

STATE OF OKLAHOMA

1st Session of the 48th Legislature (2001)

HOUSE BILL HB1068

By: Mitchell

AS INTRODUCED

An Act relating to crimes and punishments; creating the Unused Property Market Act; defining terms; prohibiting the offering for sale certain products, foods and devices; providing for construction of section; requiring certain receipts; providing for contents; making certain actions unlawful; providing for application of act; specifying penalties; providing for codification; and providing an effective date.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2001 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. This act shall be known and may be cited as the "Unused Property Market Act".

B. For purposes of the Unused Property Market Act:

1. "Unused Property Market" means any event:

- a. at which two or more persons offer personal property for sale or exchange at which a fee is charged for sale or exchange of person property, or is charged to prospective buyers for admission to the area at which person property is offered or displayed for sale or exchange, or
- b. regardless of the number of persons offering or displaying person property or the absence of fees at which personal property is offered or displayed for sale or exchange if the event is held more than six times in any twelve-month period.

The term "Unused Property Market" is interchangeable with and applicable to "Swap Meet", "Indoor Swap Meet", "Flea Market", or other similar terms regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business. The term "Unused Property Market" shall not mean and shall not apply to:

- a. an event which is organized for the exclusive benefit of any community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, provided that no part of any admission fee or parking fee charged vendors or prospective purchasers or the gross receipt or net earnings from the sale or exchange of personal property, whether in the form of a percentage of the receipts or earning, as salary, or otherwise, inures to the benefit of any private shareholder or person participating in the organization or conduct of the event, or
- b. any event at which all of the personal property offered for sale or displayed is new and all persons selling, exchanging, offering or displaying personal property for sale or exchange, are manufacturers or authorized representatives of manufacturers or distributors.

2. "Unused property merchant" means any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

3. "New and unused property" means tangible personal property that was acquired by an unused property merchant directly from the producer, manufacturer, wholesaler or retailer in the ordinary course of business which has never been used since its production or manufacturing or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured.

4. "Baby food" or "infant formula" means any food manufactured, packaged and labeled specifically for sale for consumption by a child under the age of two (2).

5. "Nonprescription drug" or "over the counter drug" means any nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and should be properly labeled and unadulterated in accordance with the requirements of the state food and drug laws and the federal Food, Drug and Cosmetic Act. The term "nonprescription drug" shall not include herbal products, dietary supplements, botanical extracts or vitamins.

6. "Medical device" shall mean any instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component part or accessory, required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician", or which is defined by federal law as a medical device and which is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment or prevention of disease in man or animals or is intended to affect the structure or any function of the body of man or animals, which does not achieve any of its principal intended purposes through chemical action within or on the body of man or animals and which is not dependent upon being

metabolized for achievement of any of its principal intended purposes.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2002 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. No unused property merchant shall offer at an unused property market for sale or knowingly permit the sale of baby food, infant formula, cosmetics or personal care products or any nonprescription drug or medical device.

B. The provisions of this section shall not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product, as long as the authorization is not false, fraudulent, or fraudulently obtained.

SECTION 3. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2003 of Title 21, unless there is created a duplication in numbering, reads as follows:

A. Every unused property merchant shall maintain receipts for the purchase of new and unused property as defined above. Receipts shall contain all of the following information:

1. Date of the transaction;
2. Name and address of the person, corporation, or entity from whom the new and unused property was acquired;
3. An identification and description of the new and unused property acquired;
4. The price paid for such new and unused property; and
5. The signature of the seller and buyer of the new and unused property.

B. It is a violation of the Unused Property Market Act for an unused property merchant required to maintain receipts under the provisions contained herein to knowingly:

1. Falsify, obliterate or destroy such receipts;

2. Refuse or fail upon request to make such receipts available for inspection within a period of time which is reasonable under the individual circumstances surrounding such request. Provided, however, nothing contained within the provisions of this paragraph shall be construed to require the unused property merchant to possess such receipt on or about his or her person without reasonable notice; or

3. Fail to maintain the receipts required by this section for at least two (2) years.

C. The provisions of the Unused Property Market Act shall not apply to:

1. The sale of a motor vehicle or trailer that is required to be registered or is subject to the certificate of title laws of this state;

2. The sale of wood for fuel, ice, or livestock;

3. Business conducted in any industry or association trade show;

4. Property, although never used, whose style, packaging or material, clearly indicates that such property was not produced or manufactured within recent times;

5. Anyone who sells by sample, catalog or brochure for future delivery;

6. The sale of arts or crafts or other merchandise by a person who produces such arts or crafts or merchandise or by a person or persons acting on their behalf; or

7. Persons who make sales presentations pursuant to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

SECTION 4. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2004 of Title 21, unless there is created a duplication in numbering, reads as follows:

The Unused Property Market Act shall apply to all new and unused property purchased or acquired on or after January 1, 2002.

SECTION 5. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 2005 of Title 21, unless there is created a duplication in numbering, reads as follows:

Penalty for violations of the Unused Property Market Act shall be as follows:

1. The first violation shall be a misdemeanor punishable by a fine not to exceed One Thousand Dollars (\$1,000.00);
2. A second violation shall be a misdemeanor punishable by a fine not to exceed Five Thousand Dollars (\$5,000.00); and
3. Any subsequent violation shall be a felony.

SECTION 6. This act shall become effective November 1, 2001.

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