

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION

SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2268

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12/21/03  
Date

2003 SENATE JUDICIARY

SB 2268

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB2268

Senate Judiciary Committee

☐ Conference Committee

Hearing Date: February 4, 2003

Tape Number	Side A	Side B	Meter #
2	X		51.0 - End
3	X		0.0 - 5.3
Committee Clerk Signature <i>Maria L. Salby</i>			

Minutes: Senator John T. Traynor, Chairman, called the meeting to order. . Sen. Traynor requested meeting starts with testimony on the bill.

Testimony in support of SB 2268

Sen. Dever introduced the bill.

Mr Russ Hanson - Introduced SB 2268 and Frank Muscato

Fran Muscato - Special Investigations Retail Theft Read Attachment #1

Senator Thomas L. Trenbeath asked if this type of legislation common in any other state? Mr.

Muscato replied that 18 other states have adopted this legislation. He spoke of how states were loosing criminal law suits due to U.P.C. code changing and the inability to charge the criminal due to the law stating "price switching"

Testimony in opposition of SB 2268:

None.

Testimony neutral to SB 2061:

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Date

Page 2  
Senate Judiciary Committee  
Bill/Resolution Number SB 2268  
Hearing Date February 4, 2003

None

Sen. Trenbeath moved a DO PASS. Senator Dick Dever second the motion.

Roll Call Vote: 5 Yes. 0 No. 1 Absent

Motion carried,

Carrier: Senator Dick Dever

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Date: February 4, 2003  
Roll Call Vote #: 1

**2003 SENATE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. SB 2268**

Senate JUDICIARY Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number \_\_\_\_\_

Action Taken DO PASS

Motion Made By Senator Thomas L. Trenbeath Seconded By Sen. Dever

Senators	Yes	No	Senators	Yes	No
Sen. John T. Traynor - Chairman	X		Sen. Dennis Bercier	X	
Sen. Stanley Lyson - Vice Chair	X		Sen. Carolyn Nelson	A	A
Sen. Dick Dever	X				
Sen. Thomas L. Trenbeath	X				

Total (Yes) FIVE (5) No ZERO (0)

Absent ONE (1)

Floor Assignment SEN. DEVER

If the vote is on an amendment, briefly indicate intent:

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10/21/03  
Date

REPORT OF STANDING COMMITTEE (410)  
February 4, 2003 12:17 p.m.

Module No: SR-21-1599  
Carrier: Dever  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE  
SB 2268: Judiciary Committee (Sen. Traynor, Chairman) recommends DO PASS  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2268 was placed on the  
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-21-1599

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2003 HOUSE JUDICIARY

SB 2268

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2268

House Judiciary Committee

☐ Conference Committee

Hearing Date 3-11-03

Tape Number	Side A	Side B	Meter #
1	xx		0-7.5 & 42.6-44.2
Committee Clerk Signature <i>A Penrose</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the hearing on SB 2268.

**Sen. Dick Dever:** Introduced the bill.

**Rep. Klemin:** On lines 11-13, there is a definition of "universal bar code for purposes of this section..."etc. However, I don't find the term "universal bar code" used in that section anywhere. I see the term "universal product code" used, do we need to amend to say "universal product code" instead of "universal bar code". It doesn't do much good to have a defined term that is only good for this section if we don't use the term anywhere.

**Sen. Dever:** If that is necessary, that would be fine.

**Chairman DeKrey:** Thank you.

**Frank Muscato, National Investigator, Wal-Mart:** Support (see attached testimony).

**Chairman DeKrey:** So this bill makes it a Class A misdemeanor if you switch UPC codes.

**Mr. Muscato:** Yes.

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Date



Page 2  
House Judiciary Committee  
Bill/Resolution Number SB 2268  
Hearing Date 3-11-03

**Rep. Klemin:** Do we need to amend this bill to fix the terminology on line 11.

**Mr. Muscato:** Yes, that will need to be fixed.

**Chairman DeKrey:** Thank you. Further testimony in support. Testimony in opposition. We will close the hearing.

(Reopened later in the same session)

**Chairman DeKrey:** What are the committee's wishes in regard to SB 2268.

**Rep. Delmore:** I move the amendment proposed by Rep. Klemin, changing "bar" to "product" in line 11.

**Rep. Maragos:** Seconded.

Voice vote: Carried.

