



February 19, 1999

HOUSE BILL No. 1495

DIGEST OF HB1495 (Updated February 16, 1999 5:24 pm - DI 98)

Citations Affected: IC 24-4.

Synopsis: Unused property market regulation. Creates unused property market regulation. Defines "unused property market" as including "swap meets", "indoor swap meets", "flea markets", and other similar events. Prohibits the sale of baby food, infant formula, cosmetics, or personal care products, or any nonprescription drug or medical device at an unused property market except by a representative of a manufacturer with written authorization. Requires unused property merchants to maintain receipts. Provides penalties for violations.

Effective: July 1, 1999.

Dvorak

January 19, 1999, read first time and referred to Committee on Human Affairs.
February 18, 1999, reported — Do Pass.

C
O
P
Y

HB 1495—LS 7331/DI 94+



February 19, 1999

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

C
O
P
Y

HOUSE BILL No. 1495

A BILL FOR AN ACT to amend the Indiana Code concerning trade regulations; consumer sales and credit.

Be it enacted by the General Assembly of the State of Indiana:

1 SECTION 1. IC 24-4-12 IS ADDED TO THE INDIANA CODE AS
2 A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY
3 1, 1999]:

4 **Chapter 12. Unused Property Market Regulation**

5 **Sec. 1. This chapter does not apply to the following:**

6 (1) An event organized for the exclusive benefit of:

7 (A) a community chest;

8 (B) a fund;

9 (C) a foundation;

10 (D) an association; or

11 (E) a corporation;

12 organized and operated for religious, educational, or
13 charitable purposes, unless part of an admission fee, a
14 parking fee charged to vendors or prospective purchasers, or
15 the gross receipts or net earnings from the sale or exchange of
16 personal property is shared with a private shareholder or
17 person organizing or conducting the event.

HB 1495—LS 7331/DI 94+



- 1 **(2) An event where all personal property offered for sale or**
- 2 **displayed is new, and all persons selling, exchanging, or**
- 3 **offering or displaying personal property for sale or exchange**
- 4 **are manufacturers or authorized representatives of**
- 5 **manufacturers or distributors.**
- 6 **(3) The sale of a motor vehicle or trailer that is required to be**
- 7 **registered or is subject to state motor vehicle registration law.**
- 8 **(4) The sale of wood for fuel, ice, or livestock.**
- 9 **(5) Business conducted in an industry or association trade**
- 10 **show.**
- 11 **(6) Property, although never used, whose style, packaging, or**
- 12 **material clearly indicates that the property was not produced**
- 13 **or manufactured recently.**
- 14 **(7) A person who sells by sample, catalog, or brochure for**
- 15 **future delivery.**
- 16 **(8) The sale of arts or crafts by a person who produces the**
- 17 **arts or crafts.**
- 18 **(9) A person who makes sales presentations related to a prior,**
- 19 **individualized invitation issued to the consumer by the owner**
- 20 **or legal occupant of the premises.**

21 **Sec. 2. As used in this chapter, "unused property market"**
 22 **means an event:**

- 23 **(1) where a fee is charged for the sale or the exchange of**
- 24 **personal property or where a fee is charged to a prospective**
- 25 **buyer for admission to an area where personal property is**
- 26 **offered or displayed for sale or exchange by two (2) or more**
- 27 **persons;**
- 28 **(2) held more than six (6) times in any twelve (12) month**
- 29 **period where personal property is offered or displayed for**
- 30 **sale or exchange; or**
- 31 **(3) referred to as a "swap meet", "indoor swap meet", "flea**
- 32 **market", or any other similar term, regardless of whether the**
- 33 **event is held inside a building or in the open, if that event has**
- 34 **as a primary characteristic activities that involve a series of**
- 35 **sales sufficient in number, scope, and character to constitute**
- 36 **a regular course of business.**

37 **Sec. 3. As used in this chapter, "unused property merchant"**
 38 **means a person, other than a vendor or a merchant with an**
 39 **established retail store in the county, who transports an inventory**
 40 **of goods to a building, vacant lot, or other unused property market**
 41 **location and who, at that location, displays the goods for sale and**
 42 **sells the goods at retail or offers the goods for sale at retail.**



COPY

1 **Sec. 4. As used in this chapter, "new and unused property"**
 2 **means tangible personal property that:**

