HOUSE BILL NO. 50

INTRODUCED BY FAGG

IN THE HOUSE **DECEMBER 23, 1992** INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. **JANUARY 4, 1993** FIRST READING. **JANUARY 7, 1993** COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED. JANUARY 8, 1993 PRINTING REPORT. **JANUARY 11, 1993** SECOND READING, DO PASS AS AMENDED. JANUARY 13, 1993 ENGROSSING REPORT. THIRD READING, PASSED. AYES, 75; NOES, 23. TRANSMITTED TO SENATE. IN THE SENATE JANUARY 15, 1993 INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY. FIRST READING. MARCH 4, 1993 COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED. MARCH 6, 1993 SECOND READING, CONCURRED IN. MARCH 8, 1993 THIRD READING, CONCURRED IN. AYES, 48; NOES, 0. RETURNED TO HOUSE. IN THE HOUSE RECEIVED FROM SENATE. MARCH 16, 1993 SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

Montana Legislative Council

1	HOUSE BILL NO. 50	1	merc
2	INTRODUCED BY FAGG	2	mann
3		3	and
4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MERCHANT TO	4	auth
5	STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER."	5	sear
6		6	pack
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:	7	stop
8	NEW SECTION. Section 1. Temporary detention by	8	whic
9	merchant liability. (1) A merchant may stop and	9	to g
10	temporarily detain a suspected shoplifter. The merchant:	10	cust
11	(a) shall promptly inform the person that the stop is	11	
12	for investigation of shoplifting and that upon completion of	12	pers
13	the investigation, the person will be released or turned	13	liab
14	over to the custody of a peace officer;	14	with
15	(b) may demand the person's name and present or last	15	sect
16	address and guestion the person in a reasonable manner for	16	
17	the purpose of ascertaining whether or not the person is	17	appl
18	guilty of shoplifting;	18	
19	(c) may take into possession any merchandise for which	19	purp
20	the purchase price has not been paid and that is in the	20	whol
21	possession of the person or has been concealed from full	21	with
22	view; and	22	the
23	(d) may detain the person or request the person to	23	dece
24	remain on the premises until a peace officer arrives.	24	
25	(2) A stop, detention, questioning, or recovery of	25	cont
	A		

1 merchandise under this section must be done in a reasonable 2 manner and time. Unless evidence of concealment is obvious 3 and apparent to the merchant, this section does not 4 authorize a search of the detained person other than a 5 search of the person's coat or other outer garments and any 6 package, bag, or other container. After the purpose of a 7 stop has been accomplished or 30 minutes have elapsed, 8 whichever occurs first, the merchant shall allow the person 9 to go unless the person is arrested and turned over to the 10 custody of a peace officer.

(3) A merchant stopping, detaining, or arresting a person on the belief that the person is shoplifting is not liable for damages to the person unless the merchant acts with malice, either actual or implied, or contrary to this section.

16 (4) As used in this section, the following definitions 17 apply:

(a) "Concealment" means any act or deception done
purposely or knowingly upon or outside the premises of a
wholesale or retail store or other mercantile establishment,
with the intent to deprive the merchant of all or part of
the value of the merchandise. The following acts or
deceptive conduct is prima facie evidence of concealment:

24 (i) concealing merchandise upon the person or in a 25 container or otherwise removing merchandise from full view

> -2- HB 50 INTRODUCED BILL

1 while upon the premises;

2 (ii) removing, changing, or altering a price tag;

3 (iii) transferring or moving any merchandise upon the 4 premises to obtain a lower price than the merchandise was 5 offered for sale for by the merchant; or

6 (iv) abandoning or disposing of any merchandise in such 7 a manner that the merchant will be deprived of all or part 8 of the value of the merchandise.

9 (b) "Shoplifting" means the theft of any goods offered
10 for sale by a wholesale or retail store or other mercantile
11 establishment.

NEW SECTION. Section 2. Codification instruction.
(Section 1) is intended to be codified as an integral part
of Title 30, chapter 11, part 3, and the provisions of Title
30, chapter 11, part 3, apply to [section 1].

