

1 **SWAP MEETS AND FLEA MARKETS ACT**

2 1999 GENERAL SESSION

3 STATE OF UTAH

4 **Sponsor: Leonard M. Blackham**

5 AN ACT RELATING TO COMMERCE AND TRADE; PROHIBITING CERTAIN SALES AT
6 SWAP MEETS; REQUIRING THE RETENTION OF RECEIPTS AND RECORDS BY SWAP
7 MEET VENDORS; PROVIDING PENALTIES; AND SETTING FORTH EXEMPTIONS.

8 This act affects sections of Utah Code Annotated 1953 as follows:

9 ENACTS:

10 **13-32-101**, Utah Code Annotated 1953

11 **13-32-102**, Utah Code Annotated 1953

12 **13-32-103**, Utah Code Annotated 1953

13 **13-32-104**, Utah Code Annotated 1953

14 **13-32-105**, Utah Code Annotated 1953

15 **13-32-106**, Utah Code Annotated 1953

16 **13-32-107**, Utah Code Annotated 1953

17 *Be it enacted by the Legislature of the state of Utah:*

18 Section 1. Section **13-32-101** is enacted to read:

19 **CHAPTER 32. SWAP MEETS AND FLEA MARKETS ACT**

20 **13-32-101. Title.**

21 This chapter is known as the "Swap Meets and Flea Markets Act."

22 Section 2. Section **13-32-102** is enacted to read:

23 **13-32-102. Definitions.**

24 (1) "Manufacturer's or distributor's representative" means a person who has available for
25 public inspection written proof of authorization from the manufacturer or distributor of a product
26 to offer that product for public retail sale.

27 (2) "New and unused property" means tangible personal property that:

28 (a) was acquired by the vendor directly from the producer, manufacturer, wholesaler, or
 29 retailer of that property in the ordinary course of business;

30 (b) has never been used since its production or manufacturing; and

31 (c) if the property was packaged when originally produced or manufactured, is in its
 32 original and unopened package or container.

33 (3) (a) "Swap meet" or "flea market" means an event at which personal property is offered
 34 for sale or exchange:

35 (i) by two or more persons and a fee is charged to vendors for the privilege of offering or
 36 displaying such personal property or to prospective buyers for admission to the area where such
 37 personal property is offered or displayed for sale; or

38 (ii) if the event is held more than six times in any 12-month period, regardless of the
 39 number of persons offering or displaying personal property or the absence of fees.

40 (b) The terms "swap meet" and "flea market" do not include any events:

41 (i) that are organized for the exclusive benefit of any community chest, fund, foundation,
 42 association, or corporation organized and operated exclusively for religious, educational, or
 43 charitable purposes; or

44 (ii) at which all of the personal property offered for sale or displayed is new and unused
 45 property, and all persons selling, exchanging, offering, or displaying the personal property are
 46 manufacturer's or distributor's representatives.

47 (4) "Vendor" means a person who offers for sale or exchange § [any] SIX OR MORE LIKE

47a ITEMS OF § new and unused property

48 at a swap meet or flea market in this state.

49 Section 3. Section **13-32-103** is enacted to read:

50 **13-32-103. Prohibited sales.**

51 A vendor who is not a manufacturer's or distributor's representative shall not sell or offer
 52 for sale or exchange at a swap meet or flea market any:

53 (1) food product which is manufactured and packaged specifically for consumption by a
 54 child under two years of age;

55 (2) nonprescription or over-the-counter drug or medication other than herbal products,
 56 dietary supplements, botanical extracts, or vitamins; or

57 (3) cosmetic or personal care product which has an expiration date.

58 Section 4. Section **13-32-104** is enacted to read:

59 **13-32-104. Receipts and transaction records -- Retention of receipts and transaction**
60 **records.**

61 (1) Every vendor shall maintain receipts or a permanent record book for the acquisition
62 of new and unused property which must contain:

63 (a) the date of the transaction on which the property was acquired;

64 (b) the name and address of the person from whom the property was acquired;

65 (c) an identification and description of the property acquired;

66 (d) the price paid for such property; and

67 (e) the signatures of the person selling the property and the vendor.

68 (2) The receipt or record for each transaction required by Subsection (1) shall be
69 maintained by the vendor for a period of not less than § [~~two years~~] ONE YEAR § following the date
69a of the

70 transaction.

71 Section 5. Section **13-32-105** is enacted to read:

72 **13-32-105. Violations.**

73 (1) It is a violation of this chapter for any vendor, required to maintain receipts or records
74 under Section 13-32-104, to knowingly:

75 (a) falsify, obliterate, or destroy the receipts or records;

76 (b) refuse or fail to make such receipts available for inspection, upon the request of a law
77 enforcement officer, within a reasonable period of time under the circumstances surrounding the
78 request; or

79 (c) present credentials pursuant to the requirements of this chapter which are false,
80 fraudulent, forged, or fraudulently obtained.

81 (2) Nothing contained within this section shall be construed to require a vendor to possess
82 the receipts or records required by Section 13-32-104 on or about the vendor's person without
83 reasonable notice.

84 Section 6. Section **13-32-106** is enacted to read:

85 **13-32-106. Penalties.**

86 A person who violates this chapter is guilty of a class C misdemeanor.

87 Section 7. Section **13-32-107** is enacted to read:

88 **13-32-107. Exemptions.**

89 The provisions of this chapter shall not apply to:

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

92 (2) the sale of agricultural products, forestry products, livestock, or food products other
93 than those which are manufactured and packaged specifically for consumption by a child under
94 two years of age;

95 (3) business conducted at any industry or association trade show;

96 (4) the sale of arts or crafts by the person who produced such arts and crafts; and

97 (5) anyone who displays only samples, catalogs, or brochures and sells property for future
98 delivery.

Legislative Review Note

as of 1-13-99 2:52 PM

A limited legal review of this legislation raises no obvious constitutional or statutory concerns.

Office of Legislative Research and General Counsel