

---

HOUSE BILL 2445

---

State of Washington

56th Legislature

2000 Regular Session

By Representatives Constantine, Ballasiotes, O'Brien, Carrell, Huff and Edwards

Read first time 01/13/2000. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to unused property markets; adding a new chapter to  
2 Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** The definitions set forth in this section  
5 apply throughout this chapter.

6 (1)(a) "Unused property market" means an event:

7 (i) At which two or more persons offer personal property for sale  
8 or exchange and (A) at which a fee is charged for sale or exchange of  
9 personal property, or (B) at which a fee is charged to prospective  
10 buyers for admission to the area in which personal property is offered  
11 or displayed for sale or exchange; or

12 (ii) Regardless of the number of persons offering or displaying  
13 personal property or the absence of fees at which personal property is  
14 offered or displayed for sale or exchange, if the event is held more  
15 than six times in any twelve-month period.

16 (b) The term unused property market is interchangeable with and  
17 applicable to "swap meet," "indoor swap meet," "flea market," or other  
18 similar terms regardless of whether these events are held inside a  
19 building or outside in the open. The primary characteristic is that

1 these activities involve a series of sales sufficient in number, scope,  
2 and character to constitute a regular course of business.

3 (c) The term unused property market does not mean and does not  
4 apply to:

5 (i) An event that is organized for the exclusive benefit of a  
6 community chest, fund, foundation, association, or corporation  
7 organized and operated for religious, educational, or charitable  
8 purposes, so long as no part of an admission fee or parking fee charged  
9 vendors or prospective purchasers or the gross receipts or net earnings  
10 from the sale or exchange of personal property, whether in the form of  
11 a percentage of the receipts or earnings, as salary, or otherwise,  
12 inures to the benefit of a private shareholder or person participating  
13 in the organization or conduct of the event; or

14 (ii) An event at which all of the personal property offered for  
15 sale or displayed is new, and all persons selling, exchanging, or  
16 offering or displaying personal property for sale or exchange are  
17 manufacturers or authorized representatives of manufacturers or  
18 distributors.

19 (2) "Unused property merchant" means a person, other than a vendor  
20 or merchant with an established retail store in the county, who  
21 transports an inventory of goods to a building, vacant lot, or other  
22 unused property market location and who, at that location, displays the  
23 goods for sale and sells the goods at retail or offers the goods for  
24 sale at retail.

25 (3) "New and unused property" means tangible personal property that  
26 was acquired by the unused property merchant directly from the  
27 producer, manufacturer, wholesaler, or retailer in the ordinary course  
28 of business that has never been used since its production or  
29 manufacturing or that is in its original and unopened package or  
30 container, if the personal property was so packaged when originally  
31 produced or manufactured.

32 (4) "Baby food" or "infant formula" means food manufactured,  
33 packaged, and labeled specifically for sale for consumption by a child  
34 under the age of two years.

35 (5) "Nonprescription drug," which may also be referred to as an  
36 "over the counter drug," means a nonnarcotic medicine or drug that may  
37 be sold without a prescription and is prepackaged for use by the  
38 consumer, prepared by the manufacturer or producer for use by the  
39 consumer, properly labeled and unadulterated in accordance with the

1 requirements of the state food and drug laws and the federal Food, Drug  
2 and Cosmetic Act. The term "nonprescription drug" does not include  
3 herbal products, dietary supplements, botanical extracts, or vitamins.

4 (6) "Medical device" means an instrument, apparatus, implement,  
5 machine, contrivance, implant, in vitro reagent, tool, or other similar  
6 or related article, including a component part or accessory, required  
7 under federal law to bear the label "Caution: Federal law requires  
8 dispensing by or on the order of a physician"; or that is defined by  
9 federal law as a medical device and that is intended for use in the  
10 diagnosis of disease or other conditions or in the cure, mitigation,  
11 treatment, or prevention of disease in man or other animals or is  
12 intended to affect the structure or a function of the body of man or  
13 other animals, that does not achieve any of its principal intended  
14 purposes through chemical action within or on the body of man or other  
15 animals, and that is not dependent upon being metabolized for  
16 achievement of any of its principal intended purposes.

17 NEW SECTION. **Sec. 2.** An unused property merchant may not offer at  
18 an unused property market for sale or knowingly permit the sale of baby  
19 food, infant formula, cosmetics or personal care products, or any  
20 nonprescription drug or medical device. This section does not apply to  
21 a person who keeps available for public inspection a written  
22 authorization identifying that person as an authorized representative  
23 of the manufacturer or distributor of such a product, as long as the  
24 authorization is not false, fraudulent, or fraudulently obtained.

25 NEW SECTION. **Sec. 3.** (1) An unused property merchant shall  
26 maintain receipts for the purchase of new and unused property.  
27 Receipts must contain all of the following information:

28 (a) Date of the transaction;

29 (b) Name and address of the person, corporation, or entity from  
30 whom the new and unused property was acquired;

31 (c) An identification and description of the new and unused  
32 property acquired;

33 (d) The price paid for the new and unused property.

34 (2) It is a violation of this chapter for an unused property  
35 merchant required to maintain receipts under this section to knowingly:

36 (a) Falsify, obliterate, or destroy the receipts;

1 (b) Refuse or fail upon request to make the receipts available for  
2 inspection within a period of time that is reasonable under the  
3 individual circumstances surrounding the request; however, nothing  
4 contained in this subsection requires the unused property merchant to  
5 possess the receipt on or about his or her person without reasonable  
6 notice; or

7 (c) Fail to maintain the receipts required by this section for at  
8 least two years.

9 NEW SECTION. **Sec. 4.** This chapter does not apply to:

10 (1) The sale of a motor vehicle or trailer that is required to be  
11 registered or is subject to the certificate of ownership laws of this  
12 state;

13 (2) The sale of wood for fuel, ice, or livestock;

14 (3) Business conducted at an industry or association trade show;

15 (4) Property, although never used, whose style, packaging, or  
16 material clearly indicates that the property was not produced or  
17 manufactured within recent times;

18 (5) Anyone who sells by sample, catalog, or brochure for future  
19 delivery;

20 (6) The sale of arts or crafts by the person who produced the arts  
21 or crafts;

22 (7) Persons who make sales presentations under a prior,  
23 individualized invitation issued to the consumer by the owner or legal  
24 occupant of the premises.

25 NEW SECTION. **Sec. 5.** (1) The first violation of this chapter is  
26 a misdemeanor.

27 (2) A second violation of this chapter is a gross misdemeanor.

28 (3) A third or subsequent violation of this chapter is a felony.

29 NEW SECTION. **Sec. 6.** Sections 1 through 5 of this act constitute  
30 a new chapter in Title 19 RCW.

--- END ---