

By: Senator(s) Huggins

To: Business and Financial
Institutions

SENATE BILL NO. 2167

1 AN ACT TO RESTRICT THE SALE OF BABY FOOD, COSMETICS, DRUGS OR
2 MEDICAL DEVICES AT FLEA MARKETS OR OTHER UNUSED PROPERTY MARKETS;
3 TO ENACT DEFINITIONS; TO REQUIRE DOCUMENTATION AND RECORD KEEPING;
4 TO PRESCRIBE PENALTIES; TO ENACT EXCEPTIONS; AND FOR RELATED
5 PURPOSES.

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

7 **SECTION 1.** (1) (a) "Unused property market" shall mean any
8 event:

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

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

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

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



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

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

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

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



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

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

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

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



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

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

99 (a) Date of the transaction;

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

151 **SECTION 3.** This act shall take effect and be in force from
152 and after July 1, 2002.