3 (1) **was acquired by an unused property merchant directly**
 4 **from the producer, manufacturer, wholesaler, or retailer in**
 5 **the ordinary course of business; and**

6 (2) **has not been used since its production or manufacture or**
 7 **that is in its original and unopened package or container, if**
 8 **the personal property was packaged when originally**
 9 **produced or manufactured.**

10 **Sec. 5. As used in this chapter, "baby food" or "infant formula"**
 11 **means any food manufactured, packaged, and labeled specifically**
 12 **for sale for consumption by a child under two (2) years of age.**

13 **Sec. 6. As used in this chapter, "nonprescription drug" or "over**
 14 **the counter drug" means nonnarcotic medicine or a drug that is**
 15 **sold without a prescription and is prepackaged for use by the**
 16 **consumer, prepared by the manufacturer or producer for use by**
 17 **the consumer, properly labeled, and unadulterated under**
 18 **requirements of the state and the federal governments. However,**
 19 **the terms do not include herbal products, dietary supplements,**
 20 **botanical extracts, or vitamins.**

21 **Sec. 7. As used in this chapter, "medical device" means an**
 22 **instrument, an apparatus, an implement, a machine, a contrivance,**
 23 **an implant, an in vitro reagent, a tool, or other similar or related**
 24 **article, including a component part or an accessory:**

25 (1) **required under federal law to bear the label "Caution:**
 26 **Federal law requires dispensing by or on the order of a**
 27 **physician"; or**

28 (2) **that is defined by federal law as a medical device and that**
 29 **is intended for use in the diagnosis of disease or other**
 30 **conditions or in the cure, mitigation, treatment, or prevention**
 31 **of disease in humans or animals or is intended to affect the**
 32 **structure or any function of the body of humans or animals,**
 33 **that does not achieve any of its principal intended purposes**
 34 **through chemical action within or on the body of humans or**
 35 **animals, and that is not dependent upon being metabolized for**
 36 **achievement of its principal intended purposes.**

37 **Sec. 8. (a) This section does not apply to a person who keeps**
 38 **available for public inspection a written authorization identifying**
 39 **that person as an authorized representative of the manufacturer or**
 40 **distributor of a product listed in subsection (b), if the authorization**
 41 **is not false, fraudulent, or fraudulently obtained.**

42 **(b) An unused property merchant may not offer at an unused**

C
O
P
Y



1 property market for sale, or knowingly permit the sale of, baby
2 food, infant formula, cosmetics, personal care products,
3 nonprescription drugs, or medical devices.

4 **Sec. 9. An unused property merchant shall maintain receipts for**
5 **the purchase of new and unused property. A receipt must contain**
6 **the following information:**

- 7 (1) The date of the transaction.
- 8 (2) The name and address of the person, corporation, or entity
9 from whom the new and unused property was acquired.
- 10 (3) An identification and description of the new and unused
11 property acquired.
- 12 (4) The price paid for the new and unused property.
- 13 (5) The signature of the seller and buyer of the new and
14 unused property.

15 **Sec. 10. It is a violation of this chapter for an unused property**
16 **merchant required to maintain receipts under this chapter to**
17 **knowingly do any of the following:**

- 18 (1) Falsify, obliterate, or destroy the receipts.
- 19 (2) Refuse or fail upon request to make the receipts available
20 for inspection within a period that is reasonable based on the
21 individual circumstances surrounding the request. However,
22 this chapter does not require the unused property merchant
23 to possess the receipt on or about the merchant's person
24 without reasonable notice.
- 25 (3) Fail to maintain the receipts required by this chapter for
26 at least two (2) years after the date of the transaction.

27 **Sec 11. A person who violates this chapter commits:**

- 28 (1) a Class B misdemeanor on the first violation;
- 29 (2) a Class A misdemeanor on the second violation; and
- 30 (3) a Class D felony on the third and any subsequent violation.

C
O
P
Y



COMMITTEE REPORT

Mr. Speaker: Your Committee on Human Resources, to which was referred House Bill 1495, has had the same under consideration and begs leave to report the same back to the House with the recommendation that said bill do pass.

SUMMERS, Chair

Committee Vote: yeas 13, nays 0.

C
o
p
y

