

By: Senator(s) Tollison

To: Judiciary, Division B

SENATE BILL NO. 2859
(As Sent to Governor)

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

25 (3) Any person who shall be convicted of receiving stolen
26 property which exceeds Five Hundred Dollars (\$500.00) in value
27 shall be committed to the custody of the State Department of
28 Corrections for a term not exceeding ten (10) years or by a fine
29 of not more than Ten Thousand Dollars (\$10,000.00), or both.

30 (4) Any person who shall be convicted of receiving stolen
31 property which does not exceed Five Hundred Dollars (\$500.00) in
32 value shall be punished by imprisonment for not more than six (6)

33 months or by a fine of not more than One Thousand Dollars
34 (\$1,000.00), or both.

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

37 97-23-93. (1) Any person who shall wilfully and unlawfully
38 take possession of any merchandise owned or held by and offered or
39 displayed for sale by any merchant, store or other mercantile
40 establishment with the intention and purpose of converting such
41 merchandise to his own use without paying the merchant's stated
42 price therefor shall be guilty of the crime of shoplifting and,
43 upon conviction, shall be punished as is provided in this section.

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

48 (a) Conceals the unpurchased merchandise;

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

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

55 (d) Transfers the unpurchased merchandise from one
56 container to another; or

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

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

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

64 (b) The content of the price tag or marking from such
65 merchandise; or

66 (c) Properly identified photographs of such
67 merchandise.

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

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

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

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

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

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

89 (8) In determining the number of prior shoplifting
90 convictions for purposes of imposing punishment under this
91 section, the court shall disregard all such convictions occurring
92 more than seven (7) years prior to the shoplifting offense in
93 question.

94 (9) For the purpose of determining the gravity of the
95 offense under subsection (7) of this section, the prosecutor may
96 aggregate the value of merchandise shoplifted from three (3) or
97 more separate mercantile establishments within the same legal
98 jurisdiction over a period of thirty (30) or fewer days.

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

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

113 **SECTION 4.** (1) For the purposes of this section, the
114 following terms shall have the meanings ascribed to them unless
115 the context clearly requires otherwise:

116 (a) "Cardholder" means any person:

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

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

121 (b) "Credit card" means:

122 (i) Any instrument or device, whether known as a
123 credit card, charge card, credit plate, courtesy card,
124 identification card or any other name that is issued with or
125 without fee by an issuer for the use of the cardholder in
126 obtaining money, goods, services or anything else of value, either
127 on credit or in consideration of an undertaking or guaranty by the
128 issuer of the payment of a check drawn by the cardholder, on a
129 promise to pay in part or in full therefor at a future time,
130 whether or not all or any part of the indebtedness that is

131 represented by the promise to make deferred payment is secured or
132 unsecured.

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

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

142 (iv) The number that is assigned the card,
143 instrument or device, even if the physical card, instrument or
144 device is not used or presented.

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

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

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

155 (f) "Scanning device" means a scanner, reader or other
156 electronic device that is used to access, read, scan, obtain,
157 memorize or store, temporarily or permanently, information that is
158 encoded on a magnetic strip or stripe of a credit card.

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

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

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

170 97-17-75. Any person who shall remove, or cause to be
171 removed, or aid or assist in removing from the county in which it
172 may be, any personal property which may be the subject of a
173 pledge, mortgage, deed of trust, conditional sales contract, lien
174 of a lessor of lands, or lien by judgment, or any other lien of
175 which such party has notice, without the consent of the holder of
176 such encumbrance or lien, or who shall conceal or secrete such
177 property, or who shall sell or dispose of the same or any part
178 thereof without the consent of the mortgagee or beneficiary, or
179 conditional vendor, with intent to defraud the holder of the
180 encumbrance or lien, whether any of these acts shall be done
181 before or after the maturity of the debt secured by the lien, and
182 shall not immediately discharge such encumbrance or lien or pay to
183 the holder of such lien or encumbrance the value of such property
184 in event same is less than the amount of such lien or encumbrance,
185 shall, upon conviction, be imprisoned in the custody of the
186 Department of Corrections not more than three (3) years, or be
187 fined not more than Five Thousand Dollars (\$5,000.00), or both.

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