

House File 2493

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1 3 AN ACT
1 4 RELATING TO REGULATION OF SALES AT UNUSED PROPERTY MARKETS
1 5 AND PROVIDING PENALTIES.
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1 7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:
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1 9 Section 1. NEW SECTION. 546B.1 DEFINITIONS.
1 10 As used in this chapter, unless the context otherwise
1 11 requires:
1 12 1. "Baby food" or "infant formula" means any food
1 13 manufactured, packaged, and labeled specifically for sale for
1 14 consumption by a child under two years of age.
1 15 2. "Cosmetic" means any of the following, but does not
1 16 include soap:
1 17 a. An article intended to be rubbed, poured, sprinkled, or
1 18 sprayed on, introduced into, or otherwise applied to the human
1 19 body or any part of a human body for cleaning, beautifying,
1 20 promoting attractiveness, or altering the appearance.
1 21 b. An article intended for use as a component of an
1 22 article defined in paragraph "a".
1 23 3. "Medical device" means an instrument, apparatus,
1 24 implement, machine, contrivance, implant, in vitro reagent,
1 25 tool, or other similar or related article, including any
1 26 component, part, or accessory, to which either of the
1 27 following applies:
1 28 a. The article is required under federal law to bear the
1 29 label "Caution: Federal law requires dispensing by or on the
1 30 order of a physician".
1 31 b. The article is defined by federal law as a medical
1 32 device, and is intended for use in one of the following:
1 33 (1) The diagnosis of disease or other conditions.
1 34 (2) The cure, mitigation, treatment, or prevention of
1 35 disease in humans or other animals.
2 1 (3) To affect the structure or any function of the body of
2 2 man or other animals, but none of its principal intended
2 3 purposes are achieved through chemical action within or on the
2 4 body of a human or other animal nor is achievement of any of
2 5 its principal intended purposes dependent upon the article
2 6 being metabolized.
2 7 4. "New and unused property" means tangible personal
2 8 property that was acquired by the unused property merchant
2 9 directly from the producer, manufacturer, wholesaler, or
2 10 retailer in the ordinary course of business that has never
2 11 been used since its production or manufacture or which is in
2 12 its original and unopened package or container, if such
2 13 personal property was so packaged when originally produced or
2 14 manufactured.
2 15 5. "Nonprescription drug" means any nonnarcotic medicine,
2 16 drug, or other substance that may be sold without a
2 17 prescription or medication order, and is prepackaged for use
2 18 by the consumer, prepared by the manufacturer or producer for
2 19 use by the consumer, and properly labeled and unadulterated,
2 20 pursuant to the requirements of state and federal laws.
2 21 "Nonprescription drug" does not include herbal products,
2 22 dietary supplements, botanical extracts, or vitamins.
2 23 6. "Personal care product" means an item used in essential
2 24 activities of daily living which may include but are not
2 25 limited to bathing, personal hygiene, dressing, and grooming.
2 26 7. a. "Unused property market" means any of the
2 27 following:
2 28 (1) An event where two or more persons offer personal
2 29 property for sale or exchange, for which a fee is charged for
2 30 sale or exchange of personal property, or at which a fee is
2 31 charged to prospective buyers for admission to the area at
2 32 which personal property is offered or displayed for sale or
2 33 exchange, provided that the event is held more than six times
2 34 in any twelve-month period.
2 35 (2) Any similar event that involves a series of sales
3 1 sufficient in number, scope, and character to constitute a
3 2 regular course of business, regardless of where the event is
3 3 held, and regardless of the terminology applied to such event,
3 4 including but not limited to "swap meet", "indoor swap meet",
3 5 "flea market", or other similar terms.

3 6 b. "Unused property market" shall not mean any of the
3 7 following:

3 8 (1) An event that is organized for the exclusive benefit
3 9 of any community chest, fund, foundation, association, or
3 10 corporation organized and operated for religious, educational,
3 11 or charitable purposes, provided that no part of any admission
3 12 fee or parking fee charged vendors or prospective purchasers
3 13 or the gross receipts or net earnings from the sale or
3 14 exchange of personal property, whether in the form of a
3 15 percentage of the receipts or earnings, as salary, or
3 16 otherwise, inures to the benefit of any private shareholder or
3 17 person participating in the organization or conduct of the
3 18 event.

