

IC 24-4-12

Chapter 12. Unused Property Market Regulation

IC 24-4-12-1

Chapter exemptions

Sec. 1. This chapter does not apply to the following:

- (1) An event organized for the exclusive benefit of:
 - (A) a community chest;
 - (B) a fund;
 - (C) a foundation;
 - (D) an association; or
 - (E) a corporation;

organized and operated for religious, educational, or charitable purposes, unless part of an admission fee, a parking fee charged to vendors or prospective purchasers, or the gross receipts or net earnings from the sale or exchange of personal property is shared with a private shareholder or person organizing or conducting the event.

(2) An event where all 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 representatives of manufacturers or distributors.

(3) The sale of a motor vehicle or trailer that is required to be registered or is subject to state motor vehicle registration law.

(4) The sale of wood for fuel, ice, or livestock.

(5) Business conducted in an industry or association trade show.

(6) Property, although never used, whose style, packaging, or material clearly indicates that the property was not produced or manufactured recently.

(7) A person who sells by sample, catalog, or brochure for future delivery.

(8) The sale of arts or crafts by a person who produces the arts or crafts.

(9) A person who makes sales presentations related to a prior, individualized invitation issued to the consumer by the owner or legal occupant of the premises.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-2

"Unused property market" defined

Sec. 2. As used in this chapter, "unused property market" means an event:

- (1) where a fee is charged for the sale or the exchange of personal property or where a fee is charged to a prospective buyer for admission to an area where personal property is offered or displayed for sale or exchange by two (2) or more persons;
- (2) held more than six (6) times in any twelve (12) month period where personal property is offered or displayed for sale

or exchange; or

(3) referred to as a "swap meet", "indoor swap meet", "flea market", or any other similar term, regardless of whether the event is held inside a building or in the open, if that event has as a primary characteristic activities that involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-3

"Unused property merchant" defined

Sec. 3. As used in this chapter, "unused property merchant" means a person, other than a vendor or a 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.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-4

"New and unused property" defined

Sec. 4. As used in this chapter, "new and unused property" means tangible personal property that:

(1) was acquired by an unused property merchant directly from the producer, manufacturer, wholesaler, or retailer in the ordinary course of business; and

(2) has not been used since its production or manufacture or that is in its original and unopened package or container, if the personal property was packaged when originally produced or manufactured.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-5

"Baby food" and "infant formula" defined

Sec. 5. As used in this chapter, "baby food" or "infant formula" means any food manufactured, packaged, and labeled specifically for sale for consumption by a child under two (2) years of age.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-6

"Nonprescription drug" and "over the counter drug" defined

Sec. 6. As used in this chapter, "nonprescription drug" or "over the counter drug" means nonnarcotic medicine or a drug that is 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 under requirements of the state and the federal governments. However, the terms do not include herbal products, dietary supplements, botanical extracts, or vitamins.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-7

"Medical device" defined

Sec. 7. As used in this chapter, "medical device" means an instrument, an apparatus, an implement, a machine, a contrivance, an implant, an in vitro reagent, a tool, or other similar or related article, including a component part or an accessory:

- (1) required under federal law to bear the label "Caution: Federal law requires dispensing by or on the order of a physician"; or
- (2) that is defined by federal law as a medical device and that is intended for use in the diagnosis of disease or other conditions or in the cure, mitigation, treatment, or prevention of disease in humans or animals or is intended to affect the structure or any function of the body of humans or animals, that does not achieve any of its principal intended purposes through chemical action within or on the body of humans or animals, and that is not dependent upon being metabolized for achievement of its principal intended purposes.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-8

Products prohibited from sale at unused property market

Sec. 8. (a) This section does not apply to a person who keeps available for public inspection a written authorization identifying that person as an authorized representative of the manufacturer or distributor of a product listed in subsection (b), if the authorization is not false, fraudulent, or fraudulently obtained.

(b) An unused property merchant may not offer at an unused property market for sale, or knowingly permit the sale of, baby food, infant formula, cosmetics, personal care products, nonprescription drugs, medical devices, or cigarettes or other tobacco products.

As added by P.L.99-1999, SEC.1. Amended by P.L.160-2005, SEC.16.

IC 24-4-12-9

Receipts required

Sec. 9. An unused property merchant shall maintain receipts for the purchase of new and unused property. A receipt must contain the following information:

- (1) The date of the transaction.
- (2) The name and address of the person, corporation, or entity 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 the new and unused property.
- (5) The signature of the seller and buyer of the new and unused property.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-10

Improper maintenance of or failure to produce receipts

Sec. 10. It is a violation of this chapter for an unused property merchant required to maintain receipts under this chapter to knowingly do any of the following:

- (1) Falsify, obliterate, or destroy the receipts.
- (2) Refuse or fail upon request to make the receipts available for inspection within a period that is reasonable based on the individual circumstances surrounding the request. However, this chapter does not require the unused property merchant to possess the receipt on or about the merchant's person without reasonable notice.
- (3) Fail to maintain the receipts required by this chapter for at least two (2) years after the date of the transaction.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-11 Version a

Chapter violations

Note: This version of section effective until 7-1-2014. See also following version of this section, effective 7-1-2014.

Sec. 11. A person who violates this chapter commits:

- (1) a Class B misdemeanor on the first violation;
- (2) a Class A misdemeanor on the second violation; and
- (3) a Class D felony on the third and any subsequent violation.

As added by P.L.99-1999, SEC.1.

IC 24-4-12-11 Version b

Chapter violations

Note: This version of section effective 7-1-2014. See also preceding version of this section, effective until 7-1-2014.

Sec. 11. A person who violates this chapter commits:

- (1) a Class B misdemeanor on the first violation;
- (2) a Class A misdemeanor on the second violation; and
- (3) a Level 6 felony on the third and any subsequent violation.

As added by P.L.99-1999, SEC.1. Amended by P.L.158-2013, SEC.272.