CHAPTER 546A

UNUSED PROPERTY MARKETS — REGULATION OF SALES

Referred to in §669.14

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546A.1 Definitions.

As used in this chapter, unless the context otherwise requires:

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

2. *"Cosmetic"* means any of the following, but does not include soap:

a. An article intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part of a human body for cleaning, beautifying, promoting attractiveness, or altering the appearance.

b. An article intended for use as a component of an article defined in paragraph *"a"*.

3. *"Medical device"* means an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent, tool, or other similar or related article, including any component, part, or accessory, to which either of the following applies:

a. The article is required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician".

b. The article is defined by federal law as a medical device, and is intended for use in one of the following:

(1) The diagnosis of disease or other conditions.

(2) The cure, mitigation, treatment, or prevention of disease in humans or other animals.

(3) To affect the structure or any function of the body of man or other animals, but none of its principal intended purposes are achieved through chemical action within or on the body of a human or other animal nor is achievement of any of its principal intended purposes dependent upon the article being metabolized.

4. *"New and unused property"* means tangible personal property that was acquired by the 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.

5. *"Nonprescription drug"* means any nonnarcotic medicine, drug, or other substance that may be sold without a prescription or medication order, and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, and properly labeled and unadulterated, pursuant to the requirements of state and federal laws. *"Nonprescription drug"* does not include herbal products, dietary supplements, botanical extracts, or vitamins.

6. *"Personal care product"* means an item used in essential activities of daily living which may include but are not limited to bathing, personal hygiene, dressing, and grooming.

7. *a. "Unused property market"* means any of the following:

(1) An event where two or more persons offer personal property for sale or exchange, for which a fee is charged for sale or exchange of personal property, or at which a fee is charged to prospective buyers for admission to the area at which personal property is offered or displayed for sale or exchange, provided that the event is held more than six times in any twelve-month period.

(2) Any similar event that involves a series of sales sufficient in number, scope, and character to constitute a regular course of business, regardless of where the event is held, and regardless of the terminology applied to such event, including but not limited to "swap meet", "indoor swap meet", "flea market", or other similar terms.

b. "Unused property market" shall not mean any of the following:

(1) An event that 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 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.

(2) An event where 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.

8. *"Unused property merchant"* means any person, other than a vendor or merchant with an established retail store in the county where the unused property market event occurs, 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. *"Unused property merchant"* does not mean a merchant as defined in section 554.2104.

2004 Acts, ch 1053, §1; 2005 Acts, ch 3, §92

546A.2 Sales prohibited.

1. An unused property merchant shall not offer for sale or knowingly permit the sale at an unused property market of baby food, infant formula, cosmetics, or personal care products, or any nonprescription drug or medical device.

2. This section shall not apply to a person who possesses and keeps available for public inspection authentic written authorization identifying that person as an authorized representative of the manufacturer or distributor of such product. Authorization that is false, fraudulent, or fraudulently obtained shall not satisfy the requirement under this subsection.

2004 Acts, ch 1053, §2

546A.3 Receipts.

1. An unused property merchant shall maintain receipts for the purchase of new and unused property from the producer, manufacturer, wholesaler, or retailer. A receipt shall include all of the following:

a. The date of the purchase.

b. The name and address of the person from whom the new or unused property was acquired.

c. An identification and description of the new and unused property acquired.

d. The price paid for such new and unused property.

e. The signature of the seller and buyer of the new and unused property.

2. An unused property merchant shall maintain receipts required under subsection 1 for two years.

3. An unused property merchant shall not knowingly do either of the following:

a. Falsify, obliterate, or destroy receipts required under subsection 1. Disposal or destruction of receipts after the two-year retention period required by subsection 2 shall not violate this paragraph.

b. Refuse or fail upon request and reasonable notice to make receipts required under subsection 1 available for inspection.

4. This section shall not apply to any of the following:

a. 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.

b. The sale of wood for fuel, ice, or livestock.

c. Business conducted during an industry or association trade show.

d. New and unused property that was not recently produced or manufactured, and the style, packaging, or material of the property clearly indicates that it was not recently produced or manufactured.

e. A person who sells by sample, catalog, or brochure for future delivery.

f. The sale of arts or crafts or other merchandise by a person who produces such arts or crafts or merchandise or by a person acting on such person's behalf.

g. A person who makes a sales presentation pursuant to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

2004 Acts, ch 1053, §3

546A.4 Penalties.

A person who violates any provision of this chapter commits:

1. A simple misdemeanor for a first offense.
2. A serious misdemeanor for a second offense.
3. An aggravated misdemeanor for a third or subsequent offense.

2004 Acts, ch 1053, §4; 2005 Acts, ch 3, §93