

By: Senator(s) Turner

To: Judiciary

SENATE BILL NO. 3004

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) (a) "Unused property market" shall mean any
7 event:

8 (i) At which two (2) or more persons offer
9 personal property for sale or exchange, at which a fee is charged
10 for sale or exchange of personal property, or at which a fee is
11 charged to prospective buyers for admission to the area at which
12 personal property is offered or displayed for sale or exchange; or

13 (ii) Regardless of the number of persons offering
14 or displaying personal property or the absence of fees at which
15 personal property is offered or displayed for sale or exchange if
16 the event is held more than six (6) times in any twelve-month
17 period.

18 (b) The term unused property market is interchangeable
19 with and applicable to "swap meet," "flea market" or other similar
20 terms regardless of whether these events are held inside a
21 building or outside in the open. The primary characteristic is
22 that these activities involve a series of sales sufficient in
23 number, scope and character to constitute a regular course of
24 business.

25 (c) The term "unused property market" shall not mean
26 and shall not apply to:

27 (i) An event which is organized for the exclusive
28 benefit of any community chest, fund, foundation, association, or
29 corporation organized and operated for religious educational or
30 charitable purposes, provided that no part of any admission fee or
31 parking fee charged vendors or prospective purchasers or the gross
32 receipts or net earnings from the sale or exchange of personal
33 property, whether in the form of a percentage of the receipts or
34 earnings, as salary, or otherwise, inures to the benefit of any
35 private shareholder or person participating in the organization or
36 conduct of the event; or

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

42 (2) The term "unused property merchant" shall mean any
43 person, other than a vendor or merchant with an established retail
44 store in the county, who transports an inventory of goods to a
45 building, vacant lot or other unused property market location and
46 who, at that location, displays the goods for sale and sells the
47 goods at retail or offers the goods for sale at retail, except a
48 person who offers five or less items of the same new and unused
49 merchandise for sale or exchange at an unused property market.

50 (3) The term "new and unused property" shall mean tangible
51 personal property that was acquired by the unused property
52 merchant directly from the producer, manufacturer, wholesaler or
53 retailer in the ordinary course of business which has never been
54 used since its production or manufacturing or which is in its
55 original and unopened package or container, if such personal
56 property was so packaged when originally produced or manufactured.
57 New and unused property does not include property the sale of
58 which is already considered "used" under existing federal or state
59 law or regulation.

60 (4) The term "baby food" or "infant formula" shall mean any
61 food manufactured, packaged and labeled specifically for sale for
62 consumption by a child under the age of two (2).

63 (5) The term "nonprescription drug" (may also be referred to
64 as "over the counter drug") shall mean any nonnarcotic medicine or
65 drug that may be sold without a prescription and is prepackaged
66 for use by the consumer, prepared by the manufacturer or producer
67 for use by the consumer, and should be properly labeled and
68 unadulterated in accordance with the requirements of the state
69 food and drug laws and the federal Food, Drug and Cosmetic Act.
70 The term "nonprescription drug" shall not include herbal products,
71 dietary supplements, botanical extracts or vitamins.

72 (6) The term "medical device" shall mean any instrument
73 apparatus, implement, machine, contrivance, implant, in vitro
74 reagent, tool or other similar or related article, including any
75 component part or accessory, required under federal law to bear
76 the label "Caution: Federal law requires dispensing by or on the
77 order of a physician," or which is defined by federal law as a
78 medical device and which is intended for use in the diagnosis of
79 disease or other conditions or in the cure, mitigation, treatment
80 or prevention of disease in man or animals or is intended to
81 affect the structure or any function of the body of man or
82 animals, which does not achieve any of its principal intended
83 purposes through chemical action within or on the body of man or
84 animals and which is not dependent upon being metabolized for
85 achievement of any of its principal intended purposes.

86 SECTION 2. (1) No unused property merchant shall offer at
87 an unused property market for sale or knowingly permit the sale of
88 baby food, infant formula, cosmetics or personal care products, or
89 any nonprescription drug or medical device. This section shall
90 not apply to a person who keeps available for public inspection a
91 written authorization identifying that person as an authorized
92 representative of the manufacturer or distributor of such product,

93 as long as the authorization is not false, fraudulent, or
94 fraudulently obtained.

95 (2) Every unused property merchant shall maintain receipts
96 for the purchase of new and unused property, as defined above.
97 Receipts shall contain all of the following information:

98 (a) Date of the transaction;

99 (b) Name and address of the person, corporation, or
100 entity from whom the new and unused property was acquired;

101 (c) An identification and description of the new and
102 unused property acquired;

103 (d) The price paid for such new and unused property;

104 (3) It is a violation of this act for an unused property
105 merchant required to maintain receipts under the provisions
106 contained herein to knowingly:

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

108 (b) Refuse or fail upon request to make such receipts
109 available for inspection within a period of time which is
110 reasonable under the individual circumstances surrounding such
111 request; provided, however, nothing contained within the
112 provisions of this paragraph (b) shall be construed to require the
113 unused property merchant to possess such receipt on or about his
114 or her person without reasonable notice; or

115 (c) Fail to maintain the receipts required by this
116 section for an appropriate time.

117 (4) The provisions of this act shall not apply to:

118 (a) The sale of any item regulated by federal, state or
119 local law, sold in compliance with those provisions.

120 (b) The sale of a motor vehicle or trailer that is
121 required to be registered or is subject to the certificate of
122 title laws of this state;

123 (c) The sale of wood for fuel, ice or livestock;

124 (d) Business conducted in any industry or association
125 trade show;

126 (e) Property, although never used, whose style,
127 packaging or material clearly indicates that such property was not
128 produced or manufactured within recent times;

129 (f) Anyone who sells by sample, catalog or brochure for
130 future delivery;

131 (g) The sale of arts or crafts or other merchandise by
132 a person who produces such arts or crafts or merchandise or by a
133 person or persons acting on their behalf;

134 (h) Persons who make sales presentations pursuant to a
135 prior, individualized invitation issued to the consumer by the
136 owner or legal occupant of the premises.

137 (5) Violations of this act shall be punished as follows:

138 (a) Conviction of a first offense under this section
139 shall be a misdemeanor and punished by a fine not to exceed Five
140 Hundred Dollars (\$500.00) and imprisonment not to exceed three (3)
141 months.

142 (b) Conviction of a second offense under this section
143 shall be a misdemeanor and punished by a fine not to exceed One
144 Thousand Dollars (\$1,000.00) and imprisonment not to exceed one
145 (1) year.

146 (c) Conviction of a third offense under this section
147 shall be a felony and punished by a fine not to exceed Five
148 Thousand Dollars (\$5,000.00) and imprisonment in the penitentiary
149 not to exceed five (5) years.

150 SECTION 3. This act shall take effect and be in force from
151 and after July 1, 2001.