**Rep. Delmore:** I move a Do Pass as Amended.

**Rep. Maragos:** Seconded.

13 YES 0 NO 0 ABSENT

DO PASS AS AMENDED

CARRIER: Rep. Galvin

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*Library*

House Amendments to SB 2268 - Judiciary Committee 03/11/2003

Page 1, line 11, replace "bar" with "product"

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*10/21/03*  
Date

Date: 3/11/03  
Roll Call Vote #: 1

**2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES**  
**BILL/RESOLUTION NO. 2268**

House Judiciary Committee

☐ Check here for Conference Committee

Legislative Council Amendment Number 30573.0101 . 0200

Action Taken DP as Amended

Motion Made By Rep. Delmore Seconded By Rep. Maragos

Representatives	Yes	No	Representatives	Yes	No
Chairman DeKrey	/		Rep. Delmore	/	
Vice Chairman Maragos	/		Rep. Eckre	/	
Rep. Bernstein	/		Rep. Onstad	/	
Rep. Boehning	/				
Rep. Galvin	/				
Rep. Grande	/				
Rep. Kingsbury	/				
Rep. Klemin	/				
Rep. Kretschmar	/				
Rep. Wrangham	/				

Total (Yes) 13 No 0

Absent 0

Floor Assignment Rep. Galvin

If the vote is on an amendment, briefly indicate intent:

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10/21/03  
Date

REPORT OF STANDING COMMITTEE (410)  
March 11, 2003 3:38 p.m.

Module No: HR-43-4497  
Carrier: Galvin  
Insert LC: 30573.0101 Title: .0200

**REPORT OF STANDING COMMITTEE**

**SB 2268: Judiciary Committee (Rep. DeKroy, Chairman) recommends AMENDMENTS AS FOLLOWS** and when so amended, recommends **DO PASS** (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2268 was placed on the Sixth order on the calendar.

Page 1, line 11, replace "bar" with "product"

Renumber accordingly

(2) DESK, (3) COMM

Page No. 1

HR-43-4497

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2003 TESTIMONY

SB 2268

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10/21/03  
Date

**Bogus Receipts Legislation**

SB 2248

**Testimony****By Frank Muscato**

Honorable Chair and Members of the Committee:

My name is *Frank Muscato* and I currently work in special investigations regarding retail theft and the sale of stolen merchandise. I work closely with several retail organizations, as well federal, state, and local law enforcement officials all across the country. My purpose here today is to give you some background on this issue and to express my concern with fraudulent receipts and UPC codes and the effect it has on the retail industry and consumers.

Retail theft has become highly sophisticated and very profitable. The FBI estimates there was over \$26 Billion lost to retail theft in 1997. This excludes internal theft and vendor errors. We estimate it costs consumers 2 cents on every dollar to cover retail theft. The FBI estimates 4 cents on every dollar to cover retail theft. Losses are passed on to the consumer because if retail absorbed those losses, they would be out of business.

One of the major concerns with department type retail stores is the production and use of bogus fraudulent receipts and UPC codes. Retailers have spent millions of dollars coding retail-receipt paper and transaction numbers. With the new computer age, it is becoming easier and easier for professional retail boosters to duplicate these receipts and UPC codes. An important part of the bill are the words "with the intent to cheat or defraud".

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**Methods Used to Commit These Crimes:**

Example: A retail booster will enter a retail establishment with a bogus UPC label that will scan as a sewing kit at \$12. They will place the bogus UPC label over the top of the valid UPC label on a \$300 serger sewing machine. They will mark that item and leave the store. A second person will come into the store and pick up that item. They will then select a few other inexpensive items and go to the register to checkout. The cashier will scan these items. The total the booster pays will be approximately \$15-\$30, when in fact they have purchased over \$300 in merchandise. They will then proceed to the next retail establishment. After removing the counterfeit UCP label from the serger sewing machine, they will present a bogus receipt and receive a refund for the full cost of the merchandise. They have spent \$15-30 and have effectively stolen \$300 using bogus UPC labels and fraudulent receipts.

Another example of this type crime is retail boosters will enter a retail store and steal small, high ticket items, such as computer components that sell for \$60-\$70. They will steal several of these at one time, using each other to cover during the theft. They will then go to another retail store that carries the same items, and using bogus receipts, which they have manufactured or had manufactured for them, refund these items. This type theft has no investment and a very high return.

**Recent Cases:**

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We recently worked a case in Indiana on a group of boosters and bogus receipt refunders. The head of this group worked as a night custodian at a large university in Midwestern Indiana. He used the University's computers and copiers to make counterfeit receipts for high-ticket computer components. After receiving information on this group from an informant, along with the Indiana State Police, we conducted surveillance and followed this group through the state. During the surveillance, we observed this group commit felony thefts at four Wal-Mart stores. Shortly after each of these thefts, we witnessed the group refund the items with fraudulent receipts at five Wal-Mart stores before an arrest was initiated. Law enforcement found over 40 bogus receipts in their vehicle, along with methamphetamine with street value over \$20,000. These boosters were committing these crimes to support their methamphetamine drug habits. This group called their activities looping. A small loop would be Indiana, Kentucky and Ohio. A large loop was Indiana, Illinois, Minnesota, Nebraska, Iowa, Missouri, Illinois, Indiana, Ohio, Michigan and back home to Indiana. These subjects had prior records for retail theft and are presently serving time in the Indiana penitentiary.

