

No. 2000-46

## AN ACT

HB 1856

Regulating the sale of unused property; requiring unused property merchants to maintain certain receipts; and prescribing penalties.

The General Assembly of the Commonwealth of Pennsylvania hereby enacts as follows:

Section 1. Short title.

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

Section 2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Baby food.” Any food manufactured, packaged and labeled specifically for sale for consumption by a child under two years of age. The term includes infant formula.

“Medical device.” An instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool or other similar or related article, including any component part or accessory:

(1) 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.

(2) 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.

(3) Which does not achieve any of its principal intended purposes through chemical action within or on the body of man or animal.

(4) Which is not dependent upon being metabolized for achievement of any of its principal intended purposes.

“New and unused property.” 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 manufacture or which is in its original and unopened package or container if such personal property was so packaged when originally produced or manufactured.

“Nonprescription drug.” 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 Federal Food, Drug, and Cosmetic Act (52 Stat. 1040, 21 U.S.C. § 301 et

seq.) and the State food and drug laws. The term includes any herbal product, dietary supplement, botanical extract or vitamin.

**“Unused property market.”**

(1) An event at which:

(i) two or more persons offer personal property for sale or exchange and charge a fee for sale or exchange of personal property or charge a fee to prospective buyers for admission to the area at which personal property is offered or displayed for sale or exchange;

or

(ii) persons offer or display personal property if the event is held more than six times in any 12-month period.

The term includes an indoor swap meet, flea market or other similar terms regardless of whether the event is held inside a building or outside in the open as long as the event involves a series of sales sufficient in number, scope and character to constitute a regular course of business.

(2) The term does not include:

(i) an event that is organized for the exclusive benefit of a 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 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; or

(ii) an event at which all of the personal property offered for sale or displayed is new and all persons selling, exchanging or offering or displaying personal property for sale or exchange are manufacturers or authorized representatives of manufacturers or distributors.

**“Unused property merchant.”** A person, other than a vendor or merchant with an established retail store in the county where the unused property is offered for sale, 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.

**Section 3. Certain sales at unused property markets prohibited.**

(a) **General rule.**—No unused property merchant may offer at an unused property market for sale or knowingly permit the sale of baby food, cosmetics or personal care products or any nonprescription drug or medical device.

(b) **Applicability.**—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 4. Receipts.**

An unused property merchant shall maintain receipts for the purchase of new and unused property. The receipts shall contain all of the following information:

- (1) The date of the transaction.
- (2) The 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 the new and unused property.
- (5) The signature of the seller and buyer of the new and unused property.

**Section 5. Violation of act.**

It is a violation of this act for an unused property merchant required to maintain receipts under section 4 to knowingly:

- (1) falsify, obliterate or destroy a receipt;
- (2) refuse or fail upon request to make a receipt available for inspection within a period of time which is reasonable under the individual circumstances surrounding the request, provided, however, nothing contained in this section shall be construed to require the unused property merchant to possess a receipt on or about his person without reasonable notice; or
- (3) fail to maintain the receipts required by section 4 for at least two years.

**Section 6. Penalties.**

A person who violates any provision of this act commits:

- (1) For a first or second violation, a summary offense.
- (2) For a third or subsequent violation, a misdemeanor of the third degree.

**Section 7. Applicability.**

The provisions of this 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 Commonwealth.
- (2) The sale of wood for fuel, agricultural or horticultural produce 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 the 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 by a person who produces the arts or crafts.

(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 8. Transactions covered.

This act shall apply to all new and unused property purchased or acquired on or after the effective date of this act.

Section 9. Effective date.

This act shall take effect in 60 days.

APPROVED—The 22nd day of June, A.D. 2000.

THOMAS J. RIDGE