

RESTRICT FLEA MARKET SALES

House Bill 5677 (Substitute H-1) First Analysis (5-23-00)

Sponsor: Rep. Valde Garcia
Committee: Economic Development

THE APPARENT PROBLEM:

According to FBI statistics that were presented during an Interstate Fencing Strategic Initiative Conference held in February 1997, retail representatives conservatively estimated that grocery stores, drug stores, and discount chains suffered approximately four percent in losses due to theft in 1996, or between \$25 billion and \$31 billion. What is more, retail theft has increased at an alarming rate during the past decade. Indeed, during the past five years, 50 percent of retail operations in the United States have gone out of business, and according to committee testimony, the main cause of store closings is theft and fraud, or what retailers call "shrinkage".

Retail theft is often the work of organized groups of professional thieves, known to retailers as "boosters". According to committee testimony offered by the Loss-Prevention Legislative Team of Wal-Mart Stores, Inc., "boosters" work in groups of three or four, and commit theft by shelf-sweeping, UPC switching, box stuffing, walk-outs, redeeming two-for-one receipts, or presenting bogus receipt returns. Most "boosters" can completely clear a shelf of merchandise in a matter of seconds. They are known to take orders for products to be stolen, and will travel city-to-city and state-to-state to commit thefts. They sometimes wear special clothing designed to secrete stolen merchandise, and usually steal large quantities of the same product.

Generally, "boosters" sell their stolen goods to fences for about one-quarter of the retail price of the product. Often those fences are "flea-market fences" who will buy as much stolen product as the "booster" will deliver. In fact, some "flea-market fences" have order forms they provide the "boosters" to indicate their preferred stolen merchandise, as well as the price they will pay for the stolen property.

The merchandise that the "flea market fences" buy is then sold to repack warehouses for one-third to one-half the retail price. The buyers at the repack warehouse clean the product, repackage it, and then sell it to illegitimate wholesalers, known as "diverters", who send it to distribution warehouses. Millions of

dollars in stolen pharmaceuticals, video tapes, tools, small electronic equipment, batteries, film, and fishing equipment have been recovered by investigators from repack warehouses. Sometimes, too, the products found in warehouses are temperature-sensitive, have expiration dates, or have been recalled. The sale of these stolen goods could easily harm those who purchase them.

Investigations to stop organized rings of thieves--theft operations composed of "boosters", "flea-market fences", repack warehouse operators, and "diverters"--tend to be more successful in states that have laws to penalize flea-market fences. As of January 12, 2000, laws to regulate "flea-market fences" had been passed in 10 states: Arkansas, Idaho, Illinois, Indiana, Nevada, New Mexico, Ohio, Texas, Utah, and Virginia. Legislation similar to those law is pending in six states: Michigan, Connecticut, Delaware, Florida, Maine, and Pennsylvania.

THE CONTENT OF THE BILL:

The bill would amend the Michigan Penal Code to place certain restrictions on sales of merchandise at flea markets, swap meets, and similar events.

Prohibited sales. It would be a misdemeanor for an "unused property merchant" to sell certain items at an "unused property market" (flea market, swap meet, etc., defined in the bill to mean an event at which a fee is charged to merchants to sell or trade property, or a fee is charged to customers to enter such a sale, or an event held six or more times a year at which people offer property for sale or exchange). The bill would prohibit the sale at such events of food packaged and labeled specifically for consumption by a child less than two years of age; a cosmetic, toiletry, or personal care product; a nonprescription drug; or a medical device. A violation of this provision would be a misdemeanor punishable by imprisonment for not more than 90 days, or a fine of not more than \$1,000, or both. (An "unused property market" would not include a trade show, an event organized to benefit a charitable organization, or

an event at which all of the property offered for sale was new and offered for sale by the manufacturer.)

The prohibition would not apply if the merchant was authorized in writing to sell the item at retail by the manufacturer or the manufacturer's authorized distributor. The authorization would have to contain the merchant's name and the date the authorization expired, and the merchant would have to show the authorization to anyone at the sales event who requested to see it. However, providing a forged authorization, one containing a false statement, or one obtained by fraud would be a misdemeanor punishable by imprisonment for not more than 90 days, a fine of not more than \$1,000, or both.

Required records. The bill would require an unused property merchant to obtain and keep for at least two years a purchase receipt for each item of new and unused property the merchant acquired. ("New and unused property" would be defined to mean tangible personal property obtained directly from a producer, manufacturer, wholesaler, or retailer in the ordinary course of business, and that has not been used since its production or manufacture, or is in its original and unopened package or container. It would not include: vehicles, firewood, ice, livestock, unused antique property, arts and crafts items sold by the person who made them, or property offered for future delivery through a catalog or brochure.) The required receipts would have to show the date of acquisition, name and address of the seller, an identification and description of each item, and the price paid. It would be a misdemeanor, punishable by imprisonment for not more than 90 days, a fine of not more than \$1,000, or both, for a merchant to: falsify or obliterate a receipt; refuse to allow a law enforcement officer to inspect a receipt upon reasonable notice; or destroy or dispose of a receipt before the end of the two-year period.

MCL 750.411r

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

Organized retail theft is increasing and must be stopped. At present, this kind of crime is relatively low risk (as a misdemeanor) and high profit, as compared to burglary. This legislation to increase the penalties for fencing stolen goods will help thwart theft that causes more than \$25 billion in losses each year nationwide. The alarming increase in retail theft has caused many businesses to close operation, denying people jobs. Further, stolen goods that are sold below market value at flea markets cause harm to retailers who lose merchandise, and then must compete with the discount prices for the stolen goods. Though there may be only a few flea market merchants involved in selling stolen property (and many legitimate merchants), there is a high volume of stolen merchandise being sold. The bill's requirements that merchants provide receipts to show they legally purchased their wares will give law enforcement agencies needed tools to apprehend those merchants who are "fencing" stolen retail merchandise.

For:

Flea market fences cause their bargain-hunting customers harm. Retail theft places the customers who either knowingly or unknowingly purchase stolen goods at risk of serious injury to their health and safety. For example, over-the-counter pharmaceutical products, products with expiration dates, products that are temperature-sensitive, recalled products, and also products such as baby food and infant formula can present serious health problems, because flea market vendors do not follow retailers' health and safety guidelines for the storage and handling of products in controlled environments.

Against:

Legitimate flea market operators argue that vendors already must be licensed and undergo background checks before offering their goods to the public. The largest trade centers claim products sold at trade centers are safe and can be accounted for.

POSITIONS:

The Michigan Retailers Association, including Wal-Mart Stores, Inc. supports the bill. (5-17-00)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.