In January of 1999 one of the larger groups which does bogus receipt returns and UPC switches was shut down in Des Moines, Iowa. This group traveled the entire United States committing these crimes. When warrants were executed on their residences last month, the FBI and Des Moines Police recovered rolls of Wal-Mart receipt paper, bogus UPC's and bogus receipts. They also recovered a significant amount of methamphetamine. This group would do short runs where they would hit stores through

*Deanna D. Hall*  
Operator's Signature

12/21/03  
Date



Iowa, Nebraska, Kansas, Missouri, Illinois and back to Des Moines, Iowa. This was called a short run.

We worked a group out of Orlando, Florida where the head of this group sold kits of UPC's and bogus receipts. He sold a kit for \$2000 that contained bogus UPC's and receipts for \$10,000. He made the bogus receipts for whatever state or states the person buying the kit desired. Once we got close to this individual, he fled the area, and we now believe he is operating in Nevada.

**Conclusion:**

Retailers are experiencing some of the highest losses in the last few years because of UPC switches and bogus receipt returns. With the passage of this bill, retailers and law enforcement will have a tool to reduce these huge losses. Consumers will benefit from this bill. Keep in mind that over 2 cents of each dollar a consumer spends is to cover losses from theft. As more and more states around us pass deceptive practices legislation, this state could become a dumping ground for bogus UPC labels and fraudulent receipt returns. I would hate to see that happen. There is a federal law called "Violation of Federal Access Code" that is enforced by Secret Service. Under this law, a person who has possession of 15 or more bogus UPC labels or possesses a device that manufactures UPC labels, would be in violation of a felony under the federal system.

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## Bogus Receipts Legislation

### Testimony

SB 2261

By *Frank Muscato*

Honorable Chair and Members of the Committee:

My name is *Frank Muscato* and I currently work in special investigations regarding retail theft and the sale of stolen merchandise. I work closely with several retail organizations, as well federal, state, and local law enforcement officials all across the country. My purpose here today is to give you some background on this issue and to express my concern with fraudulent receipts and UPC codes and the effect it has on the retail industry and consumers.

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One of the major concerns with department type retail stores is the production and use of bogus fraudulent receipts and UPC codes. Retailers have spent millions of dollars coding retail-receipt paper and transaction numbers. With the new computer age, it is becoming easier and easier for professional retail boosters to duplicate these receipts and UPC codes. An important part of the bill are the words "with the intent to cheat or defraud".

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### Methods Used to Commit These Crimes:

Example: A retail booster will enter a retail establishment with a bogus UPC label that will scan as a sewing kit at \$12. They will place the bogus UPC label over the top of the valid UPC label on a \$300 serger sewing machine. They will mark that item and leave the store. A second person will come into the store and pick up that item. They will then select a few other inexpensive items and go to the register to checkout. The cashier will scan these items. The total the booster pays will be approximately \$15-\$30, when in fact they have purchased over \$300 in merchandise. They will then proceed to the next retail establishment. After removing the counterfeit UCP label from the serger sewing machine, they will present a bogus receipt and receive a refund for the full cost of the merchandise. They have spent \$15-30 and have effectively stolen \$300 using bogus UPC labels and fraudulent receipts.

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#### Conclusion:

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*THIS IS AN EXCERPT FROM THE INTERSTATE FENCING STRATEGIC INITIATIVE  
CONFERENCE, FEBRUARY 1997.*

"The retail industry representatives indicated that U.S. grocery chains work approximately ten months out of the year to support their losses due to theft. The last two months of annual sales go toward corporate profit. The drug and discount industry works six months out of the year to support their losses from theft.

To further illustrate this, according to the FBI account, in the past five years, 50% of the retail businesses in the U.S. have gone out of business. The main cause of these store closings is "shrinkage" (theft and fraud). The retail industry representatives estimated that in the next five years, another 50% of the remaining U.S.-owned retail chains would go out of business because of theft. The retail industry provides millions of jobs to Americans and provides a significant portion of U.S. tax revenue. With the loss of these companies, the effect on the American economy is disastrous. The overall retail industry in the U.S. accounted for \$2.2 trillion in sales in 1995. Of that amount, the retail drug stores, food/drug grocery stores, and large discount chains represented \$787 billion in sales, or approximately 64% of the overall retail industry. Retail representatives conservatively estimate that grocery, drug and discount chains suffered approximately 4% in losses due to theft in 1996. Based upon those figures, these retail businesses experienced \$31.5 billion in losses due to theft in 1995."

Thank you for your time. I will be happy to answer any questions you may have.

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