



Legal Update

June 2015

Chapter 451 of the Acts of 2014: An Act to Improve Criminal Laws Relative to Organized Retail Theft has new crimes, expanded venue and modified what is considered receipt of stolen property!

Effective on April 7, 2015, “*An Act to Improve Criminal Laws Relative to Retail Theft*,” was signed by Governor Charlie Baker on January 8, 2015. A summary of the bill is listed below:

Summary of Law:

The act addresses venue in all G.L. c.266 crimes, modifies G.L. c.266, § 60, and criminalizes the receipt of stolen property.

- A. **Venue:** The Act allows crimes committed in different counties or District Courts to be joined together in order to be prosecuted together in the same court. The Commonwealth can charge the crimes in any court where at least one of the offenses occurred.

- B. **Receipt of Stolen Property:** The Act modifies G.L. c. 266, § 60 and expands what is considered receipt of *stolen property* to include property obtained by law enforcement.

According to the modification, “whoever buys, receives or aids in the concealment of stolen or embezzled property knowing that the property was stolen or embezzled or whoever with intent to defraud buys, receives or aids in the concealment of property knowing it to have been obtained by false pretense of carrying on a business in the ordinary course of trade, or

Whoever, intending to deprive the property’s rightful owner permanently of the use and enjoyment of the property, obtains or exerts control over property

- (i) that is in the custody of either any law enforcement agency or any individual acting on behalf of a law enforcement agency, and
- (ii) that any law enforcement officer or any individual acting on behalf of a law enforcement agency explicitly represented to such person that the property is stolen.

These additions to the section essentially bar the defense that the fact that property was *not stolen is not a defense*. Also the fines have been increased to the following:

Penalty:

- (i) Property \$250 or less (1st offense) = increases fine to \$1000
- (ii) Property \$250 or less (2nd offense) or for (1st offense) for property worth more than \$250 = increases fine to \$5000

C. New Crimes G.L. c. 266 § 30B(a-e)

1. ***Distribution or Possession of a Theft Detection Shielding Device:***

G.L. c. 266, §30B(a): Anyone who knowingly manufactures, sells or offers for sale or distributes a laminated or coated bag or other device intended to shield merchandise from detection by an electronic or magnetic theft detector.

Penalty: HOC for up to 2 and ½ years or up to 5 years in state prison and/or a fine of up to \$25,000.

2. ***Possession, Distribution or Use of a Theft Detection Shielding Device with intent to steal:***

G.L. c. 266, § 30B(b): Anyone who knowingly possesses a laminated coated bag or device intended to shield merchandise from detection by an electronic or magnetic theft detector.

Penalty: up to 2 and ½ years in HOC or 5 years in state prison or a fine not to exceed \$25,000 or both.

3. ***Possession of a Theft Detection Device Deactivator or Remover with Intent to Use it Without Permission of the Store:*** G.L. c.266, § 30B(c): Anyone who knowingly possesses any tool or device adapted to (i) allow the ***deactivation*** of a theft detection device with intent to use such a tool or device to deactivate or remove a theft detection device on merchandise without permission of the merchant or person owning or lawfully holding the merchandise or (ii) allows the ***removal*** of a theft detection device from merchandise with intent to use such a tool or device to deactivate or remove a theft detection device on merchandise without permission of the merchant or person owning or lawfully holding the merchandise.

Penalty: HOC for up to 2 and ½ years or up to 5 years in state prison and/or a fine of up to \$25,000.

4. ***Distribution of a Theft Detection Device Deactivator or Remover:***
G.L. c. 266, § 30B(d): Anyone who knowingly manufactures, sells or offers for sale or distributes a tool or device designed or adapted to allow deactivation or removal of a theft detection device without permission.

Penalty: HOC for up to 2 and ½ years or up to 5 years in state prison and/or a fine of up to \$25,000.

5. ***Deactivation or Removal of a Theft Detection Device with Intent to Steal:***
G.L. c.266, § 30B (e): Anyone who intentionally deactivates or removes a theft detection device from merchandise prior to purchase in a retail establishment.

Penalty: HOC for up to 2 and ½ years or up to 5 years in state prison and/or a fine of up to \$25,000.

6. ***Organized Retail Crime:*** G.L. c. 266, § 30D(b): Anyone who acts with at least ***two*** or more persons within a 180 day period to steal, embezzle or obtain by fraud or other illegal means retail merchandise valued at more than \$2500 with intent to resell the stolen items.

Penalty: up to 10 years in state prison

NOTE: a series of thefts can be joined and prosecuted in any county

Aggravated Organized Retail Crime: G.L. c. 266, § 30D (c): Anyone who commits an aggravated organized retail crime if that person is acting with two or more persons within a 180 day period to steal, embezzle or obtain by fraud or other illegal means retail merchandise valued at more than \$10,000 with intent to resell the stolen items.

Penalty: up to 15 years in state prison

NOTE: a series of thefts can be joined and prosecuted in any county

Leader of Organized Retail Crime: G.L. c. 266, § 30D(d): Anyone who shall be the leader of an organized retail theft enterprise if that person conspires with others as an organizer, supervisor, financier or manager to commit an organized retail crime or an aggravated retail crime.

Penalty: up to 20 years in state prison or a fine of not more than \$250,000 or 5 times the retail value of the merchandise at the time of the arrest, whichever is greater or both.

7. ***Forging a Retail Receipt, Price Ticket or UPC Label with Intent to Defraud a Retailer:*** G.L. c. 266, § 30C

Penalty: up to 2 and ½ years in HOC or up to 5 years in state prison or a fine not to exceed \$10,000 or both.

D. ***Civil Recovery for claims involving shoplifting, larceny or attempted larceny:*** The new Act modifies G.L. c. 231, § 85 ½ : Under the Act, merchants can recover actual damages to goods for sale or personal property of a employees or consumers that occur during a shoplifting, larceny or attempted larceny.

- (i) Property less than \$50 = could recover up to \$50 in damages
- (ii) Property worth more than \$50 but less than \$250 = could recover up to \$ 250 in damages
- (iii) Property worth more than \$250 = could recover up to \$500

In order for a store to recover money in damages, the Act requires that the store “detail all of the pertinent information on which the merchant bases its claims.”

NOTE: If the store solicits more money than permitted by law, the store could be fined \$500.