-End-

53rd Legislature

23

24

view; and

HB 0050/02

APPROVED BY COMMITTEE On Judiciary

1	HOUSE BILL NO. 50		
2	INTRODUCED BY FAGG		
3			
4	A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MERCHANT TO		
5	STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER."		
6			
7	BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:		
8	NEW SECTION. Section 1. Temporary detention by		
9	merchant liability. (1) A merchant <u>WHO HAS REASON TO</u>		
10	BELIEVE THAT A PERSON HAS COMMITTED OR IS IN THE PROCESS OF		
11	COMMITTING THE OPPENSE OF THEFT may stop and temporarily		
12	detain a-suspected-shoplifter THAT PERSON. The merchant:		
13	(a) shall promptly inform the person that the stop is		
14	for investigation of shoplifting and that upon completion of		
15	the investigation, the person will be released or turned		
16	over to the custody of a peace officer;		
17	(b) may demand the person's name and present or last		
18	address and question the person in a reasonable manner for		
19	the purpose of ascertaining whether or not the person is		
20	guilty of shoplifting;		
21	(c) may take into possession any merchandise for which		
22	the purchase price has not been paid and that is in the		

25 (d) may detain the person or request the person to

possession of the person or has been concealed from full



1 remain on the premises until a peace officer arrives.

2 (2) A stop, detention, questioning, or recovery of 3 merchandise under this section must be done in a reasonable 4 manner and time. Unless evidence of concealment is obvious 5 and apparent to the merchant, this section does not 6 authorize a search of the detained person other than a 7 search of the person's coat or other outer garments and any 8 package, bag, or other container. After the purpose of a 9 stop has been accomplished or 30 minutes have elapsed. 10 whichever occurs first, the merchant shall allow the person 11 to go unless the person is arrested and turned over to the 12 custody of a peace officer.

13 (3) A merchant stopping, detaining, or arresting a
14 person on the belief that the person is shoplifting is not
15 liable for damages to the person unless the merchant acts
16 with-malice;-either--actual--or-implied;--or IN A MANNER
17 contrary to this section.

18 (4) As used in this section, the following definitions 19 apply:

(a) "Concealment" means any act or deception done
purposely or knowingly upon or outside the premises of a
wholesale or retail store or other mercantile establishment,
with the intent to deprive the merchant of all or part of
the value of the merchandise. The following acts or
deceptive conduct is prima facie evidence of concealment:

-2-

HB 50 SECOND READING

(i) concealing merchandise upon the person or in a
 container or otherwise removing merchandise from full view
 while upon the premises;

(ii) removing, changing, or altering a price tag;

4

5 (iii) transferring or moving any merchandise upon the 6 premises to obtain a lower price than the merchandise was 7 offered for sale for by the merchant; or

8 (iv) abandoning or disposing of any merchandise in such
9 a manner that the merchant will be deprived of all or part
10 of the value of the merchandise.

(b) "Shoplifting" means the theft of any goods offered
for sale by a wholesale or retail store or other mercantile
establishment.

14NEW SECTION.Section 2. Codificationinstruction.15[Section 1] is intended to be codified as an integral part16of Title 30 46, chapter 11 6, part 3 5, and the provisions17of Title 307-chapter-117-part-37 46 apply to [section 1].

-End-

-3-

HB 50

1

2

HOUSE BILL NO. 50 1 INTRODUCED BY FAGG 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MERCHANT TO 4 STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER." 5 б BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: 7 В NEW SECTION. Section 1. Temporary detention by merchant -- liability. (1) A merchant, AS DEFINED IN 9 30-11-301, WHO HAS REASON TO BELIEVE THAT A PERSON HAS 10 COMMITTED OR IS IN THE PROCESS OF COMMITTING THE OFFENSE OF 11 THEFT may stop and temporarily detain a-suspected-shoplifter 12 13 THAT PERSON. The merchant: 14 (a) shall promptly inform the person that the stop is 15 for investigation of shoplifting and that upon completion of the investigation, the person will be released or turned 16 17 over to the custody of a peace officer; 18 (b) may demand the person's name and present or last 19 address and question the person in a reasonable manner for 20 the purpose of ascertaining whether or not the person is 21 quilty of shoplifting; 22 (c) may take into possession any merchandise for which 23 the purchase price has not been paid and that is in the 24 possession of the person or has been concealed from full 25 view: and

Montana Legislative Council

(d) may detain the person or request the person to remain on the premises until a peace officer arrives.

(2) A stop, detention, questioning, or recovery of 3 merchandise under this section must be done in a reasonable 4 manner and time. Unless evidence of concealment is obvious 5 apparent to the merchant, this section does not 6 and authorize a search of the detained person other than a 7 search of the person's coat or other outer garments and any 8 package, bag, or other container. After the purpose of a 9 10 stop has been accomplished or 30 minutes have elapsed, whichever occurs first, the merchant shall allow the person 11 to go unless the person is arrested and turned over to the 12 13 custody of a peace officer.

14 (3) A merchant stopping, detaining, or arresting a
15 person on the belief that the person is shoplifting is not
16 liable for damages to the person unless the merchant acts
17 with--malice;--either--actual--or--implied;--or <u>IN A MANNER</u>
18 contrary to this section.

