

AN ACT

RELATING TO THE SALE OF UNUSED MERCHANDISE; ENACTING THE
UNUSED MERCHANDISE OWNERSHIP PROTECTION ACT; PROHIBITING THE
SALE OF CERTAIN UNUSED MERCHANDISE UNDER CERTAIN CONDITIONS;
REQUIRING RECORDS TO BE KEPT BY CERTAIN SELLERS OF UNUSED
MERCHANDISE; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Unused Merchandise Ownership Protection Act".

Section 2. DEFINITIONS.--As used in the Unused
Merchandise Ownership Protection Act:

A. "open market" may include a "swap meet", an
"indoor swap meet" or a "flea market" and means an event at
which two or more persons offer personal property for sale
or exchange and either:

(1) a fee is charged for those persons
selling or exchanging personal property or a fee is charged
to the public for admission to the event; or

(2) the event is held more than six times
in a twelve-month period;

B. "unused merchandise" means tangible personal
property that, since its original production or
manufacturing, has never been used or consumed and, if
placed in a package or container, is still in its original
and unopened package or container; and

C. "vendor of unused merchandise" means a person
who offers unused merchandise for sale or exchange at an
open market, except a person who offers five or less items
of the same unused merchandise for sale or exchange at an

open market.

Section 3. PROHIBITED SALES--CERTAIN MERCHANDISE.--

A. It is a violation of the Unused Merchandise Ownership Protection Act for a vendor of unused merchandise to sell or offer for sale any baby food or infant formula, cosmetic, drug or medical device at an open market without displaying a written valid authorization from the manufacturer or distributor of the merchandise. The authorization shall identify the vendor of unused merchandise and shall specify the merchandise and expiration date of the merchandise that the vendor is authorized to sell.

B. As used in this section:

(1) "baby food or infant formula" means unused merchandise consisting of a food product manufactured, packaged and labeled specifically for consumption by a child less than two years of age;

(2) "cosmetic" means unused merchandise, other than soap, that is:

(a) intended to be rubbed, poured, sprinkled or sprayed on, introduced into or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness or altering the appearance; or

(b) intended for use as a component of any articles enumerated in Subparagraph (a) of this paragraph;

(3) "drug" means unused merchandise, other than food, that:

(a) is recognized in an official

compendium;

(b) affects the structure or any function of the body of man or other animals; or

(c) is intended for use as a component of Subparagraph (a) or (b) of this paragraph, but does not include medical devices or their component parts or accessories;

(4) "medical device" means unused merchandise that is an instrument, apparatus, implement, machine, contrivance, implant, in vitro reagent or other similar or related article, including any component, part or accessory, and that is:

(a) recognized in an official compendium;

(b) intended for use in the diagnosis of disease or other conditions, or in the cure, mitigation, treatment or prevention of disease, in man or other animals; or

(c) intended to affect the structure or function of the body of man or other animals and which does not achieve its principal intended purposes through chemical action within or on the body of man or other animals and which is not dependent upon being metabolized for achievement of its principal intended purposes; and

(5) "official compendium" means the official United States pharmacopoeia national formulary or the official homeopathic pharmacopoeia of the United States or any supplement to either of them.

Section 4. RECORDKEEPING REQUIREMENTS--VIOLATIONS.--

A. A vendor of unused merchandise shall maintain

receipts for the vendor's purchase of any unused merchandise sold or offered for sale by the vendor at an open market. The receipts shall be kept at the open market in which the unused merchandise is offered for sale and at the vendor's residence or principal place of business for two years after the merchandise is sold. Each receipt shall specify:

- (1) the date of the purchase;
- (2) the name and address of the person from whom the unused merchandise was acquired;
- (3) a description of the unused merchandise purchased, including any specific lot numbers or other identifying characteristics;
- (4) the amount paid for the unused merchandise; and
- (5) the signature of the buyer and the seller of the unused merchandise.

B. It is a violation of the Unused Merchandise Ownership Protection Act for a person to knowingly:

- (1) falsify, obliterate or destroy any receipt required to be kept pursuant to this section;
- (2) at the request of a police officer, as defined in Section 29-7-7 NMSA 1978, fail or refuse to produce any receipt required to be kept pursuant to this section; and
- (3) fail to maintain any receipt as required by this section.

Section 5. EXEMPTIONS.--

A. The following persons are exempt from the provisions of the Unused Merchandise Ownership Protection Act:

(1) a vendor at an event organized or operated for religious, educational, charitable or other nonprofit purposes if no part of any admission fee or parking fee charged vendors or prospective purchasers and no part of the gross receipts or net earnings from the sale of merchandise at the event is paid to a private person for participating in the organization or operation of the event;

(2) a vendor at an industry or association trade show;

(3) a vendor at an event at which all of the merchandise offered for sale is new and at which all vendors are manufacturers or authorized representatives of manufacturers or distributors; and

(4) a vendor selling by sample, catalog or brochure for future delivery.

B. The requirements of the Unused Merchandise Ownership Protection Act do not apply to sales or offers for sale of the following unused merchandise:

(1) firewood, sand, gravel, flagstone, building stone or other natural product;

(2) live animals;

(3) vehicles subject to registration pursuant to Section 66-3-1 NMSA 1978;

(4) food intended for human consumption at the open market immediately after sale;

(5) merchandise offered for sale as an antique or otherwise historical item and, although never used, the style, packaging, material or appearance of which clearly indicates that the merchandise was not produced or manufactured within recent times;

(6) food offered for sale that was grown, harvested or processed by the vendor or the grower;

(7) art, crafts or handicrafts that were produced by the vendor or the grower; and

(8) fresh produce.

Section 6. PENALTIES.--A person who violates any provision of the Unused Merchandise Ownership Protection Act is guilty of a misdemeanor and shall be sentenced in accordance with Section 31-19-1 NMSA 1978.

Section 7. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 1999. _____