
ENGROSSED SENATE BILL 5374

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, at which a fee is charged for sale or exchange of personal
11 property, or at which a fee is charged to prospective buyers for
12 admission to the area at which personal property is offered or
13 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 less 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" or "over-the-counter drug" means any
32 nonnarcotic medicine or drug that may be sold without a prescription
33 and is prepackaged for use by the consumer, prepared by the
34 manufacturer or producer for use by the consumer, and should be
35 properly labeled and unadulterated in accordance with the requirements
36 of the state food and drug laws and the federal food, drug, and
37 cosmetic act. "Nonprescription drug" does not include herbal products,
38 dietary supplements, botanical extracts, 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.

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

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