

# SENATE BILL REPORT

## ESB 5374

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As Passed Senate, March 9, 2001

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

**Brief History:**

**Committee Activity:** Labor, Commerce & Financial Institutions: 2/13/01, 2/19/01 [DP, DNP].

Passed Senate: 3/9/01, 32-17.

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### SENATE COMMITTEE ON LABOR, COMMERCE & FINANCIAL INSTITUTIONS

**Majority Report:** Do pass.

Signed by Senators Prentice, Chair; Gardner, Vice Chair; Fairley, Franklin, Rasmussen, Regala and Winsley.

**Minority Report:** Do not pass.

Signed by Senators Hochstatter and Honeyford.

**Staff:** David Cheal (786-7576)

**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 of Bill:** "Unused property market" is defined to include swap meets, flea markets and similar events. 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.

**Appropriation:** None.

**Fiscal Note:** Requested on February 12, 2001.

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

**Testimony For:** Baby food, personal care products and medical devices should not be sold in unregulated, informal settings such as flea markets and swap meets because of serious harm that could result from spoilage and other defects. People harmed by these products have no recourse when they are not sold by authorized retail merchants. These markets also provide an outlet for stolen merchandise.

**Testimony Against:** None.

**Testified:** Jan Gee, WA Retail Assn., WA Food Industry (pro); Kevin Newcome, Target Corp.; Dale Coleman, Fred Meyer Inc.(pro).

**House Amendment(s):** The House 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 over-the-counter drugs are not being defined but is a term 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.