

HOUSE No.

The Commonwealth of Massachusetts

PRESENTED BY:

Robert F. Fennell

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 relative to secondhand dealers.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Robert F. Fennell	10th Essex

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 234 OF 2007-2008.]

The Commonwealth of Massachusetts

In the Year Two Thousand and Nine

AN ACT RELATIVE TO SECONDHAND DEALERS.

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 2006 Official Edition, is hereby
2 amended by inserting the following words after the definition of "Deputy director":- "Second hand dealer", any
3 person, either principal or agent who engages in the business in the commonwealth of selling used goods, used
4 wares or used merchandise.
5
- 6 SECTION 2. Said section 1 of chapter 101 of the General Laws, as so appearing, is hereby amended by inserting
7 after the word "place," in line 8, the following words: - , including selling goods, wares or merchandise at a flea
8 market so-called.
9
- 10 SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended by inserting after the word
11 "months," in line 12, the following words: - Provided, however, that a flea market, so called, whether held inside
12 such tent, booth, building or other structure or in the open shall be considered a temporary or transient business.
13
- 14 SECTION 4. Section 3 of said chapter 101, as appearing in the 2002 Official Edition, is hereby amended in line 1
15 by inserting after the word "vendor" the following:-or second hand dealer
16
- 17 SECTION 5. Section 3 of said chapter 101, as so appearing, is hereby amended by striking the second sentence and
18 inserting in place thereof the following:-
19
- 20 Thereupon, upon the payment of a fee, as determined annually by the commissioner of administration under the
21 provision of section three B of chapter seven, the deputy director shall issue to him a state license authorizing him to
22 do business as a transient vendor or second hand dealer, subject to such local rules and regulations as may be made
23 in a city by the mayor and city council and in a town by the selectmen. Such fee shall be a dedicated fee which will
24 fund, in part, the record keeping system within the department of public safety as established by section 3A of this
25 chapter.
26
- 27 SECTION 6. Said chapter 101 is hereby amended by inserting after section 3, as so appearing, the following section:
28 -

29
30 Section 3A. (a) A transient vendor selling merchandise at a flea market, so called, or a second hand dealer shall be
31 registered with the department of revenue and shall have a sales tax identification number issued by said department.
32 (b) Such vendor shall keep a record of all purchases and sales of goods, wares and merchandise, including the source
33 from which such merchandise was obtained and shall issue sales receipts for all such sales and such receipts shall
34 contain the name, license number and sales tax identification number of such vendor.
35 (c) The true name, address, license number and sales tax identification number shall be posted by such vendor at the
36 place where such vendor is conducting business.
37 (d) Whoever leases or rents space to transient vendors at a flea market so called, or a second hand dealer shall
38 maintain a record of the date of such lease or rental, and the name, license number and sales tax identification
39 numbers of each such vendor. Such record shall be a public record and may be viewed or copied upon request
40 during regular business hours.
41 (e) the Department of Public Safety shall implement a record keeping system for transient vendors and second hand
42 dealers of goods, wares, merchandise acquired and sold at the registered place of business.

43
44 SECTION 7. Section 30 of chapter 266 of the General Laws, as appearing in the 2002 Official Edition, is hereby
45 amended by adding at the end thereof the following new paragraph:-

46
47 (6) whoever commits a violation of this section by intentionally altering, transferring, or removing any label, price
48 tag or marking indicia of value or any other markings which aid in determining value affixed to any merchandise
49 displayed, held, stored, or offered for sale by any store or other retail mercantile establishment and attempting to
50 purchase such merchandise personally or in consort with another at less than the full retail value with the intention
51 of depriving the merchant of all or part of the retail value thereof; or by intentionally transferring any merchandise
52 displayed, held, stored, or offered for sale by any sale or other retail mercantile establishment from the container in
53 or on which the same shall be displayed to any other container the intent to deprive the merchant of all or part of the
54 retail value thereof; or by intentionally recording a value for the merchandise which is less than the actual retail
55 value with the intention of depriving the merchant of the full value thereof shall be punished for a first offense by
56 imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than five
57 thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in
58 the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars or by both
59 such fine and imprisonment.

