

By: Senator(s) Jordan (18th)

To: Judiciary

SENATE BILL NO. 3049

1 AN ACT TO RESTRICT THE CONDITIONS FOR SALE OF CERTAIN NEW AND
2 UNUSED PROPERTY; TO ENACT DEFINITIONS; TO REQUIRE DOCUMENTATION
3 AND RECORD KEEPING; TO PRESCRIBE PENALTIES; TO ENACT EXCEPTIONS;
4 AND FOR RELATED PURPOSES.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MISSISSIPPI:

6 SECTION 1. (1) For the purposes of this act, unless the
7 context clearly requires otherwise:

8 (a) "Manufacturer's or distributor's representative"
9 means a person who has on his person and available for public
10 inspection written proof that such person is authorized by the
11 manufacturer or distributor for the public retail sale of those
12 products which are offered for sale. Such credentials shall
13 include the seller's name and may include a date upon which such
14 authorization shall expire.

15 (b) "New and unused property merchant" means a person
16 who engages in the retail sale of personal property at a
17 wholesale/retail outlet in this state and some of such property
18 offered for sale is new and unused.

19 (c) "New and unused property" means tangible personal
20 property that was acquired by the new and unused property merchant
21 directly from the producer, manufacturer, wholesaler or retailer
22 in the ordinary course of business which has never been used since
23 its production or manufacturing or which is in its original and
24 unopened package or container, if such personal property was so
25 packaged when originally produced or manufactured. New and unused
26 property does not include:

27 (i) Property which is in its original and unopened

28 package or container that contains a date or expiration date and
29 such date is not a new date or the date has expired.

30 (ii) Property which was pre-owned by an individual
31 other than the new and unused property merchant and such
32 individual obtained the property through the ordinary course of
33 business.

34 (iii) Property, although never used, whose style,
35 packaging or material clearly indicates that such property was not
36 produced or manufactured within recent times.

37 (d) "Wholesale/Retail Outlet" means an event:

38 (i) At which two (2) or more persons offer
39 personal property for sale or exchange; and

40 (ii) If the event is held more than six (6) times
41 in any twelve-month period, regardless of the number of persons
42 offering or displaying personal property or the absence of fees,
43 at which such property is offered or displayed for sale or
44 exchange; or

45 (iii) At which a fee is charged for the privilege
46 of offering or displaying such personal property; or

47 (iv) At which a fee is charged to prospective
48 buyers for admission to the area where such personal property is
49 offered or displayed for sale.

50 "Wholesale/retail outlet" is interchangeable with
51 and applicable to "flea market", "itinerant vendor", "swap meet",
52 "indoor swap meet", or other similar terms regardless of whether
53 these events are held inside a building or outside in the open.
54 The primary characteristic is that those activities involve a
55 series of sales sufficient in number, scope, and character to
56 constitute a regular course of business.

57 "Wholesale/retail outlet" does not mean nor apply
58 to an event which is organized for the exclusive benefit of any
59 community chest, fund, foundation, association, or corporation
60 organized and operated for religious, educational, or charitable

61 purposes.

62 (2) Every new and unused property merchant shall maintain
63 receipts for the acquisition of new and unused property which must
64 contain all of the following information:

65 (a) The date of the transaction on which the property
66 was acquired;

67 (b) The name and address of the person, corporation, or
68 entity from whom the property was acquired;

69 (c) An identification and description of the property
70 acquired;

71 (d) The price paid for such property; and

72 (e) The signatures of the person selling the property

73 and the new and unused property merchant only if the new and
74 unused property merchant acquires the property vis-a-vis the
75 person selling the property if such person is not regularly
76 engaged in the normal course of business of selling such property.

77 (3) If a new and unused property merchant makes a single
78 purchase of Five Hundred dollars (\$500.00) or more from an
79 individual or corporation, the bill of sale from such purchase
80 shall be sufficient to satisfy the record keeping requirements of
81 this subsection.

82 (4) The record of each purchase transaction provided for in
83 this section shall be maintained for a period of not less than two
84 (2) years.

85 (5) It is an offense for any new and unused property
86 merchant required to maintain receipts under the provisions of
87 this section to knowingly:

88 (a) Falsify, obliterate or destroy such receipts;

89 (b) Refuse or fail, upon the request of a law
90 enforcement officer, to make such receipts available for
91 inspection with a period of time which is reasonable under the
92 individual circumstances surrounding such request; provided,
93 nothing contained within the provisions of this subsection shall

94 be construed to require the new and unused property merchant to
95 possess such receipt on or about his or her person without
96 reasonable notice;

97 (c) Fail to maintain the receipts required by this
98 section for at least two (2) years; or

99 (d) Present credentials pursuant to the requirements of
100 this section which are false, fraudulent, forged, fraudulently
101 obtained or the nature of which is misrepresented.

102 (6) (a) For the first violation of this section, the
103 violator shall be issued a warning and informed of the penalty for
104 any subsequent violations.

105 (b) A second or subsequent violation of this section is
106 a misdemeanor punishable by fine only.

107 (7) This section shall apply to all new and unused property
108 purchased or acquired on or after July 1, 1999 which is sold, or
109 to be sold, at a wholesale/retail outlet in this state.

110 (8) The provisions of this section shall not apply to:

111 (a) The sale of a motor vehicle or trailer that is
112 required to be registered or is subject to the certificate of
113 title laws of this state;

114 (b) The sale of agricultural products, forestry
115 products or food products, other than food defined as new and
116 unused property;

117 (c) Business conducted at any industry or association
118 trade show;

119 (d) The sale of arts or crafts by the person who
120 produced such arts and crafts;

121 (e) A manufacturer's or distributor's representative as
122 defined in this section; or

123 (f) Any new and unused property merchant under the age
124 of eighteen (18) years.

125 (9) (a) No person shall knowingly sell or offer for sale at
126 a wholesale/retail outlet any food manufactured and packaged for

127 sale for consumption by a child under the age of two (2) years,
128 over-the-counter drug or medication, or cosmetic which has an
129 expiration date, and such date has expired.

130 (b) Any person who violates the provisions of this
131 subsection (a) commits a misdemeanor, punishable by a fine only,
132 not to exceed One Hundred Dollars (\$100.00) for each violation.

133 SECTION 2. This act shall take effect and be in force from
134 and after July 1, 1999.