

# MAINE STATE LEGISLATURE

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# 119th MAINE LEGISLATURE

## FIRST REGULAR SESSION-1999

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Legislative Document

No. 2025

H.P. 1418

House of Representatives, March 24, 1999

### An Act to Regulate Unused Property Markets.

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Reference to the Committee on Business and Economic Development suggested and ordered printed.

A handwritten signature in black ink that reads "Joseph W. Mayo".

JOSEPH W. MAYO, Clerk

Presented by Representative POVICH of Ellsworth.

Be it enacted by the People of the State of Maine as follows:

2  
4           Sec. 1. 10 MRSA c. 205-A is enacted to read:

6                           CHAPTER 205-A

8                           UNUSED PROPERTY MARKETS

10           §1210. Definitions

12           As used in this chapter, unless the context otherwise  
indicates, the following terms have the following meanings.

14           1. Baby food. "Baby food" or "infant formula" means any  
food manufactured, packaged and labeled specifically for sale for  
consumption by a child under 2 years of age.

18           2. Medical device. "Medical device" means 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," which is required under federal law to be  
prescribed by a practitioner as a medical device 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 but that does not achieve any of its  
principal intended purposes through chemical action within or on  
the body of man or animals and that is not dependent upon being  
metabolized for achievement of any of its principal intended  
purposes.

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

42           4. Nonprescription drug or over-the-counter drug.  
"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, properly  
labeled and unadulterated in accordance with the requirements of  
the state food and drug laws and the federal Food, Drug and  
Cosmetic Act. "Nonprescription drug" does not include herbal  
products, dietary supplements, botanical extracts or vitamins.

2           **5. Unused property market.** "Unused property market" means  
any event:

4           **A. At which 2 or more persons offer personal property for**  
6           **sale or exchange and at which a fee is charged for sale or**  
8           **exchange of personal property or a fee is charged to**  
              **prospective buyers for admission to the event; or**

10           **B. Where personal property is offered or displayed for sale**  
12           **or exchange if the event is held more than 6 times in any**  
14           **12-month period, regardless of the number of persons**  
              **offering or displaying personal property or the absence of**  
              **an admission fee.**

16           **"Unused property market" is interchangeable with and applicable**  
18           **to "swap meet," "indoor swap meet," "flea market" or other**  
20           **similar terms, regardless of whether these events are held inside**  
              **a building or outside in the open, when these activities involve**  
              **a series of sales sufficient in number, scope and character to**  
              **constitute a regular course of business.**

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

30           **§1210-A. Prohibitions**

32           **An unused property merchant may not offer for sale or**  
34           **knowingly permit the sale of baby food, cosmetics or personal**  
36           **care products, nonprescription drugs or medical devices at an**  
38           **unused property market. This section does not apply to a person**  
40           **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.**

42           **§1210-B. Requirement to maintain receipt**

44           **1. Receipt information.** An unused property merchant shall  
46           **maintain receipts for the purchase of new and unused property.**  
              **Receipts must contain the following information:**

- 2           A. The date of the transaction;
- 4           B. The name and address of the person, corporation or  
entity from whom the new and unused property was acquired;
- 6           C. An identification and a description of the new and  
unused property acquired;
- 8           D. The price paid for the new and unused property; and
- 10           E. The signature of the seller and buyer of the new and  
unused property.

14           2. Violations. An unused property merchant required to  
maintain receipts under this section may not knowingly:

- 16           A. Falsify, obliterate or destroy receipts;
- 18           B. Refuse or fail upon request to make receipts available  
for inspection within a period of time that is reasonable  
under the individual circumstances surrounding the request,  
except that this section may not be construed to require an  
unused property merchant to physically possess a receipt  
without reasonable notice; or
- 20           C. Fail to maintain receipts required by this section for  
at least 2 years after receiving the receipts.

26           3. Exemptions. The provisions of this chapter do not apply  
to:

- 30           A. An event that is organized for the exclusive benefit of  
any fund, foundation, association or corporation organized  
and operated for religious, educational or charitable  
purposes if no part of any admission fee or parking fee  
charged to vendors or prospective purchasers, or the gross  
receipts or net earnings from the sale or exchange of  
personal property, whether in the form of a percentage of  
the receipts or earnings, as salary, or otherwise, inures to  
the benefit of any private shareholder or person  
participating in the organization or conduct of the event;
- 32           B. An 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 receipts for at least 2 years. The bill exempts certain property and people from regulation. The bill also provides a penalty for violation of the chapter's provisions.