

## SENATE SUBSTITUTE TO HB 1346

**AS PASSED SENATE**

A BILL TO BE ENTITLED  
AN ACT

1 To amend Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated,  
2 relating to theft, so as to create the offense of retail property fencing; to provide for  
3 definitions; to provide for forfeiture; to provide for related matters; to repeal conflicting laws;  
4 and for other purposes.

5 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

**SECTION 1.**

6 Article 1 of Chapter 8 of Title 16 of the Official Code of Georgia Annotated, relating to theft,  
7 is amended by adding a new Code section to read as follows:

8 "16-8-5.2.

9 (a) As used in this Code section, the term:

10 (1) 'Retail property' means any new article, product, commodity, item, or component  
11 intended to be sold in retail commerce.

12 (2) 'Retail property fence' means a person or entity that buys, sells, transfers, or possesses  
13 with the intent to sell or transfer retail property that such person knows or should have  
14 known was stolen.

15 (3) 'Value' means the retail value of the item as stated or advertised by the affected retail  
16 establishment, to include applicable taxes.

17 (b) A person commits the offense of retail property fencing when such persons receives,  
18 disposes of, or retains retail property which was unlawfully taken or shoplifted over a  
19 period not to exceed 180 days with the intent to:

20 (1) Transfer, sell, or distribute such retail property to a retail property fence; or

21 (2) Attempt or cause such retail property to be offered for sale, transfer, or distribution  
22 for money or other things of value.

23 (c) Whoever knowingly receives, possesses, conceals, stores, barter, sells, or disposes of  
24 retail property with the intent to distribute any retail property which is known or should be  
25 known to have been taken or stolen in violation of this subsection with the intent to  
26

1 distribute the proceeds, or to otherwise promote, manage, carry on, or facilitate an offense  
2 described in this subsection, shall have committed the offense of retail property fencing.

3 (d)(1) It shall not be necessary in any prosecution under this Code section for the state  
4 to prove that any intended profit was actually realized. The trier of fact may infer that a  
5 particular scheme or course of conduct was undertaken for profit from all of the attending  
6 circumstances.

7 (2) It shall not be a defense to violating this Code section that the property was obtained  
8 by means other than through the commission of a theft offense if the property was  
9 explicitly represented to the accused as being obtained through the commission of a theft.

10 (e) Any property constituting proceeds derived from or realized through a violation of this  
11 Code section shall be subject to forfeiture to the State of Georgia except that no property  
12 of any owner shall be forfeited under this subsection, to the extent of the interest of such  
13 owner, by reason of an act or omission established by such owner to have been committed  
14 or omitted without knowledge or consent of such owner. The procedure for forfeiture and  
15 disposition of forfeited property under this subsection shall be as provided for under Code  
16 Section 16-13-49.

17 (f) Each violation of this Code section shall constitute a separate offense."

## 18 SECTION 2.

19 All laws and parts of laws in conflict with this Act are repealed.