

FINAL BILL REPORT

ESB 5374

C 160 L 01
Synopsis as Enacted

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

Sponsors: Senators Constantine, Winsley, Prentice and McCaslin.

Senate Committee on Labor, Commerce & Financial Institutions
House Committee on Commerce & Labor

Background: Swap meets and flea markets sometimes involve the sale of unused products as well as used merchandise. Certain products, such as food, drugs, and medical equipment sold in these informal and largely unregulated settings could present a threat to purchasers greater than sales in a typical regulated retail setting.

Summary: "Unused property market" is defined to include swap meets, flea markets and similar events where a fee is charged for participation or which occurs more than six times a year. Charitable events are excluded. Events involving exclusively new merchandise, where all vendors are authorized manufacturers' representatives are excluded. An "unused property merchant" is defined as anyone other than a merchant with an established retail store in the county, who transports an inventory of goods to an unused property market and sells or offers the goods for sale, except a person who offers five or fewer items of the same new and unused merchandise.

"Baby food" means food labeled for consumption by a child under the age of two.

"Nonprescription drug" means medicines that may be sold without a prescription that are subject to state or federal food and drug laws, excluding herbal, botanical or vitamin products.

"Medical device" means any instrument, apparatus, machine or the like, which is regulated by federal law, and which is intended to affect the structure or function of the body of man or animals, and not dependent on being metabolized for the achievement of its intended purposes.

No unused property merchant shall offer for sale at an unused property market any baby food, infant formula, cosmetics, or medical devices. Authorized representatives of manufacturers or distributors of such products are excluded from this prohibition, if they keep a written authorization identifying them available for inspection by the public.

A violation of the act is a misdemeanor. A second violation within a five-year period is a gross misdemeanor. Third and subsequent violations within a five-year period are a class C felony.

Votes on Final Passage:

Senate	32	17	
House	93	0	(House amended)
Senate	30	18	(Senate concurred)

Effective: July 22, 2001