

By: Representative Johnson

To: Ways and Means

HOUSE BILL NO. 1407

1 AN ACT TO REQUIRE FLEA MARKET VENDORS TO KEEP A WRITTEN
2 RECORD OF THE SOURCE OF ALL NEW BRAND NAME MERCHANDISE OFFERED FOR
3 SALE; TO REQUIRE A FLEA MARKET OPERATOR TO CONSPICUOUSLY POST IN
4 PLAIN VIEW A SIGN INFORMING ALL VENDORS THAT FAILURE TO PRODUCE
5 THE WRITTEN RECORD TO LAW ENFORCEMENT IS PUNISHABLE BY A CIVIL
6 PENALTY; AND FOR RELATED PURPOSES.

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

8 **SECTION 1.** (1) For the purposes of this section, the
9 following terms shall have the following meanings unless the
10 context clearly indicates otherwise:

11 (a) "Flea market vendor" means any event where:

12 (i) Two (2) or more persons offer new personal
13 property for sale or exchange and a fee is charged for the
14 privilege of offering or displaying personal property for sale or
15 exchange, or a fee is charged to prospective buyers for admission
16 to the area where personal property is offered or displayed for
17 sale or exchange; or

18 (ii) Used personal property is offered or
19 displayed for sale or exchange if the event is held seven (7) or
20 more times in any twelve-month period.

21 (b) "Flea market operator" means the person who is
22 responsible for the operation and management of any event that is
23 described in paragraph (a) of this subsection.

24 (c) "Vendor" means a person who engages in the retail
25 sale of personal property at a flea market.

26 (2) This section does not apply to an event:

27 (a) That is organized for the exclusive benefit of any
28 political subdivision or a nonprofit corporation if no person

29 participating in the organization of the event receives a portion
30 of any:

31 (i) Admission fee or parking fee charged to
32 vendors or prospective purchasers.

33 (ii) Gross receipts or net earnings from the sale
34 or exchange of personal property either as a percentage of the
35 receipts or earnings or as salary.

36 (b) Where all of the personal property offered or
37 displayed is new and all of the persons selling, exchanging,
38 offering or displaying personal property for sale or exchange are
39 manufacturers or licensed retail or wholesale merchants.

40 (3) (a) A vendor shall keep a written record of the source
41 of all new brand name merchandise offered for sale. Except as
42 provided in paragraph (b) of this subsection, the record shall be
43 a receipt or invoice from the person who sold the merchandise to
44 the vendor. The invoice or receipt shall identify the product
45 offered for sale by the product name and serial, model or other
46 number. The invoice or receipt shall also include a description
47 of all identifying marks inscribed on the product, the price the
48 vendor paid for the product and the signature of the seller. If
49 the seller is:

50 (i) An individual, the receipt or invoice shall
51 also include the seller's date of birth and driver's license
52 number, the state of issuance and the expiration date. The vendor
53 shall verify the information provided by the seller by comparing
54 the seller's driver's license to the invoice or receipt and
55 signing the invoice or receipt.

56 (ii) A corporation, the receipt or invoice shall
57 also include the corporation's federal tax identification number,
58 the state of incorporation, the name and address of the
59 corporation's registered agent in this state, if any, and the
60 corporation's principal office address.

61 (b) The vendor may satisfy the record requirement of
62 paragraph (a) of this subsection by producing a notarized
63 affidavit identifying the source of the merchandise, including the
64 name and address of the seller, the license number of any
65 auctioneer seller and the date and place of purchase of the
66 merchandise.

67 (c) The vendor shall have the record or affidavit
68 prescribed by this section while the vendor is offering the
69 merchandise for sale. The vendor shall keep the record for one
70 (1) year after the merchandise is sold.

71 (d) On the request of a law enforcement officer the
72 vendor shall produce the record or affidavit prescribed by this
73 section. The law enforcement officer shall issue the vendor a
74 citation if the vendor fails to produce the record or affidavit.
75 Failure to produce the record or affidavit or falsifying the
76 record or affidavit is punishable by a civil penalty of not more
77 than One Hundred Dollars (\$100.00) for each item offered for sale
78 or sold for which the vendor failed to produce the required record
79 or affidavit.

80 (4) A flea market operator shall conspicuously post in plain
81 view of all vendors a sign informing all vendors that effective on
82 January 1, 2007, failure to produce the record or affidavit
83 prescribed by this section on the request of a law enforcement
84 officer is punishable by a civil penalty of not more than One
85 Hundred Dollars (\$100.00) for each item offered for sale or sold
86 for which the vendor failed to produce the required record or
87 affidavit.

88 (5) (a) Except an authorized representative of a
89 manufacturer or distributor who possesses written proof of
90 authorization for public retail sales, no vendor may sell, offer
91 for sale or knowingly permit the sale at any flea market of any of
92 the following items:

93 (i) Food manufactured and packaged for sale for
94 consumption by a child under the age of two (2) years.

95 (ii) Drugs, cosmetics and medical devices as
96 defined in the federal food, drug and cosmetic act (21 USCS
97 Section 321).

98 (iii) Any product that has an expiration date.

99 (b) For the purposes of this section "representative of
100 a manufacturer or distributor" means a person who carries and has
101 available for public inspection written proof that the person is
102 authorized by the manufacturer or distributor for the public
103 retail sale of those products that are offered for sale. The
104 written proof shall include the seller's name and may include an
105 expiration date.

106 (6) (a) Except as provided in paragraph (b) of this
107 subsection, a vendor who violates this act is subject to a civil
108 penalty of not more than One Hundred Dollars (\$100.00) for each
109 item offered for sale or sold for which the vendor failed to
110 produce a record or an affidavit as prescribed by this section.

111 (b) If a vendor subject to a civil penalty under this
112 section presents to the court the record or affidavit prescribed
113 in subsection (3)(d) or the authorization prescribed in subsection
114 (5)(a) and the court verifies that the record, affidavit or
115 authorization is valid, the court may reduce or waive the amount
116 of the penalty.

117 **SECTION 2.** This act shall take effect and be in force from
118 and after July 1, 2006.