

By: Senator(s) Tollison

To: Judiciary, Division B

COMMITTEE SUBSTITUTE
FOR
SENATE BILL NO. 2859

1 AN ACT TO AMEND SECTION 97-17-70, MISSISSIPPI CODE OF 1972,
2 TO REVISE DEFENSES TO A CHARGE OF RECEIVING STOLEN PROPERTY; TO
3 AMEND SECTION 97-23-93, MISSISSIPPI CODE OF 1972, TO ALLOW FOR
4 AGGREGATION OF MULTIPLE OFFENSES IN DETERMINING THE GRAVITY OF
5 CERTAIN OFFENSES OF SHOPLIFTING; TO CREATE THE CRIMES OF FALSELY
6 USING OR PRODUCING RETAIL SALES RECEIPTS AND UNIVERSAL PRODUCT
7 CODES; TO CRIMINALIZE THE USE OF A SCANNING DEVICE OR REENCODER TO
8 CAPTURE ENCODED INFORMATION FROM A MAGNETIC STRIP ON A CREDIT,
9 DEBIT OR OTHER PAYMENT CARD WITH INTENT TO DEFRAUD; TO AMEND
10 SECTION 97-17-75, MISSISSIPPI CODE OF 1972, TO REVISE THE PENALTY
11 FOR REMOVAL OR SALE OF PERSONAL PROPERTY SUBJECT TO A LIEN; AND
12 FOR RELATED PURPOSES.

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

14 **SECTION 1.** Section 97-17-70, Mississippi Code of 1972, is
15 amended as follows:

16 97-17-70. (1) A person commits the crime of receiving
17 stolen property if he intentionally possesses, receives, retains
18 or disposes of stolen property knowing that it has been stolen or
19 having reasonable grounds to believe it has been stolen, unless
20 the property is possessed, received, retained or disposed of with
21 intent to restore it to the owner.

22 (2) (a) The fact that the person who stole the property has
23 not been convicted, apprehended or identified is not a defense to
24 a charge of receiving stolen property.

25 (b) The fact that the property was obtained by means
26 other than through the commission of an offense amounting to theft
27 if the property was explicitly represented to the accused as being
28 obtained through the commission of an offense amounting to theft
29 is not a defense to a charge of receiving stolen property.

30 (3) Any person who shall be convicted of receiving stolen
31 property which exceeds Five Hundred Dollars (\$500.00) in value
32 shall be committed to the custody of the State Department of

33 Corrections for a term not exceeding ten (10) years or by a fine
34 of not more than Ten Thousand Dollars (\$10,000.00), or both.

35 (4) Any person who shall be convicted of receiving stolen
36 property which does not exceed Five Hundred Dollars (\$500.00) in
37 value shall be punished by imprisonment for not more than six (6)
38 months or by a fine of not more than One Thousand Dollars
39 (\$1,000.00), or both.

40 **SECTION 2.** Section 97-23-93, Mississippi Code of 1972, is
41 amended as follows:

42 97-23-93. (1) Any person who shall willfully and unlawfully
43 take possession of any merchandise owned or held by and offered or
44 displayed for sale by any merchant, store or other mercantile
45 establishment with the intention and purpose of converting such
46 merchandise to his own use without paying the merchant's stated
47 price therefor shall be guilty of the crime of shoplifting and,
48 upon conviction, shall be punished as is provided in this section.

49 (2) The requisite intention to convert merchandise without
50 paying the merchant's stated price for the merchandise is
51 presumed, and shall be prima facie evidence thereof, when such
52 person, alone or in concert with another person, willfully:

53 (a) Conceals the unpurchased merchandise;

54 (b) Removes or causes the removal of unpurchased
55 merchandise from a store or other mercantile establishment;

56 (c) Alters, transfers or removes any price-marking, any
57 other marking which aids in determining value affixed to the
58 unpurchased merchandise, or any tag or device used in electronic
59 surveillance of unpurchased merchandise;

60 (d) Transfers the unpurchased merchandise from one
61 container to another; or

62 (e) Causes the cash register or other sales recording
63 device to reflect less than the merchant's stated price for the
64 unpurchased merchandise.

65 (3) Evidence of stated price or ownership of merchandise may
66 include, but is not limited to:

67 (a) The actual merchandise or the container which held
68 the merchandise alleged to have been shoplifted; or

69 (b) The content of the price tag or marking from such
70 merchandise; or

71 (c) Properly identified photographs of such
72 merchandise.

73 (4) Any merchant or his agent or employee may testify at a
74 trial as to the stated price or ownership of merchandise.

75 (5) A person convicted of shoplifting merchandise for which
76 the merchant's stated price is less than or equal to Five Hundred
77 Dollars (\$500.00) shall be punished as follows:

78 (a) Upon a first shoplifting conviction the defendant
79 shall be guilty of a misdemeanor and fined not more than One
80 Thousand Dollars (\$1,000.00), or punished by imprisonment not to
81 exceed six (6) months, or by both such fine and imprisonment.

82 (b) Upon a second shoplifting conviction the defendant
83 shall be guilty of a misdemeanor and fined not more than One
84 Thousand Dollars (\$1,000.00) or punished by imprisonment not to
85 exceed six (6) months, or by both such fine and imprisonment.

86 (6) Upon a third or subsequent shoplifting conviction the
87 defendant shall be guilty of a felony and fined not more than Five
88 Thousand Dollars (\$5,000.00), or imprisoned for a term not
89 exceeding five (5) years, or by both such fine and imprisonment.