19 (4) As used in this section, the following definitions20 apply:

(a) "Concealment" means any act or deception done
purposely or knowingly upon or outside the premises of a
wholesale or retail store or other mercantile establishment,
with the intent to deprive the merchant of all or part of
the value of the merchandise. The following acts or

~2-

HB 50 THIRD READING AS AMENDED

deceptive conduct is prima facie evidence of concealment:
 (i) concealing merchandise upon the person or in a
 container or otherwise removing merchandise from full view
 while upon the premises;

5 (ii) removing, changing, or altering a price tag;

6 (iii) transferring or moving any merchandise upon the 7 premises to obtain a lower price than the merchandise was 8 offered for sale for by the merchant; or

9 (iv) abandoning or disposing of any merchandise in such 10 a manner that the merchant will be deprived of all or part 11 of the value of the merchandise.

12 (b) "Shoplifting" means the theft of any goods offered
13 for sale by a wholesale or retail store or other mercantile
14 establishment.

15NEW SECTION.Section 2.Codificationinstruction.16[Section 1] is intended to be codified as an integral part17of Title $\exists \theta$ <u>46</u>, chapter $\ddagger 6$, part $\exists 5$, and the provisions18of Title $\exists \theta_7$ -chapter- $\ddagger 7$ <u>46</u> apply to [section 1].

-End-

-3-

17

HB 0050/03

2

HOUSE BILL NO. 50 1 INTRODUCED BY FAGG 2 3 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING A MERCHANT TO 4 5 STOP AND TEMPORARILY DETAIN A SUSPECTED SHOPLIFTER." 6 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA: NEW SECTION. Section 1. Temporary 8 detention by merchant --- liability. (1) A merchant, AS DEFINED IN 9 30-11-301, WHO HAS REASON TO BELIEVE THAT A PERSON HAS 10 11 COMMITTED OR IS IN THE PROCESS OF COMMITTING THE OFFENSE OF 12 THEFT may stop and temporarily detain a-suspected-shoplifter 13 THAT PERSON. The merchant: 14 (a) shall promptly inform the person that the stop is 15 for investigation of shoplifting and that upon completion of 16 the investigation, the person will be released or turned

18 (b) may demand the person's name and present or last 19 address and question the person in a reasonable manner for 20 the purpose of ascertaining whether or not the person is 21 guilty of shoplifting;

over to the custody of a peace officer;

22 (c) may take into possession any merchandise for which 23 the purchase price has not been paid and that is in the 24 possession of the person or has been concealed from full 25 view; and



1 (d) may detain the person or request the person to remain on the premises until a peace officer arrives.

3 (2) A stop, detention, questioning, or recovery of 4 merchandise under this section must be done in a reasonable 5 manner and time. Unless evidence of concealment is obvious 6 and apparent to the merchant, this section does not 7 authorize a search of the detained person other than a 8 search of the person's coat or other outer garments and any 9 package, bag, or other container. After the purpose of a 10 stop has been accomplished or 30 minutes have elapsed. whichever occurs first, the merchant shall allow the person 11 12 to go unless the person is arrested and turned over to the 13 custody of a peace officer.

14 (3) A merchant stopping, detaining, or arresting a 15 person on the belief that the person is shoplifting is not 16 liable for damages to the person unless the merchant acts 17 with--malicey--either--actual--or--impliedy--or IN A MANNER 18 contrary to this section.

19 (4) As used in this section, the following definitions 20 apply:

21 (a) "Concealment" means any act or deception done 22 purposely or knowingly upon or outside the premises of a 23 wholesale or retail store or other mercantile establishment, 24 with the intent to deprive the merchant of all or part of 25 the value of the merchandise. The following acts or

-2-

HB 50

REFERENCE BILL

deceptive conduct is prima facie evidence of concealment:
 (i) concealing merchandise upon the person or in a
 container or otherwise removing merchandise from full view
 while upon the premises;

5 (ii) removing, changing, or altering a price tag;

6 (iii) transferring or moving any merchandise upon the
7 premises to obtain a lower price than the merchandise was
8 offered for sale for by the merchant; or

9 (iv) abandoning or disposing of any merchandise in such 10 a manner that the merchant will be deprived of all or part 11 of the value of the merchandise.

12 (b) "Shoplifting" means the theft of any goods offered
13 for sale by a wholesale or retail store or other mercantile
14 establishment.

NEW SECTION. Section 2. Codification instruction.
[Section 1] is intended to be codified as an integral part
of Title 30 <u>46</u>, chapter <u>126</u>, part <u>35</u>, and the provisions
of Title 307-chapter-<u>117</u>-part-<u>37</u> <u>46</u> apply to [section 1].

-End-

-3-