3 19 (2) An event where all of the personal property offered
3 20 for sale or displayed is new, and all persons selling,
3 21 exchanging, or offering or displaying personal property for
3 22 sale or exchange are manufacturers or authorized
3 23 representatives of manufacturers or distributors.

3 24 8. "Unused property merchant" means any person, other than
3 25 a vendor or merchant with an established retail store in the
3 26 county where the unused property market event occurs, who
3 27 transports an inventory of goods to a building, vacant lot, or
3 28 other unused property market location and who, at that
3 29 location, displays the goods for sale and sells the goods at
3 30 retail or offers the goods for sale at retail. "Unused
3 31 property merchant" does not mean a merchant as defined in
3 32 section 554.2104.

3 33 Sec. 2. NEW SECTION. 546B.2 SALES PROHIBITED.

3 34 1. An unused property merchant shall not offer for sale or
3 35 knowingly permit the sale at an unused property market of baby
4 1 food, infant formula, cosmetics or personal care products, or
4 2 any nonprescription drug or medical device.

4 3 2. This section shall not apply to a person who possesses
4 4 and keeps available for public inspection, authentic written
4 5 authorization identifying that person as an authorized
4 6 representative of the manufacturer or distributor of such
4 7 product. Authorization that is false, fraudulent, or
4 8 fraudulently obtained shall not satisfy the requirement under
4 9 this subsection.

4 10 Sec. 3. NEW SECTION. 546B.3 RECEIPTS.

4 11 1. An unused property merchant shall maintain receipts for
4 12 the purchase of new and unused property from the producer,
4 13 manufacturer, wholesaler, or retailer. A receipt shall
4 14 include all of the following:

4 15 a. The date of the purchase.

4 16 b. The name and address of the person from whom the new or
4 17 unused property was acquired.

4 18 c. An identification and description of the new and unused
4 19 property acquired.

4 20 d. The price paid for such new and unused property.

4 21 e. The signature of the seller and buyer of the new and
4 22 unused property.

4 23 2. An unused property merchant shall maintain receipts
4 24 required under subsection 1 for two years.

4 25 3. An unused property merchant shall not knowingly do
4 26 either of the following:

4 27 a. Falsify, obliterate, or destroy receipts required under
4 28 subsection 1. Disposal or destruction of receipts after the
4 29 two-year retention period required by subsection 2 shall not
4 30 violate this paragraph.

4 31 b. Refuse or fail upon request and reasonable notice to
4 32 make receipts required under subsection 1 available for
4 33 inspection.

4 34 4. This section shall not apply to any of the following:

4 35 a. The sale of a motor vehicle or trailer that is required
5 1 to be registered or is subject to the certificate of title
5 2 laws of this state.

5 3 b. The sale of wood for fuel, ice, or livestock.

5 4 c. Business conducted during an industry or association
5 5 trade show.

5 6 d. New and unused property that was not recently produced
5 7 or manufactured, and the style, packaging, or material of the
5 8 property clearly indicates that it was not recently produced
5 9 or manufactured.

5 10 e. A person who sells by sample, catalog, or brochure for
5 11 future delivery.

5 12 f. The sale of arts or crafts or other merchandise by a
5 13 person who produces such arts or crafts or merchandise or by a
5 14 person acting on such person's behalf.

5 15 g. A person who makes a sales presentation pursuant to a
5 16 prior, individualized invitation issued to the consumer by the

5 17 owner or legal occupant of the premises.
5 18 Sec. 4. NEW SECTION. 546B.4 PENALTIES.
5 19 A person who violates any provision of this chapter
5 20 commits:
5 21 1. A simple misdemeanor for a first offense.
5 22 2. A serious misdemeanor for a second offense.
5 23 3. An aggravated misdemeanor for a third or subsequent
5 24 violation.

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CHRISTOPHER C. RANTS
Speaker of the House

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JEFFREY M. LAMBERTI
President of the Senate

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I hereby certify that this bill originated in the House and
is known as House File 2493, Eightieth General Assembly.

MARGARET THOMSON
Chief Clerk of the House

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Approved _____, 2004

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THOMAS J. VILSACK
Governor