

171

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

174 □

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

176 □

177 □A person is guilty of unlawful distribution of a theft detection shielding device when he

178 knowingly manufactures, sells, offers for sale or distributes in any way laminated or a coated bag

179 or other devise intended to shield merchandise from detection by an electronic or magnetic theft

180 detector.

181 □

182 □A person is guilty of unlawful possession of a theft detection shielding device when he

183 knowingly possesses any laminated or coated bags or devices intended to shield merchandise

184 from detection by an electronic or magnetic theft detector, with the intent to commit (or aid or

185 abet) theft.

186 □

187 □A person is guilty of unlawful possession of a theft detection device deactivator or remover

188 when he knowingly possesses any tool or device designed or adapted to allow, or is capable of

189 allowing, the deactivation, or removal from any merchandise, of any theft detection device, with

190 the intent to use such tool or device to deactivate any theft detection device on, or to remove any

191 theft detection device from, any merchandise without the permission of the merchant or person

192 owning or lawfully holding said merchandise.

193 □

194 □A person is guilty of unlawful distribution of a theft detection device deactivator or remover

195 when he knowingly manufacturers, sells, offers for sale or distributes in any way tool or device

196 designed or adapted to allow, or capable of allowing, the deactivation, or removal from any

197 merchandise, of any theft detection device without the permission of the merchant or person
198 owning or lawfully holding said merchandise.

199

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

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

208

209 The activation of an anti-shoplifting or inventory control device as a result of a person exiting
210 the establishment or a protected security device within the area within the establishment shall
211 constitute reasonable cause for the detention of the person so exiting by the owner or operator of
212 the establishment or by an agent or employee of the owner or operator, provided notice has been
213 posted to advise the patrons that the establishment utilizes anti-shoplifting or inventory control
214 devices. Each such detention shall be made only in a reasonable manner and only for a
215 reasonable period of time sufficient for any inquiry into the circumstances surrounding the
216 activation of the device and/or for the recovery of goods. Such taking into custody and detention
217 by a law enforcement officer, security officer, merchant, merchant's employee or agent, if done
218 in compliance with all the requirements of the foregoing subsection, shall not render such law
219 enforcement officer, security officer, merchant, merchant's employee or agent, criminally or

220 civilly liable, including any liability for false arrest, false imprisonment, unlawful detention,
221 malicious prosecution, intentional infliction of emotional distress or defamation.

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

224 □

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

226 □

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

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

239 □

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

243 □

244 □Section 60. Whoever buys, receives or aids in the concealment of stolen or embezzled
245 property, knowing it to have been stolen or embezzled, or whoever with intent to defraud buys,
246 receives or aids in the concealment of property, knowing it to have been obtained from a person
247 by a false pretense of carrying on business in the ordinary course of trade or whoever obtains or
248 exerts control over property in the custody of any law enforcement agency, or any individual
249 acting on behalf of a law enforcement agency, which is explicitly represented to him by any law
250 enforcement officer or any individual acting on behalf of a law enforcement agency as being
251 stolen and who intends to deprive its rightful owner permanently of the use and enjoyment of
252 said property shall, if the value of such property does not exceed two hundred and fifty dollars,
253 be punished for a first offense by imprisonment in a jail or house of correction for not more than
254 two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
255 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be
256 punished by imprisonment in a state prison for not more than five years, or by a fine of five
257 thousand dollars, or by both a fine and imprisonment. It shall not be a defense that the property
258 was obtained by means other than through the commission of a theft offense if the property was
259 explicitly represented to the accused as having been obtained through the commission of a theft
260 offense.

261 □

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

264 □

265 □Section 30D. Enhanced Theft ? Receiving & Concealing

266 □

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

270 □

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

273 □

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

275 □

276 □A person who, with intent to cheat or defraud a retailer, possesses, uses, utters, transfers,
277 makes, alters, counterfeits, or reproduces a retail sales or return receipt, price ticket or a
278 Universal Product Code Label, shall be punished for a first offense by imprisonment in the house
279 of correction for not more than two and one half years or by a fine of not more than five hundred
280 dollars or by both such fine and imprisonment, and for a second offense shall be punished by
281 imprisonment in a house of corrections for not more than two and one half years or by a fine of
282 not more than two thousand dollars or by both fine and imprisonment and subsequent offenses
283 shall be punished by imprisonment in the state prison for not more than five years, or by a fine of
284 not more than ten thousand dollars or by both such fine and imprisonment.

285 □

286 □A person who, with intent to cheat or defraud a retailer, possesses *fifteen (15) or more
287 fraudulent retail sales or return receipts, price tickets, Universal Product Code Labels or
288 possesses the device which purpose is to manufacture fraudulent retail sales receipts or Universal

289 Product Code Labels, shall be punished by imprisonment in the state prison for not more than
290 five years, or by a fine of not more than ten thousand dollars or by both such fine and
291 imprisonment.

292

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

295

296 Section 60C. Pattern of Criminal Offenses

297

298 Venue for criminal actions to enforce the provisions of this Section, including criminal actions
299 with respect to each of the alleged offenses included within a pattern of criminal offenses, as
300 defined in this Section, that have allegedly been committed, attempted or conspired to be
301 committed by a person or persons, shall be in any county in which at least one alleged criminal
302 offense has occurred that constitutes part of the alleged pattern of criminal offenses, it being the
303 intent of this section that one district court may have jurisdiction over all the conduct, persons
304 and property which are part of, or are directly related to, each and all of the alleged criminal
305 offenses forming part of the alleged pattern of criminal offenses. It is discretionary, not
306 mandatory, to bring all criminal actions in one county when an alleged pattern of criminal
307 offenses involves two or more counties.

308

309 Any person who engages in a pattern of criminal offenses in two or more counties in this state
310 or who attempts or conspires with others to engage in a pattern of criminal offenses shall, upon
311 conviction, be punishable by imprisonment in the house of corrections for a term not exceeding

312 two years, or imprisonment in the house of corrections for a term not exceeding one year, or by a
313 fine in an amount not more than twenty-five thousand dollars, or by both such fine and
314 imprisonment. Such punishment shall be in addition to and imprisoned on and after any penalty
315 imposed for any offense involved in the pattern of criminal offenses.

316

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

326

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

329

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

332

333 Section 30F. Organized Retail Crime

334

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

341

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

344

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

348

349 A person who is guilty of organized retail crime shall be punished by imprisonment in a state
350 prison for a minimum term of not less than 1 year and a maximum term of not more than
351 10 years, if the aggregated value of the property or services involved in all crimes commitment
352 by the individual or co-conspirators in an organized retail crime ring within the past one hundred
353 and eighty days is at least \$2,500 but less than \$10,000; or (2) by imprisonment in a state prison
354 of not less than 2 years and a maximum term of not more than 15 years, if the aggregated value
355 of the property or services involved in all crimes commitment by the individual or co-
356 conspirators in an organized retail crime ring within the past one hundred and eighty days is at
357 least \$10,000 or more.

358

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

363

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

366

367 Leader of Organized Retail Crime Enterprise.

368

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