

# HOUSE BILL REPORT

## ESB 5374

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### As Reported by House Committee On:

Commerce & Labor

**Title:** An act relating to the imposition of criminal penalties and sanctions for the unauthorized sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices.

**Brief Description:** Imposing criminal penalties and sanctions for the unauthorized sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices.

**Sponsors:** By Senators Constantine, Winsley, Prentice and McCaslin.

### Brief History:

#### Committee Activity:

Commerce & Labor: 3/20/01, 3/30/01 [DPA].

#### Brief Summary of Engrossed Bill (As Amended by House Committee)

- Prohibits the sale of baby food, infant formula, cosmetics, nonprescription drugs, or medical devices at unused property markets (including swap meets, flea markets, etc., but not trade shows) unless sold by an authorized manufacturer's representative or product distributor.
- Makes a first violation of the prohibition a misdemeanor, a second violation within five years a gross misdemeanor, and a third or subsequent violation within five years a class C felony.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** Do pass as amended. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hunt, Kenney, Lisk and McMorris.

**Staff:** Chris Cordes (786-7103).

### Background:

Second-hand dealers are persons engaged in the business of selling or transferring for value personal property that is not new, with some exceptions such as stamps, used books, and clothing with a resale value of less than \$75. "Second-hand dealer" also includes persons or entities conducting business at flea markets or swap meets more than three times a year. These dealers must record at the time of each transaction:

- 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 driver's license number;
- store identification information; and
- the nature of the transaction.

Second-hand dealers must retain this information for three years and, if requested, must furnish to law enforcement agencies this information for transactions occurring on the preceding day.

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### **Summary of Amended Bill:**

An unused property merchant may not offer for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, nonprescription drugs, or medical devices at an unused property market. This prohibition does not apply to:

- a legally authorized representative of the manufacturer or distributor of such a product who keeps the written authorization available for public inspection.
- business conducted in any industry or association trade show.
- anyone who sells by sample, catalog, or brochure for future delivery.

A first violation of the prohibition is a misdemeanor, a second violation within five years is a gross misdemeanor, and a third or subsequent violation within five years is a class C felony.

An "unused property merchant" is a person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot, or other unused property market location and who, at that location, displays the goods for sale and sells or offers the goods for sale at retail. A person who offers five or fewer items of the same new and unused merchandise is exempt.

An "unused property market" means an event at which two or more persons offer personal property for sale or exchange and:

- these persons are charged a fee for sale or exchange of personal property;
- prospective buyers are charged a fee for admission to the event; or
- regardless of the number of persons offering property for sale or fees charged, personal property is offered or displayed for sale or exchange if the event is held more than six times in any 12-month period.

An unused property market is interchangeable with swap meet, flea market, or similar term, when the primary characteristic is a series of sales sufficient to constitute a regular course of business.

An unused property market does not include an event:

- organized for the exclusive benefit of a religious, educational, or charitable organization, as long as the admission fee or parking fee charged to vendors or prospective buyers or the gross receipts or net earnings do not benefit a private shareholder or person participating in conducting the event; or
- at which all property offered for sale or displayed is new and the persons selling or offering to sell or exchange the property are manufacturers or authorized representatives of manufacturers or distributors.

"Baby food" means manufactured food packaged and labeled for sale for consumption by a child under two years of age.

"Nonprescription drug" means a nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged and labeled for consumer use according to state and federal food and drug laws, but does not include herbal products, dietary supplements, botanical extracts, or vitamins.

"Medical device" means an implement, machine, implant, or other similar article that is required under federal law to be dispensed under a physician's order, or that is defined by federal law as a medical device and intended for use in the diagnosis of disease, or in the treatment or prevention of disease in people or animals, or intended to affect the structure or function of the body of people or animals, but that is not dependent on chemical action within or on the body or being metabolized to achieve its intended purpose.

#### **Amended Bill Compared to Engrossed Bill:**

The amendment (1) clarifies that a fee must be charged for an event to be considered an unused property market (unless the event occurs more than six times in a year); (2) clarifies that the term over-the-counter drugs is not being defined but is used to reference "nonprescription drugs"; (3) clarifies that a nonprescription drug includes those drugs that are required to comply with federal and state food and drug laws; and (4) makes a grammatical correction.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** Ninety days after adjournment of session in which bill is passed.

**Testimony For:** The bill is narrowed to exclude garage sales and other similar events. It only deals with specific items. This bill has been adopted in a number of states in response to a growing problem with theft rings. There are large losses at the retail level because of shoplifting of baby food and infant formula, for example. These items frequently appear at events such as flea markets, and access to these outlets needs to be stopped. There is danger to the public when baby food or medical devices, such as diabetic strips, are sold without regard to storage conditions or when recall of the items cannot be effective. There is also danger to employees at retail stores if persons shoplifting these items are apprehended at the store.

**Testimony Against:** None.

**Testified:** Jan Gee and Renee Knesal, Washington Retail Association.