

# MICROFILM DIVIDER

OMB/RECORDS MANAGEMENT DIVISION  
SFN 2053 (2/85) 5M



ROLL NUMBER

DESCRIPTION

2269

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Date

2003 SENATE JUDICIARY

SB 2269

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2003 SENATE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2269

Senate Judiciary Committee

Conference Committee

Hearing Date: February 4, 2003

Tape Number	Side A	Side B	Meter #
2	X		50.0 -End
3			0.0 - 18.9
Committee Clerk Signature <i>Mina L Solberg</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 2269**

Sen. Dever introduced the bill.

Mr. Russ Hanson - Introduced SB 2269 and Frank Muscato.

Fran Muscato - Special Investigations Retail Theft Read Attachment #1

Electronic device to stop the alarm. The use of tin foil is one way to not set off alarm. The store alarms can not be any stronger due to pace makers. This bill pertains to if a person has these things in there possession or if a person sells these things on the Internet or otherwise. An E.A.S. system cost a store \$200,000. When a person steals from a home they are stealing used merchandise and can get .10 on the dollar when stealing from a store the get .30 on the dollar if not a full refund from a fake receipt. Attachment - four (4) pictures

Senator Dick Dever asked how many states have adopted this resolution? 27 states.

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Page 2  
Senate Judiciary Committee  
Bill/Resolution Number SB 2269  
Hearing Date February 4, 2003

Senator John T. Traynor, Chairman-asked if the language in this bill was a mirror of the other states? Yes, replied Mr. Muscato.

**Testimony in opposition of SB 2269:**

None.

**Testimony neutral to SB 2069:**

None

**Senator Dick Dever moved a DO PASS, Senator Stanley W. Lyson, Vice Chairman second the motion.**

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

**Motion carried,**

**Carrier: Senator Dick Dever**

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REPORT OF STANDING COMMITTEE (410)  
February 4, 2003 12:19 p.m.

Module No: SR-21-1600  
Carrier: Dever  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2269: Judiciary Committee (Sen. Traynor, Chairman) recommends **DO PASS**  
(5 YEAS, 0 NAYS, 1 ABSENT AND NOT VOTING). SB 2269 was placed on the  
Eleventh order on the calendar.

(2) DESK, (3) COMM

Page No. 1

SR-21-1600

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2003 HOUSE JUDICIARY

SB 2269

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2003 HOUSE STANDING COMMITTEE MINUTES

BILL/RESOLUTION NO. SB 2269

House Judiciary Committee

Conference Committee

Hearing Date 3-11-03

Tape Number	Side A	Side B	Meter #
1	XX		0-1.4 / 7.6-24.3
1	XX		44.2-46.0
Committee Clerk Signature <i>A. Penrose</i>			

**Minutes:** 13 members present.

**Chairman DeKrey:** We will open the hearing on SB 2269.

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

**Chairman DeKrey:** Thank you.

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

**Chairman DeKrey:** An alarm went off when I was leaving the store at Christmas time, I had the receipt in the bag. It took forever for somebody to come. They took the wand and went over the bag and then they took my name, address, I was wondering why since I had the receipt in the bag right there, why did they want my name, address, etc.

**Mr. Muscato:** Normally, this is the large retailer, Wal-Mart, vs. the small retailer. What we do is deactivate anything that you have inside that bag with that wand. A lot of times they will take your name in case you want to make a complaint, because these machines are made by humans,

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House Judiciary Committee  
Bill/Resolution Number SB 2269  
Hearing Date 3-11-03

and human error exists. Smaller retailers will look inside the bag and check the receipt.

Wal-Mart doesn't do that, unless we watched and followed you through the store and suspect something. We have 5 points that have to be met before we can stop you. When we first put the EAS system in, and you would set the alarm off, we would stop you and look and we found out that's not the right thing to do. We don't do that anymore. When the EAS tag is scanned, it moves the magnet from one end to the other - then the alarm won't go off. If it gets scanned and doesn't move, when it goes out through that alarm, it will set the alarm off. If it isn't scanned correctly, it will go off. We do double duty, we scan it and we also run it over the magnetic pad to make sure that it's done.

**Rep. Klemin:** These devices are in there, is there a reason why sometimes those don't get deactivated.

**Mr. Muscato:** I think the magnetic piece doesn't move, maybe it's been squished and prevents the magnet from moving from one end to the other.

**Rep. Klemin:** I had the same situation as Chairman DeKrey, the product didn't deactivate and it went off, and they said don't worry about it, I left and went into another store and it went off when I was entering the second store.

**Mr. Muscato:** It happened to me, I couldn't figure out what happens, and somebody is trailing me through the store and watching me. This was when I was a cop, before I became an investigator. He should have deactivated that product for you.

