

House Bill 1346 (AS PASSED HOUSE AND SENATE)

By: Representatives O'Neal of the 146th and Talton of the 145th

A BILL TO BE ENTITLED
AN ACT

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

BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

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

"16-8-5.2.

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

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

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

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

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

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

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

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

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.