

SECOND REGULAR SESSION

SENATE BILL NO. 1032

90TH GENERAL ASSEMBLY

INTRODUCED BY SENATOR SIMS.

Read 1st time February 21, 2000, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

4549S.011

AN ACT

To amend chapter 407, RSMo, by adding thereto four new sections relating to merchandising practices.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Chapter 407, RSMo, is amended by adding thereto four new sections, to be known as sections 407.1125, 407.1127, 407.1129 and 407.1131, to read as follows:

407.1125. As used in sections 407.1125 to 407.1131, the following terms mean:

(1) "New and unused property", tangible personal property that was acquired by the unused property merchant directly from the producer, manufacturer, wholesaler or retailer in the ordinary course of business which has never been used since its production or manufacturing or which is in its original and unopened package or container, if such personal property was so packaged when originally produced or manufactured;

(2) "Nonprescription drug" or "over the counter drug", any nonnarcotic medicine or drug that may be sold without a prescription and is prepackaged for use by the consumer, prepared by the manufacturer or producer for use by the consumer, properly labeled and unadulterated in accordance with the requirements of the state food and drug laws and the federal Food, Drug and Cosmetic Act, but does not include herbal products, dietary supplements, botanical extracts or vitamins;

(3) "Unused property market":

(a) Any event at which two or more persons offer personal property for sale or exchange, at which a fee is charged for the sale or exchange of personal property, or at which a fee is charged to prospective buyers for admission to the area at which personal property is offered or displayed for sale or exchange; or

(b) Any event, regardless of the number of persons offering or displaying

personal property or the absence of fees at which personal property is offered or displayed for sale or exchange if the event is held more than six times in any twelve-month period;

(c) Includes and is interchangeable with "swap meet", "indoor swap meet", "flea market" and other similar terms regardless of whether these events are held inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope and character to constitute a regular course of business;

(d) Does not mean and shall not apply to:

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

b. Any event at which all of the personal property offered for sale or displayed is new, and all persons selling, exchanging or offering or displaying personal property for sale or exchange, are manufacturers or authorized representative of manufacturers or distributors;

(4) "Unused property merchant", any person, other than a vendor or merchant with an established retail store in the county, who transports an inventory of goods to a building, vacant lot or other unused property market location and who, at that location, displays the goods for sale and sells the goods at retail or offers the goods for sale at retail.

407.1127. No unused property merchant shall offer at an unused property market for sale or knowingly permit the sale of cosmetics or personal care products, or any nonprescription drug. The provisions of this section shall not apply to any person who keeps available for public inspection a written authorization identifying such person as an authorized representative of the manufacturer or distributor of such product, so long as such authorization is not false, fraudulent or fraudulently obtained.

407.1129. 1. Every unused property merchant shall maintain receipts for the purchase of new and unused property. Receipts shall contain all of the following:

(1) The date of the transaction;

(2) The name and address of the person from whom the new and unused property was acquired;

(3) An identification and description of the new and unused property acquired;

(4) The price paid for such new and unused property.

2. No unused property merchant required to maintain receipts pursuant to the provisions of subsection 1 of this section shall knowingly:

(1) Falsify, obliterate or destroy such receipts;

(2) Refuse or fail upon request to make such receipts available for inspection within a reasonable period of time;

(3) Fail to maintain the receipts required by this section for at least two years.

3. The provisions of sections 407.1125 to 407.1131 shall not apply to:

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

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

(3) Business conducted in any industry or association trade show;

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

(5) Anyone who sells by sample, catalog or brochure for future delivery;

(6) The sale of arts or crafts by a person who produces such arts or crafts;

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

407.1131. 1. Any person who violates the provisions of sections 407.1125 to 407.1131 shall be guilty of a class B misdemeanor for the first offense.

2. Any person who violates the provisions of sections 407.1125 to 407.1131 shall be guilty of a class A misdemeanor for the second offense.

3. Any person who violates the provisions of sections 407.1125 to 407.1131 shall be guilty of a class D felony for the third and any subsequent offense.

Copy ✓