60
61 SECTION 8. Section 30A of said chapter 266 of the General Laws, as so appearing, is hereby amended by inserting
62 after the eighth paragraph the following new paragraph:-

63
64 A violation of this section committed from three or more individual retail mercantile establishments,
65 notwithstanding whether the retail value of the goods obtained from each such individual retail mercantile
66 establishment is less than one hundred dollars, shall be punished for a first offense by imprisonment in the house of
67 correction for not more than two and one-half years or by a fine of not more than one thousand dollars or by both
68 such fine and imprisonment, and for a second or subsequent offense by imprisonment in the state prison for not
69 more than five years, or by a fine of not more than twenty-five thousand dollars or by both such fine and
70 imprisonment. Apprehension with goods reasonably believed to have been stolen from three separate retail
71 mercantile establishments shall be prima facie evidence of a violation under this paragraph.

72
73 SECTION 19. Said Chapter 266 of the General Laws, as so appearing is hereby amended by inserting the following
74 new section:-

75
76 Section 30B. Unlawful Use of Theft Detection Shielding or Deactivation Devices

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78 Whoever knowingly manufactures, sells, offers for sale or distributes in any way a laminated or coated bag intended
79 to shield merchandise from detection by an electronic or magnetic theft detector; or knowingly possesses any tool or
80 device designed to allow, or capable of allowing, the deactivation, or removal from any merchandise, of any theft
81 detection device, with the intent to use such tool or device to deactivate any theft detection device on, or to remove
82 any theft detection device from, any merchandise without the permission of the merchant or person owning or
83 lawfully holding said merchandise; or intentionally deactivates in a retail establishment a theft detection device on,
84 or removes a theft detection device from, merchandise prior to purchase shall be punished for a first offense by

85 imprisonment in the house of correction for not more than two and one-half years or by a fine of not more than one
86 thousand dollars or by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in
87 the state prison for not more than five years, or by a fine of not more than twenty-five thousand dollars and
88 imprisonment in jail for not more than two years.

89
90 SECTION 10. Section 60 of chapter 266 of the general laws, as so appearing, is hereby amended by striking out the
91 entire section and inserting in place thereof the following new section: -

92
93 Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it to have been stolen
94 or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of property, knowing it to
95 have been obtained from a person by a false pretense of carrying on business in the ordinary course of trade or
96 whoever obtains or exerts control over property in the custody of any law enforcement agency, or any individual
97 acting on behalf of a law enforcement agency, which is explicitly represented to him by any law enforcement officer
98 or any individual acting on behalf of a law enforcement agency as being stolen and who intends to deprive its
99 rightful owner permanently of the use and enjoyment of said property shall, if the value of such property does not
100 exceed two hundred and fifty dollars, be punished for a first offense by imprisonment in a jail or house of correction
101 for not more than two and one half years, or by a fine of not more than one thousand dollars; or if for a second or
102 subsequent offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by
103 imprisonment in a state prison for not more than five years, or by imprisonment in a jail or house of correction for
104 not more than two and one half years or by a fine of five thousand dollars. It shall not be a defense that the property
105 was obtained by means other than through the commission of a theft offense if the property was explicitly
106 represented to the accused as having been obtained through the commission of a theft offense.

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

110
111 Section 60B Any transient vendor or second hand dealer, as defined in section one of chapter one hundred and one
112 of the General Laws, who buys, receives or aids in the concealment of stolen or embezzled property, knowing it to
113 have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the concealment of
114 property, knowing it to have been obtained from a person by a false pretense of carrying on business and dealing in
115 the ordinary course of trade, shall, be punished for a first offense by imprisonment in the house of correction for not
116 more than two and one-half years or by a fine of not more than five thousand dollars or by both such fine and
117 imprisonment, and for a second or subsequent offense by imprisonment in the state prison for not more than five
118 years, or by a fine of not more than twenty-five thousand dollars or by both such fine and imprisonment. There shall
119 be no limitation of the time in which the owner of such stolen property may make claim for such property. There
120 shall be no limitation of the time in which a transient vendor may be charged with the possession of such stolen
121 goods, wares or merchandise

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