

# HOUSE BILL REPORT

## HB 2445

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### As Reported By House Committee On:

Commerce & Labor

**Title:** An act relating to unused property markets.

**Brief Description:** Regulating swap meets.

**Sponsors:** Representatives Constantine, Ballasiotes, O'Brien, Carrell, Huff and Edwards.

### Brief History:

#### Committee Activity:

Commerce & Labor: 1/27/00, 2/3/00/ [DPS].

#### Brief Summary of Substitute 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 and are offering for sale.

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### HOUSE COMMITTEE ON COMMERCE & LABOR

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 8 members: Representatives Clements, Republican Co-Chair; Conway, Democratic Co-Chair; B. Chandler, Republican Vice Chair; Wood, Democratic Vice Chair; Hurst; Lisk; McIntire and McMorris.

**Staff:** Pam Madson (786-7166).

### 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 driver's 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.

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**Summary of Substitute 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. In addition, the merchant must offer property that includes at least five items that are identical, and the value of the inventory of new and unused property offered for sale at an event must exceed \$500.

"Unused property markets" are markets with the primary purpose of reselling new, unused, or used tangible personal property at which a fee is charged for the right to sell or exchange goods at the market, or at which buyers are charged an admission fee. 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; and
- 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 a crime for an unused property merchant to falsify or obliterate receipts, refuse to make receipts reasonably available for inspection, or destroy the receipts before two years.

These requirements and restrictions do not apply to:

- the sale of registered motor vehicles or trailers;
- sales conducted at industry or association trade shows;
- the sale of wood for fuel, ice, or livestock;
- sales of antique property;
- catalog, brochure, or sample sales;
- the sale of arts and crafts;
- sales through scheduled sales presentations; and
- sales of firearms.

Unused property merchants may not sell the following items at unused property markets: baby food, infant formula, nonprescription drugs, medical devices, cosmetics, or personal care products, unless the merchant is 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 class C felony on subsequent violations.

**Substitute Bill Compared to Original Bill:** Elements are added for defining an unused property merchant and an unused property market. To be an unused property merchant, the property offered for sale must include at least five items that are identical and the value of the inventory of new and unused property offered at the event must be more than \$500. An unused property market is one having as its primary purpose, the resale of new, unused, and used tangible personal property.

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**Appropriation:** None.

**Fiscal Note:** Not requested.

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

**Testimony For:** The Federal Bureau of Investigation estimates that retail theft losses amount to as much as \$40 billion with much of the stolen property sold at swap meets. Also of concern are perishable items and items usually sold in a controlled environment. The bill says if you sell at these swap meets you have to have a receipt that shows where the property came from. It also lists items that cannot be sold. Twenty-two states have legislation regulating swap meets. Nothing in law currently requires new and unused property sellers to have receipts. As other states adopt legislation like this, the criminal element will move into states that do not have these laws. The flow of stolen goods travel from the retail establishments to swap meets and flea markets where they are resold. Investigations are more successful in states that have laws governing flea market fences. The sale of over-the-counter medications can pose a serious health risk in that these products may not be stored properly or may not be sold according to certain restrictions. This bill will help shut down those vendors who are selling stolen property.

**Testimony Against:** This puts a burden on anyone who sells property at swap meets including property that they have acquired legitimately. Some property may not carry the type of receipt this bill requires. Inventory is purchased in bulk at going out-of-business sales where itemized receipts are not given. The large retail stores should better control the thefts from their establishments. Gun shows should be exempted.

**Testified:** (In favor) Representative Constantine, prime sponsor; Jan Gee, Washington Retail Association; and Laura Schmidt.

(Opposed) Al Woodbridge, Washington Property Rights Alliance.