

SWAP MEETS AND FLEA MARKETS ACT

1999 GENERAL SESSION

STATE OF UTAH

Sponsor: Leonard M. Blackham

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

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

ENACTS:

13-32-101, Utah Code Annotated 1953

13-32-102, Utah Code Annotated 1953

13-32-103, Utah Code Annotated 1953

13-32-104, Utah Code Annotated 1953

13-32-105, Utah Code Annotated 1953

13-32-106, Utah Code Annotated 1953

13-32-107, Utah Code Annotated 1953

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

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

CHAPTER 32. SWAP MEETS AND FLEA MARKETS ACT

13-32-101. Title.

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

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

13-32-102. Definitions.

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

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

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

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

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

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

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

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

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

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

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

(4) "Vendor" means a person who offers for sale or exchange six or more like items of new and unused property at a swap meet or flea market in this state.

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

13-32-103. Prohibited sales.

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

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

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

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

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

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

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

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

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

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

(d) the price paid for such property; and

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

(2) The receipt or record for each transaction required by Subsection (1) shall be maintained by the vendor for a period of not less than one year following the date of the transaction.

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

13-32-105. Violations.

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

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

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

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

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

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

13-32-106. Penalties.

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

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

13-32-107. Exemptions.

The provisions of this chapter 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 agricultural products, forestry products, livestock, or food products other than those which are manufactured and packaged specifically for consumption by a child under two years of age;

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

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

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