

BAN ANTI-DETECTION DEVICES

House Bill 5125 (Substitute H-2)

House Bill 5126 (Substitute H-2)

Sponsor: Rep. Michael Bishop

Committee: Criminal Justice

First Analysis (12-12-01)

THE APPARENT PROBLEM:

Years ago, in an attempt to reduce losses due to shoplifting, many retailers installed various anti-theft detectors, such as placing devices on individual pieces of merchandise that would set off an alarm when removed from the store if not deactivated by the store clerk. Though a deterrent to the average shoplifter, apparently some have discovered ways to deactivate these devices. Reportedly, sophisticated rings of criminals now move between communities and even states using foil-lined bags or purses to smuggle stolen merchandise past anti-theft detectors placed at store exits. Others use special tools to remove the white plastic clips placed on many articles of clothing. These are not isolated cases of street-smart petty criminals, but of organized rings that target specific merchandise to later sell on the black market. Not only are they difficult to catch, but if they do get apprehended, current penalties for shoplifting fail to act as a deterrent for repeat offenses. This criminal behavior is not just detrimental to retailers (estimates have put losses at billions of dollars each year), but also to consumers, as retailers must raise prices for goods to offset losses incurred due to shoplifting. It has been suggested that the penalty should be increased for intentionally deactivating an anti-theft device or removing an anti-theft device.

THE CONTENT OF THE BILLS:

House Bill 5125 would prohibit the sale or possession of shields or tools that foil retail theft detectors and House Bill 5126 would specify that a violation of the prohibition would be a one-year felony offense. The bills would take effect April 1, 2002. Specifically, the bills would do the following:

House Bill 5125 would amend the Michigan Penal Code (MCL 750.360a) to prohibit the following conduct:

- Possessing a laminated or coated bag or device intended to shield merchandise from detection by an electronic or magnetic theft detector with the intent to commit or attempt to commit larceny;
- Manufacturing, selling, offering for sale, or distributing (or attempting to do any of these) a bag or device intended to shield merchandise from detection by an electronic or magnetic theft detector knowing or reasonably believing that the device would be used to commit or attempt to commit larceny;
- Possessing a tool or device designed to deactivate or remove a theft detection device from merchandise with the intent to utilize the device without the permission of the merchant or person owning or lawfully holding that merchandise with the intent to commit or attempt to commit larceny;
- Manufacturing, selling, offering for sale, or distributing a tool or device designed to deactivate or remove a theft detection device from merchandise without the permission of the merchant or person owning or lawfully holding that merchandise knowing or reasonably believing that the device would be used to commit or attempt to commit larceny; and,
- Activating a theft detection device or removing a theft detection device from merchandise in a retail establishment prior to purchasing the merchandise with the intent to commit or attempt to commit a larceny.

A first violation of the bill would be a misdemeanor punishable by imprisonment for not more than one year or a fine of not more than \$500, or both. A second or subsequent offense would be a felony punishable by imprisonment for not more than four years or a fine of not more than \$2,000, or both.

House Bill 5126 would amend the Code of Criminal Procedure (MCL 777.16r) to specify that to possess, manufacture, sell, or distribute a theft detector shield or theft detector deactivation tool, or to deactivate or remove a theft detection device with intent to commit larceny, would be a Class G property offense with a maximum term of imprisonment of four years. The bill is tie-barred to House Bill 5125.

FISCAL IMPLICATIONS:

According to the House Fiscal Agency, the bills could increase state and local correctional costs, the degree of which would depend on how they affected charging, convictions, and sentences. Penal fine revenues are constitutionally dedicated to local libraries, so those revenues could marginally increase under the bill. (12-12-01)

ARGUMENTS:

For:

Shoplifting hurts consumers as well as retailers and merchants. In order to recoup losses incurred by shoplifting, retailers raise prices across the board for goods. Retailers have tried to deter shoplifting through the use of store security guards, surveillance cameras, mirrors, and more recently, by installing theft detection devices at exits that sound an alarm if merchandise containing an anti-theft device has not been removed or deactivated by store personnel. However, as anti-shoplifting measures get more sophisticated, so do the actions of criminals seeking to circumvent those measures. Reportedly, organized rings of criminals now operate using bags or purses lined with foil or laminated in such a way as to enable merchandise placed in the bag or purse to pass through theft detection devices at store exits without setting off an alarm. Others use special tools to remove plastic tags placed on articles of clothing. The result is that retailers and merchants are losing large sums of money each year in stolen merchandise to shoplifters. One object in particular demand by these shoplifters appears to be ink jet cartridges for printers. Retailing around \$40 each, the cartridges are easy to sell on the black market. Money made from the subsequent illegal sales of stolen goods is believed to fund illicit drug activities and even terrorism.

The bill would establish harsher penalties to deter this deliberate attempt to circumvent anti-theft devices. Though a first offense would be a misdemeanor, the penalty of up to one year imprisonment would trigger mandatory fingerprinting

and recordkeeping requirements, which include sending a copy of the fingerprints to the FBI. A second or subsequent offense would be a four-year felony. The bill should therefore act as a greater deterrent, as even a first time offender would be placed in the national criminal database and subsequent offenses could result in some serious prison time.

POSITIONS:

The Department of State Police supports the bill. (12-11-01)

The Michigan Retailers Association supports the bill. (12-11-01)

Analyst: S. Stutzky

■ 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.