

HOUSE No. 01006

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:

Robert F. Fennell

DISTRICT/ADDRESS:

10th Essex

HOUSE No. 01006

By Mr. Robert F. Fennell of Lynn, petition (accompanied by bill, House, No. 01006) of Robert F. Fennell relative to regulating secondhand dealers. Joint Committee on Consumer Protection and Professional Licensure.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 243 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

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

8 SECTION 3. Said section 1 of chapter 101, as so appearing, is hereby further amended by
9 inserting after the word "months," in line 12, the following words: - Provided, however, that a
10 flea market, so called, whether held inside such tent, booth, building or other structure or in the
11 open shall be considered a temporary or transient business.

12 SECTION 4. Section 3 of said chapter 101, as appearing in the 2002 Official Edition, is hereby
13 amended in line 1 by inserting after the word "vendor" the following:-or second hand dealer

14 SECTION 5. Section 3 of said chapter 101, as so appearing, is hereby amended by striking the
15 second sentence and inserting in place thereof the following:-

16 Thereupon, upon the payment of a fee, as determined annually by the commissioner of
17 administration under the provision of section three B of chapter seven, the deputy director shall
18 issue to him a state license authorizing him to do business as a transient vendor or second hand
19 dealer, subject to such local rules and regulations as may be made in a city by the mayor and city
20 council and in a town by the selectmen. Such fee shall be a dedicated fee which will fund, in
21 part, the record keeping system within the department of public safety as established by section
22 3A of this chapter.

23 SECTION 6. Said chapter 101 is hereby amended by inserting after section 3, as so appearing,
24 the following section:-

25 Section 3A. (a) A transient vendor selling merchandise at a flea market, so called, or a second
26 hand dealer shall be registered with the department of revenue and shall have a sales tax
27 identification number issued by said department.

28 (b) Such vendor shall keep a record of all purchases and sales of goods, wares and merchandise,
29 including the source from which such merchandise was obtained and shall issue sales receipts for
30 all such sales and such receipts shall contain the name, license number and sales tax
31 identification number of such vendor.

32 (c) The true name, address, license number and sales tax identification number shall be posted by
33 such vendor at the place where such vendor is conducting business.

34 (d) Whoever leases or rents space to transient vendors at a flea market so called, or a second
35 hand dealer shall maintain a record of the date of such lease or rental, and the name, license
36 number and sales tax identification numbers of each such vendor. Such record shall be a public
37 record and may be viewed or copied upon request during regular business hours.

38 (e) the Department of Public Safety shall implement a record keeping system for transient
39 vendors and second hand dealers of goods, wares, merchandise acquired and sold at the
40 registered place of business.

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

43 (6) whoever commits a violation of this section by intentionally altering, transferring, or
44 removing any label, price tag or marking indicia of value or any other markings which aid in
45 determining value affixed to any merchandise displayed, held, stored, or offered for sale by any
46 store or other retail mercantile establishment and attempting to purchase such merchandise
47 personally or in consort with another at less than the full retail value with the intention of
48 depriving the merchant of all or part of the retail value thereof; or by intentionally transferring
49 any merchandise displayed, held, stored, or offered for sale by any sale or other retail mercantile

50 establishment from the container in or on which the same shall be displayed to any other
51 container the intent to deprive the merchant of all or part of the retail value thereof; or by
52 intentionally recording a value for the merchandise which is less than the actual retail value with
53 the intention of depriving the merchant of the full value thereof shall be punished for a first
54 offense by imprisonment in the house of correction for not more than two and one-half years or
55 by a fine of not more than five thousand dollars or by both such fine and imprisonment, and for a
56 second or subsequent offense by imprisonment in the state prison for not more than five years, or
57 by a fine of not more than twenty-five thousand dollars or by both such fine and imprisonment.

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

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

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

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

73 Whoever knowingly manufactures, sells, offers for sale or distributes in any way a laminated or
74 coated bag intended to shield merchandise from detection by an electronic or magnetic theft
75 detector; or knowingly possesses any tool or device designed to allow, or capable of allowing,
76 the deactivation, or removal from any merchandise, of any theft detection device, with the intent
77 to use such tool or device to deactivate any theft detection device on, or to remove any theft
78 detection device from, any merchandise without the permission of the merchant or person
79 owning or lawfully holding said merchandise; or intentionally deactivates in a retail
80 establishment a theft detection device on, or removes a theft detection device from, merchandise
81 prior to purchase shall be punished for a first offense by imprisonment in the house of correction
82 for not more than two and one-half years or by a fine of not more than one thousand dollars or by
83 both such fine and imprisonment, and for a second or subsequent offense by imprisonment in the
84 state prison for not more than five years, or by a fine of not more than twenty-five thousand
85 dollars and imprisonment in jail for not more than two years.

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

89 Whoever buys, receives or aids in the concealment of stolen or embezzled property, knowing it
90 to have been stolen or embezzled, or whoever with intent to defraud buys, receives or aids in the
91 concealment of property, knowing it to have been obtained from a person by a false pretense of
92 carrying on business in the ordinary course of trade or whoever obtains or exerts control over
93 property in the custody of any law enforcement agency, or any individual acting on behalf of a

94 law enforcement agency, which is explicitly represented to him by any law enforcement officer
95 or any individual acting on behalf of a law enforcement agency as being stolen and who intends
96 to deprive its rightful owner permanently of the use and enjoyment of said property shall, if the
97 value of such property does not exceed two hundred and fifty dollars, be punished for a first
98 offense by imprisonment in a jail or house of correction for not more than two and one half
99 years, or by a fine of not more than one thousand dollars; or if for a second or subsequent
100 offense, or if the value of such property exceeds two hundred and fifty dollars, be punished by
101 imprisonment in a state prison for not more than five years, or by imprisonment in a jail or house
102 of correction for not more than two and one half years or by a fine of five thousand dollars. It
103 shall not be a defense that the property was obtained by means other than through the
104 commission of a theft offense if the property was explicitly represented to the accused as having
105 been obtained through the commission of a theft offense.

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

108 Section 60B Any transient vendor or second hand dealer, as defined in section one of chapter
109 one hundred and one of the General Laws, who buys, receives or aids in the concealment of
110 stolen or embezzled property, knowing it to have been stolen or embezzled, or whoever with
111 intent to defraud buys, receives or aids in the concealment of property, knowing it to have been
112 obtained from a person by a false pretense of carrying on business and dealing in the ordinary
113 course of trade, shall, be punished for a first offense by imprisonment in the house of correction
114 for not more than two and one-half years or by a fine of not more than five thousand dollars or
115 by both such fine and imprisonment, and for a second or subsequent offense by imprisonment in
116 the state prison for not more than five years, or by a fine of not more than twenty-five thousand

117 dollars or by both such fine and imprisonment. There shall be no limitation of the time in which
118 the owner of such stolen property may make claim for such property. There shall be no
119 limitation of the time in which a transient vendor may be charged with the possession of such
120 stolen goods, wares or merchandise