**Rep. Delmore:** I had a similar experience last weekend in Grand Forks, I set off the alarm. When I was leaving, it went off, I sat and waited. What they thought was that it was the key for

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10/21/03  
Date

the capitol. We can scan in and out. They ran my purse over the scanner, and it didn't do anything. They couldn't figure it out. Why would it do that.

**Mr. Muscato:** It shouldn't unless it is the same type of system.

**Rep. Delmore:** It is very embarrassing, even when you know you are innocent.

**Rep. Onstad:** As you worked in different states, do you find that maybe ND retail stores, because of less population, are more vulnerable than say Minneapolis/St. Paul.

**Mr. Muscato:** That depends on the groups that are working. Yes, our less populated areas get hit the hardest on major, one-time thefts. Baby formula is the #1 item in the country at this time. Also are the ink jet cartridges. They'll go into a store and take \$3-4,000 at a time. These people are being brought in from Colombia and Argentina, brought into Miami and travel all over the country. They are concentrating on places like ND, SD, WY, MT where there aren't a lot of people who know this kind of stuff. It is wiping out the stores. We asked a group that we brought in what happens when they see a police car in front of the store, and they say that is the best time, because the police and the store loss prevention officers are in the back with a suspect and they have free run of the place.

**Rep. Kingsbury:** When store employees are involved, do they watch for this in the stores. Is it often that you have someone working at the check-out, and they would go to that check-out, that they are part of the whole business. How often is it that the store employee is helping them out.

**Mr. Muscato:** First of all on the checking out, we have 100-150,000 different items in that store for sale, and that check-out person is checking out a lot of people. The person that is buying the items, will engage them in conversation and distract them from seeing what is up there. There are a lot of boxed toys that sell for \$19.95 that are around the same size. Another

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House Judiciary Committee  
Bill/Resolution Number SB 2269  
Hearing Date 3-11-03

big theft that they do is find a large toy in a box, such as with a teeter-totter and leave the toy on the shelf, and have others go around the store and get expensive items and place them in the box, seal the box up, and someone comes in after a couple of hours and buys the box and walks out with all the merchandise.

**Rep. Eckre:** I talked to Karen Mund, she is in charge of the key cards. She talked to an engineer on that, he said they are two different complete system. He said it couldn't be.

**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 2269.

**Rep. Boehning:** I move a Do Pass.

**Rep. Kingsbury:** Seconded.

13 YES 0 NO 0 ABSENT

DO PASS

CARRIER: Rep. Bernstein

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

2003 HOUSE STANDING COMMITTEE ROLL CALL VOTES  
BILL/RESOLUTION NO. 2269

House Judiciary Committee

Check here for Conference Committee

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

Action Taken Do Pass

Motion Made By Rep. Boehning Seconded By Rep. Kingsbury

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. Bernstein

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

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Deanna Walcott 10/21/03  
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REPORT OF STANDING COMMITTEE (410)  
March 11, 2003 10:10 a.m.

Module No: HR-43-4424  
Carrier: Bernstein  
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

SB 2269: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS  
(13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). SB 2269 was placed on the  
Fourteenth order on the calendar.

(2) DESK, (3) COMM

Page No. 1

HR-43-4424

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2003 TESTIMONY

SB 2269

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Date

10/21/03

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**Theft Detection Devices Legislation**

SB 2269

**Testimony  
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 as federal, state and local law enforcement officials across the country. My purpose here today is to give you some background on this issue and to express my concern with retail theft and its effects on consumers and retailers.**

**The proposed Theft Detection Shielding Devices legislation deals with a type of fraud that is growing in frequency and sophistication. Retail theft offenses committed in mercantile establishments are increasing at an alarming rate. Many retailers are combating these increases in retail theft offenses by installing complex and expensive electronic article surveillance (EAS) systems. Manufacturers are spending millions of dollars through source tagging. That is where the EAS tag is placed inside the product container, invisible to the consumer.**

**A large number of individuals involved in retail theft crimes are very sophisticated and are organized "professionals" who travel city-to-city and state-to-state committing these offenses. This stolen merchandise is then being sold to property fences (persons who knowingly buy stolen property). A vast majority of the individuals committing retail theft are using the monies gained to support their involvement with illegal drugs. Retail theft has become a high profit low risk avenue of crime.**

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Many of these individuals wear special clothing or have home-made tools and devices for retail theft including metal or foil-lined shopping bags which override and evade these electronic article surveillance systems. When property is placed inside the shielding device, an individual is able to defeat the electronic article surveillance system. The individuals also have devices to remove security sensors and tags affixed to some expensive apparel and other products. They often steal large numbers of the same items.

