

CERTIFICATION OF ENROLLMENT

**ENGROSSED SENATE BILL 5374**

Chapter 160, Laws of 2001

57th Legislature  
2001 Regular Session

UNUSED PROPERTY MERCHANTS--PROHIBITED SALES

EFFECTIVE DATE: 7/22/01

Passed by the Senate April 17, 2001  
YEAS 30 NAYS 18

BRAD OWEN  
**President of the Senate**

Passed by the House April 6, 2001  
YEAS 93 NAYS 0

FRANK CHOPP  
**Speaker of the  
House of Representatives**

CLYDE BALLARD  
**Speaker of the  
House of Representatives**

Approved May 7, 2001

GARY LOCKE  
**Governor of the State of Washington**

CERTIFICATE

I, Tony M. Cook, Secretary of the Senate of the State of Washington, do hereby certify that the attached is **ENGROSSED SENATE BILL 5374** as passed by the Senate and the House of Representatives on the dates hereon set forth.

TONY M. COOK  
**Secretary**

FILED

May 7, 2001 - 12:43 p.m.

**Secretary of State  
State of Washington**

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ENGROSSED SENATE BILL 5374

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AS AMENDED BY THE HOUSE

Passed Legislature - 2001 Regular Session

State of Washington                      57th Legislature                      2001 Regular Session

By Senators Constantine, Winsley, Prentice and McCaslin

Read first time 01/19/2001. Referred to Committee on Labor, Commerce & Financial Institutions.

1            AN ACT Relating to the imposition of criminal penalties and  
2 sanctions for the unauthorized sale of baby food, infant formula,  
3 cosmetics, nonprescription drugs, or medical devices; adding a new  
4 chapter to Title 19 RCW; and prescribing penalties.

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

6            NEW SECTION.    **Sec. 1.**    The definitions in this section apply  
7 throughout this chapter unless the context clearly requires otherwise.

8            (1)(a) "Unused property market" means any event:

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

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

18            (b) "Unused property market" is interchangeable with and applicable  
19 to swap meet, indoor swap meet, flea market, or other similar terms,

1 regardless of whether these events are held inside a building or  
2 outside in the open. The primary characteristic is that these  
3 activities involve a series of sales sufficient in number, scope, and  
4 character to constitute a regular course of business.

5 (c) "Unused property market" does not include:

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

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

20 (2) "Unused property merchant" means any person, other than a  
21 vendor or merchant with an established retail store in the county, who  
22 transports an inventory of goods to a building, vacant lot, or other  
23 unused property market location and who, at that location, displays the  
24 goods for sale and sells the goods at retail or offers the goods for  
25 sale at retail, except a person who offers five or fewer items of the  
26 same new and unused merchandise for sale or exchange at an unused  
27 property market.

28 (3) "Baby food" or "infant formula" means any food manufactured,  
29 packaged, and labeled specifically for sale for consumption by a child  
30 under the age of two years.

31 (4) "Nonprescription drug," which may also be referred to as an  
32 over-the-counter drug, means any nonnarcotic medicine or drug that may  
33 be sold without a prescription and is prepackaged for use by the  
34 consumer, prepared by the manufacturer or producer for use by the  
35 consumer, and required to be properly labeled and unadulterated in  
36 accordance with the requirements of the state food and drug laws and  
37 the federal food, drug, and cosmetic act. "Nonprescription drug" does  
38 not include herbal products, dietary supplements, botanical extracts,  
39 or vitamins.

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

14 NEW SECTION. **Sec. 2.** No unused property merchant shall offer at  
15 an unused property market for sale or knowingly permit the sale of baby  
16 food, infant formula, cosmetics, nonprescription drugs, or medical  
17 devices. This section does not apply to a person who keeps available  
18 for public inspection a written authorization identifying that person  
19 as an authorized representative of the manufacturer or distributor of  
20 such product, as long as the authorization is not false, fraudulent, or  
21 fraudulently obtained.

22 NEW SECTION. **Sec. 3.** This chapter does not apply to:

- 23 (1) Business conducted in any industry or association trade show;  
24 or  
25 (2) Anyone who sells by sample, catalog, or brochure for future  
26 delivery.

27 NEW SECTION. **Sec. 4.** (1) A first violation of this chapter is a  
28 misdemeanor.

29 (2) A second violation of this chapter within five years is a gross  
30 misdemeanor.

31 (3) A third or subsequent violation of this chapter within five  
32 years is a class C felony.

33 NEW SECTION. **Sec. 5.** Sections 1 through 4 of this act constitute  
34 a new chapter in Title 19 RCW.

Passed the Senate April 17, 2001.  
Passed the House April 6, 2001.  
Approved by the Governor May 7, 2001.  
Filed in Office of Secretary of State May 7, 2001.