90 (7) A person convicted of shoplifting merchandise for which
91 the merchant's stated price exceeds Five Hundred Dollars (\$500.00)
92 shall be guilty of a felony and, upon conviction, punished as
93 provided in Section 97-17-41 for the offense of grand larceny.

94 (8) In determining the number of prior shoplifting
95 convictions for purposes of imposing punishment under this
96 section, the court shall disregard all such convictions occurring

97 more than seven (7) years prior to the shoplifting offense in
98 question.

99 (9) For the purpose of determining the gravity of the
100 offense under subsections (6) and (7) of this section, the
101 prosecutor may aggregate the value of merchandise shoplifted from
102 three (3) or more separate mercantile establishments over a period
103 of thirty (30) or fewer days.

104 **SECTION 3.** (1) A person who, with intent to cheat or
105 defraud a retailer, possesses, uses, utters transfers, makes,
106 alters, counterfeits or reproduces a retail sales receipt or a
107 universal product code label commits a misdemeanor which shall be
108 punished, upon conviction thereof, by imprisonment not to exceed
109 one (1) year, a fine not to exceed Five Thousand Dollars
110 (\$5,000.00), or both.

111 (2) A person who, with intent to cheat or defraud a
112 retailer, possesses fifteen (15) or more retail sales receipts or
113 a universal product code labels or possesses a device the purpose
114 of which is to manufacture fraudulent retail sale receipts or
115 universal product code labels commits a felony punishable, upon
116 conviction thereof, by imprisonment not to exceed five (5) years,
117 a fine not to exceed Ten Thousand Dollars (\$10,000.00), or both.

118 **SECTION 4.** (1) For the purposes of this section the
119 following terms shall have the meanings ascribed to them unless
120 the context clearly requires otherwise:

121 (a) "Cardholder" means any person:

122 (i) Named on the face of a credit card to whom or
123 for whose benefit the credit card is issued by an issuer; or

124 (ii) In possession of a credit card with the
125 consent of the person to whom the credit card was issued.

126 (b) "Credit card" means:

127 (i) Any instrument or device, whether known as a
128 credit card, charge card, credit plate, courtesy card,
129 identification card or any other name that is issued with or

130 without fee by an issuer for the use of the cardholder in
131 obtaining money, goods, services or anything else of value, either
132 on credit or in consideration of an undertaking or guaranty by the
133 issuer of the payment of a check drawn by the cardholder, on a
134 promise to pay in part or in full therefor at a future time,
135 whether or not all or any part of the indebtedness that is
136 represented by the promise to make deferred payment is secured or
137 unsecured.

138 (ii) A debit card, electronic benefit transfer
139 card or other access instrument or device, other than a check that
140 is signed by the holder or other authorized signatory on the
141 deposit account, that draws funds from a deposit account in order
142 to obtain money, goods, services or anything else of value.

143 (iii) A stored value card, smart card or other
144 instrument or device that enables a person to obtain goods,
145 services or anything else of value through the use of value stored
146 on the card instrument or device.

147 (iv) The number that is assigned the card,
148 instrument or device, even if the physical card, instrument or
149 device is not used or presented.

150 (c) "Issuer" means any business organization, state
151 agency or financial institution, or its duly authorized agent,
152 that issues a credit card.

153 (d) "Merchant" means a person who is authorized under a
154 written contract with a participating party to furnish money,
155 goods, services or anything else of value on presentation of a
156 credit card by a cardholder.

157 (e) "Reencoder" means an electronic device that places
158 encoded information from the magnetic strip or stripe of a credit
159 card onto the magnetic strip or stripe of a different credit card.

160 (f) "Scanning device" means a scanner, reader or other
161 electronic device that is used to access, read, scan, obtain,

162 memorize or store, temporarily or permanently, information that is
163 encoded on a magnetic strip or stripe of a credit card.

164 (2) (a) It is unlawful for a person to use a scanning
165 device or reencoder without the permission of the cardholder of
166 the credit card from which the information is being scanned or
167 reencoded with the intent to defraud the cardholder, the issuer
168 or a merchant.

169 (b) A person who violates this section commits a felony
170 punishable, upon conviction thereof, by imprisonment not to exceed
171 five (5) years, a fine not to exceed Ten Thousand Dollars
172 (\$10,000.00), or both.

173 **SECTION 5.** Section 97-17-75, Mississippi Code of 1972, is
174 amended as follows:

175 97-17-75. Any person who shall remove, or cause to be
176 removed, or aid or assist in removing from the county in which it
177 may be, any personal property which may be the subject of a
178 pledge, mortgage, deed of trust, conditional sales contract, lien
179 of a lessor of lands, or lien by judgment, or any other lien of
180 which such party has notice, without the consent of the holder of
181 such encumbrance or lien, or who shall conceal or secrete such
182 property, or who shall sell or dispose of the same or any part
183 thereof without the consent of the mortgagee or beneficiary, or
184 conditional vendor, whether any of these acts shall be done before
185 or after the maturity of the debt secured by the lien, and shall
186 not immediately discharge such encumbrance or lien or pay to the
187 holder of such lien or encumbrance the value of such property in
188 event same is less than the amount of such lien or encumbrance,
189 shall, upon conviction, be imprisoned in the custody of the
190 Department of Corrections not more than three (3) years, or be
191 fined not more than Five Thousand Dollars (\$5,000.00), or both.

192 **SECTION 6.** This act shall take effect and be in force from
193 and after July 1, 2005.