

Stricken language would be deleted from and underlined language would be added to law as it existed prior to the 82nd General Assembly.

1 State of Arkansas
2 82nd General Assembly
3 Regular Session, 1999
4

As Engrossed: S3/29/99

A Bill

HOUSE BILL 1946

5 By: Representative Creekmore
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For An Act To Be Entitled

9 "' UNUSED PROPERTY MARKET' MODEL BILL. "

Subtitle

11 "' UNUSED PROPERTY MARKET' MODEL BILL. "

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15 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF ARKANSAS:
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17 SECTION 1. (a) "Unused property market" means any event:

18 (1) At which two (2) or more persons offer personal property for
19 sale or exchange, at which a fee is charged for sale or exchange of personal
20 property, or at which a fee is charged to prospective buyers for admission to
21 the area at which personal property is offered or displayed for sale or
22 exchange; or

23 (2) Regardless of the number of persons offering or displaying
24 personal property or the absence of fees at which personal property is offered
25 or displayed for sale or exchange if the event is held more than six (6) times
26 in any twelve (12) month period.

27 (b) The term "unused property market" is interchangeable with and
28 applicable to "swap meet", "indoor swap meet", flea market", and other similar
29 terms regardless of whether these events are held inside a building or outside
30 in the open. The primary characteristic is that these activities involve a
31 series of sales sufficient in number, scope, and character to constitute a
32 regular course of business.

33 (c) The term "unused property market" does not mean and shall not apply
34 to:

35 (1) An event which is organized for the exclusive benefit of any
36 community chest, fund, foundation, association, or corporation organized and

1 operated for religious, educational, or charitable purposes, provided that no
2 part of any admission fee or parking fee charged vendors or prospective
3 purchasers or the gross receipts or net earnings from the sale or exchange of
4 personal property, whether in the form of a percentage of the receipts or
5 earnings, as salary, or otherwise, inures to the benefit of any private
6 shareholder or person participating in the organization or conduct of the
7 event; or

8 (2) Any event at which all of the personal property offered for
9 sale or displayed is new, and all persons selling, exchanging or offering or
10 displaying personal property for sale or exchange, are manufacturers or
11 authorized representatives of manufacturers or distributors.

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

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

23 (f) "Baby food" or "infant formula" means any food manufactured,
24 packaged and labeled specifically for sale for consumption by a child under
25 the age of two (2) years.

26 (g) "Nonprescription drug" and "over the counter drug" means any
27 nonnarcotic medicine or drug that may be sold without a prescription and is
28 prepackaged for use by the consumer, prepared by the manufacturer or producer
29 for use by the consumer, properly labeled and unadulterated in accordance with
30 the requirements of the state food and drug laws and the federal Food, Drug
31 and Cosmetic Act. The term "nonprescription drug" shall not include herbal
32 products, dietary supplements, botanical extracts or vitamins.

33 (h) "Medical device" means any instrument, apparatus, implement,
34 machine, contrivance, implant, in vitro reagent, tool, or other similar or
35 related article, including any component part or accessory, required under
36 federal law to bear the label "Caution: Federal law requires dispensing by or

1 on the order of a physician"; or which is defined by federal law as a medical
2 device and which is intended for use in the diagnosis of disease or other
3 conditions or in the cure, mitigation, treatment or prevention of disease in
4 man or other animals or is intended to affect the structure or any function of
5 the body of man or other animals, which does not achieve any of its principal
6 intended purposes through chemical action within or on the body of man or
7 other animals and which is not dependent upon being metabolized for
8 achievement of any of its principal intended purposes.

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10 SECTION 2. No unused property merchant shall offer at an unused
11 property market for sale or knowingly permit the sale of baby food, infant
12 formula, cosmetics or personal care products, or any nonprescription drug or
13 medical device. This section shall not apply to a person who keeps available
14 for public inspection a written authorization identifying that person as an
15 authorized representative of the manufacturer or distributor of such product,
16 as long as the authorization is not false, fraudulent, or fraudulently
17 obtained.

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19 SECTION 3. (a) Every unused property merchant shall maintain receipts
20 for the purchase of new and unused property, as defined above. Receipts shall
21 contain all of the following information:

- 22 (1) Date of the transaction;
23 (2) Name and address of the person, corporation, or entity from
24 which the new and unused property was acquired;
25 (3) An identification and description of the new and unused
26 property acquired;
27 (4) The price paid for such new and unused property; and
28 (5) The signature of the seller and buyer of the new and unused
29 property.

30 (b) It is a violation of this act for an unused property merchant
31 required to maintain receipts under the provisions contained herein to
32 knowingly:

- 33 (1) Falsify, obliterate or destroy such receipts;
34 (2) Refuse or fail upon request to make such receipts available
35 for inspection within a period of time which is reasonable under the
36 individual circumstances surrounding such request; provided, however, nothing

1 contained within the provisions of this section shall be construed to require
2 the unused property merchant to possess such receipt on or about his or her
3 person without reasonable notice; or

4 (3) Fail to maintain the receipts required by this section for at
5 least two (2) years.

6 (c) The provisions of this act shall not apply to:

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

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

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

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

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

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

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

21 (8) Garage or yard sales held on premises devoted to residential
22 use; or

23 (9) Sales conducted by motor freight carrier companies for the
24 purpose of selling salvage goods.

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26 SECTION 4. The penalty for violation of this act shall be as follows:

27 (1) The first violation shall be a Class B misdemeanor;

28 (2) A second violation shall be a Class A misdemeanor; and

29 (3) Any third or subsequent violation shall be a Class D felony.

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31 SECTION 5. This act shall apply to all new and unused property
32 purchased or acquired on or after January 1, 2000.

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34 SECTION 6. All provisions of this act of a general and permanent nature
35 are amendatory to the Arkansas Code of 1987 Annotated and the Arkansas Code
36 Revision Commission shall incorporate the same in the Code.

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SECTION 7. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable.

SECTION 8. All laws and parts of laws in conflict with this act are hereby repealed.

/s/ Creekmore