

By: Senator(s) Tollison

To: Judiciary, Division B

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; AND FOR
 10 RELATED PURPOSES.

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

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

14 97-17-70. (1) A person commits the crime of receiving
 15 stolen property if he intentionally possesses, receives, retains
 16 or disposes of stolen property knowing that it has been stolen or
 17 having reasonable grounds to believe it has been stolen, unless
 18 the property is possessed, received, retained or disposed of with
 19 intent to restore it to the owner.

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

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

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

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

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

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

40 97-23-93. (1) Any person who shall willfully and unlawfully
41 take possession of any merchandise owned or held by and offered or
42 displayed for sale by any merchant, store or other mercantile
43 establishment with the intention and purpose of converting such
44 merchandise to his own use without paying the merchant's stated
45 price therefor shall be guilty of the crime of shoplifting and,
46 upon conviction, shall be punished as is provided in this section.

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

51 (a) Conceals the unpurchased merchandise;

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

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

58 (d) Transfers the unpurchased merchandise from one
59 container to another; or

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

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

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

67 (b) The content of the price tag or marking from such
68 merchandise; or

69 (c) Properly identified photographs of such
70 merchandise.

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

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

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

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

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

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

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

95 more than seven (7) years prior to the shoplifting offense in
96 question.

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

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

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

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

119 (a) "Cardholder" means any person:

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

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

124 (b) "Credit card" means:

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

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

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

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

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

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

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

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

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

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

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

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

171 **SECTION 5.** This act shall take effect and be in force from
172 and after July 1, 2005.