

HOUSE BILL ANALYSIS

HB 2445

Brief Description: Regulating swap meets.

Sponsors: Representatives Constantine and Ballasiotes

Hearing: January 27, 2000

Brief Summary of Bill

- Prohibiting the sale of nonprescription drugs, medical devices, baby food and formula, cosmetics or personal care products at swap meets.
- Requiring merchants selling at swap meets and flea markets to keep receipts of the property they have purchased

BACKGROUND:

Persons or businesses that sell goods at flea markets or swap meets more than three times a year are classified as second-hand dealers. For each transaction, these dealers must record:

- The signature, date of birth, description, address, and telephone number of the buyer or seller,
- the date of the transaction,
- identification of the employee conducting the transaction,
- a description of the property bought or sold,
- the price,
- a drivers license number,
- store identification information, and
- the nature of the transaction.

If requested, second-hand dealers must furnish to law enforcement agencies this information for transactions occurring on the preceding day.

Various law enforcement agencies around the nation report that dealers at flea markets and

swap meets sell counterfeit products. Corporate victims of counterfeiters report that they are losing millions of dollars a year to cheap imitations of their products.

There are some reports of a growing trend between flea market and swap meet vendors to also sell baby food and nonprescription drugs from market booths.

SUMMARY OF BILL:

A new category of merchants is created. Unused property merchants– are merchants who display and offer for sale, at retail, goods at an unused property market– and do not have established retail stores.

Unused property markets– are markets that charge a fee for the right to sell or exchange goods at the market, or that charge buyers an admission fee, or that are held more than six times during any 12-month period, or involve sufficient sales to constitute a regular course of business. Unused property markets do not include:

- Religious, educational, or charitable events that raise funds for the sponsor and do not provide any profits to a private shareholder or person organizing the event,
- trade shows where all sellers are manufacturers, distributors, or their representatives.

New and unused property– is personal property that was acquired directly from the manufacturer, wholesaler, or retailer in the ordinary course of business and is unused or is in its original, unopened packaging.

Unused property merchants must maintain receipts for any purchases of new and unused property. The receipts must contain the following information:

- The date of the transaction,
- the name and address of the seller of the property,
- an identification and description of the property, and
- the price paid.

It is crime for an unused property merchant to falsify or obliterate receipts, refuse to make receipts reasonably available for inspection, or destroy the receipts before 2 years.

This requirement to maintain receipts does not apply to:

- The sale of registered motor vehicles or trailers,
- the sale of wood for fuel, ice, or livestock,

- sales of antique property,
- catalog, brochure, or sample sales,
- the sale of arts and crafts, and
- sales through scheduled sales presentations.

Unused property merchants may not sell at unused property markets baby food, infant formula, nonprescription drugs, medical devices, or cosmetics or personal care products unless they are an authorized representative of the manufacturer or distributor of the product.

Nonprescription drugs— are over the counter drugs prepackaged and prepared by the manufacturer for use by the consumer and labeled according to state and federal law. Herbal products, dietary supplements, botanical extracts, and vitamins are not nonprescription drugs.

Medical devices— are instruments that are required by federal law to be dispensed by a physician, or are used for the diagnosis, cure, treatment, or prevention of disease of man or animals, or are intended to affect the structure of man or animals. The term does not include instruments that act through a chemical action within the body or by metabolism.

Violations of these requirements constitute a misdemeanor for the first violation, a gross misdemeanor upon the second violation, and a felony on subsequent violations.

RULES AUTHORITY: The bill does not contain provisions addressing the rule making powers of an agency.

FISCAL NOTE: Not requested.

EFFECTIVE DATE: Ninety days after adjournment of a session in which bill is passed.