

MAINE STATE LEGISLATURE

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120th MAINE LEGISLATURE

FIRST REGULAR SESSION-2001

Legislative Document

No. 1655

S.P. 534

In Senate, March 15, 2001

An Act to Regulate Unused Property Markets.

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

A handwritten signature in cursive script that reads "Joy J. O'Brien".

JOY J. O'BRIEN
Secretary of the Senate

Presented by Senator KILKELLY of Lincoln.
Cosponsored by Senators: EDMONDS of Cumberland, GAGNON of Kennebec, MITCHELL of Penobscot, SHOREY of Washington, Representatives: BRYANT of Dixfield, CLARK of Millinocket, DUNLAP of Old Town, WHEELER of Eliot.

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

4 Sec. 1. 32 MRSA c. 112 is enacted to read:

6 CHAPTER 112

8 UNUSED PROPERTY MARKETS

10 §12101. Definitions

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

14 1. Baby food or infant formula. "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"; that is defined by federal law as a
medical device and is intended for use in the diagnosis of
disease or other conditions or in the cure, mitigation, treatment
or prevention of disease in humans or animals or is intended to
affect the structure or any function of the body of a human or an
animal; or that does not achieve any of its principal intended
purposes through chemical action within or on the body of a human
or an animal 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 was acquired by an unused
property merchant directly from the producer, manufacturer,
wholesaler or retailer in the ordinary course of business 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
non-narcotic 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 is
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" or
50

2 "over-the-counter drug" does not include herbal products, dietary
3 supplements, botanical extracts or vitamins.

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

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

11
12 B. Where personal property is offered or displayed for sale
13 or exchange if the event is held more than 6 times in any
14 12-month period, regardless of the number of persons
15 offering or displaying personal property or the absence of
16 an admission fee.

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

23
24 "Unused property market" does not include an event that is
25 organized for the exclusive benefit of any community chest, fund,
26 foundation, association or corporation organized and operated for
27 religious, educational or charitable purposes, provided that no
28 part of any admission fee or parking fee charged vendors or
29 prospective purchasers or the gross receipts or net earnings from
30 the sale or exchange of personal property, whether in the form of
31 a percentage of the receipts or earnings, as salary, or
32 otherwise, inures to the benefit of any private shareholder or
33 person participating in the organization or conduct of the
34 event. "Unused property market" does not include an event at
35 which all of the personal property offered for sale or displayed
36 is new and all persons selling, exchanging or offering or
37 displaying personal property for sale or exchange are
38 manufacturers or authorized representatives of manufacturers or
39 distributors.

40
41 **6. Unused property merchant.** "Unused property merchant"
42 means any person, other than a vendor or merchant with an
43 established retail store in the county where the unused property
44 merchant is located, who transports an inventory of goods to a
45 building, vacant lot or other unused property market location and
46 who, at that location, displays the goods for sale and sells the
47 goods at retail or offers the goods for sale at retail.

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49 **§12102. Requirement to maintain receipts**

2 1. Receipts for purchase of new and unused property. An
3 unused property merchant shall maintain receipts for the purchase
4 of new and unused property. Receipts must contain the following
5 information:

6 A. The date of the transaction;

7
8 B. The name and address of the person, corporation or
9 entity from whom the new and unused property was acquired;

10
11 C. An identification and description of the new and unused
12 property acquired;

13
14 D. The price paid for such new and unused property; and

15
16 E. The signature of the seller and buyer of the new and
17 unused property.

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20 **§12103. Prohibited acts**

21 It is unlawful for any unused property merchant:

22
23 1. Sales. To offer at an unused property market for sale
24 or knowingly permit the sale of baby food, infant formula,
25 cosmetics, personal care products, nonprescription drugs or
26 medical devices, unless the unused property merchant keeps
27 available for public inspection a written authorization
28 identifying that person as an authorized representative of the
29 manufacturer or distributor of such a product, provided that the
30 authorization is not false, fraudulent or fraudulently obtained;
31 and

32
33 2. Receipts. To knowingly:

34
35 A. Falsify, obliterate or destroy receipts required under
36 section 12102;

37
38 B. Refuse or fail upon request to make receipts required
39 under section 12102 available for inspection within a period
40 of time that is reasonable under the individual
41 circumstances surrounding such a request. This paragraph
42 may not be construed to require the unused property merchant
43 to produce receipts without reasonable notice; and

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45 C. Fail to maintain receipts required under section 12102
46 for at least 2 years.

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48 **§12104. Exceptions**

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2 This chapter does not apply to:

4 1. Motor vehicle or trailer. 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;

6 2. Wood, ice and livestock. The sale of wood for fuel, ice
8 or livestock;

10 3. Industry and trade shows. Business conducted in any
industry or association trade show;

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

16 5. Catalog sales. Anyone who sells by sample, catalog or
18 brochure for future delivery;

20 6. Arts and crafts. The sale of arts or crafts or other
merchandise by a person who produces those arts or crafts or
22 merchandise or by a person or persons acting on their behalf; and

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

28 **§12105. Penalties**

30 A person who violates this chapter commits:

32 A. A Class E crime;

34 B. A Class D crime if the actor has a prior conviction
under this chapter; or

36 C. A Class C crime if the actor has 2 or more prior
38 convictions under this chapter.

40 **§12106. Application**

42 This chapter applies to all new and unused property
44 purchased or acquired on or after January 1, 2002 of the year
following the effective date of this chapter.

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48 **SUMMARY**

50 This bill prohibits unused property merchants from selling
unused baby food, infant formula, nonprescription drugs and

2 medical devices at unused property markets unless the unused
property merchant possesses written authorization to do so from
4 the manufacturer or distributor of the item being sold. The bill
also requires unused property merchants to collect and maintain
6 detailed purchase receipts for a minimum of 2 years. The bill
does not apply to the sale of motor vehicles or trailers that are
8 required to be registered or are subject to the certification of
title laws of the State, wood for fuel, ice, livestock, business
10 conducted in any industry or association trade show, property not
manufactured within recent times, anyone who sells by sample
12 catalogs or brochures for future delivery, and the sale of arts,
crafts or other merchandise produced by a person who produces
14 such arts, crafts or merchandise or a person acting on their
behalf. The bill provides that an unused property merchant's
16 first violation of the Maine Revised Statutes, Title 32, chapter
112 is a Class E crime, the 2nd violation is a Class D crime and
all subsequent violations are Class C crimes.