The thought process behind this is that the person using the Theft Detection Shielding Device has *planned* the crime...rather than a person in a store as an *opportunist* for Theft. In other words, a person who is a *Sometimes Shoplifter*, and is in a Retail Store, *sees the opportunity to steal something* and he does. Versus...*premeditated theft*. When that person *leaves his house* with a Theft Detection Shielding Device, they are on the way to Commit a Theft. That person will not stop with just One Store and One Theft.

The FBI Interstate Theft Task Force estimated that in 1997, external retail theft accounted for approximately \$26 Billion. The losses from these thefts are not absorbed by the retailer, but are passed on to the consumer through higher prices. Two to four cents of each dollar spent by a consumer at a retail establishment goes to cover theft.

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

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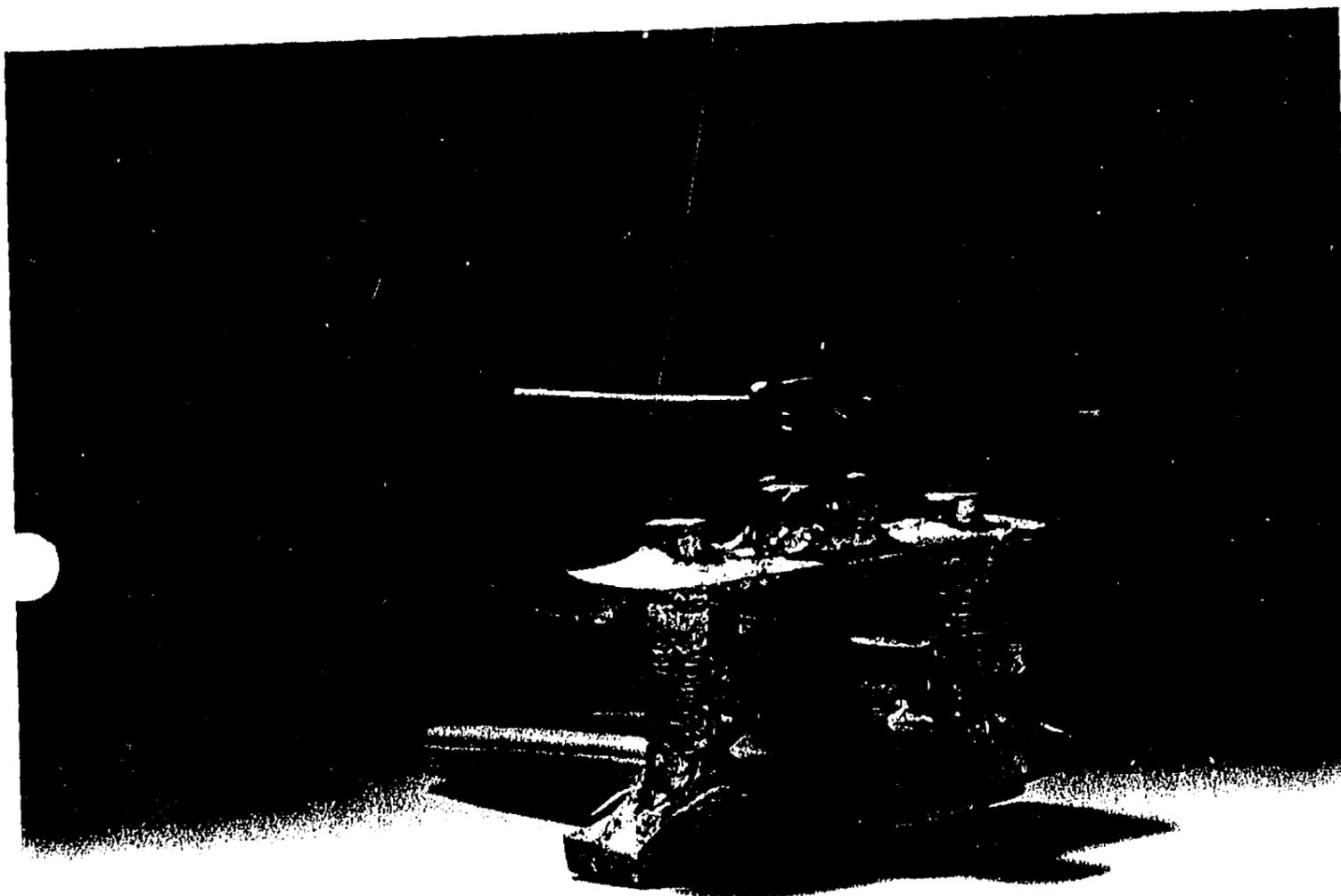
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**Theft Detection Devices Legislation**

**Testimony  
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SB 2269

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