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SENATE BILL 104

44TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 1999

INTRODUCED BY

Ben D. Altamirano

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:

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

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

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

11 C. "vendor of unused merchandise" means a person
12 who offers unused merchandise for sale or exchange at an open
13 market.

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

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

23 B. As used in this section:

24 (1) "baby food or infant formula" means
25 unused merchandise consisting of a food product manufactured,

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1 packaged and labeled specifically for consumption by a child
2 less than two years of age;

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

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

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

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

14 (a) is recognized in an official
15 compendium;

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

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

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

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1 and that is:

2 (a) recognized in an official
3 compendium;

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

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

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

18 Section 4. RECORDKEEPING REQUIREMENTS-- VIOLATIONS. --

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

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

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

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

20 Section 5. EXEMPTIONS. --

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

- 23 (1) a vendor at an event organized or
- 24 operated for religious, educational, charitable or other
- 25 nonprofit purposes if no part of any admission fee or parking

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1 fee charged vendors or prospective purchasers and no part of
2 the gross receipts or net earnings from the sale of
3 merchandise at the event is paid to a private person for
4 participating in the organization or operation of the event;

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

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

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

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

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

18 (2) live animals;

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

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

23 (5) merchandise offered for sale as an
24 antique or otherwise historical item and, although never used,
25 the style, packaging, material or appearance of which clearly

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1 indicates that the merchandise was not produced or
2 manufactured within recent times;

3 (6) food offered for sale that was grown,
4 harvested or produced by the vendor or the vendor's principal;
5 and

6 (7) art, crafts or handicrafts that were
7 produced by the vendor or the vendor's principal.

8 Section 6. PENALTIES. -- A person who violates any
9 provision of the Unused Merchandise Ownership Protection Act
10 is guilty of a misdemeanor for the first offense, a fourth
11 degree felony for the second offense and a third degree felony
12 for a third or subsequent offense.

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

1 FORTY-FOURTH LEGISLATURE

SB 104/a

2 FIRST SESSION, 1999

6 February 8, 1999

8 Mr. President:

9
10 Your PUBLIC AFFAIRS COMMITTEE, to whom has been
11 referred

13 SENATE BILL 104

14
15 has had it under consideration and reports same with
16 recommendation that it DO PASS, amended as follows:

17
18
19 1. On page 7, line 10, after "misdemeanor" strike the
20 remainder of the line, strike line 11 and line 12 through
21 "offense".,

22
23 and thence referred to the JUDICIARY COMMITTEE.

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Respectfully submit ted,

Shannon Robi nson, Chai rman

Adopted _____ Not

Adopted _____

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

The roll call vote was 5 For 0 Against

Yes: 5

No: 0

Excused: Boi tano, Ingle, Smi th, Robi nson

Absent: None

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FIRST SESSION, 1999

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FORTY- FOURTH LEGISLATURE

FIRST SESSION, 1999

SB 104/a

March 10, 1999

Mr. President:

Your JUDICIARY COMMITTEE, to whom has been referred

SENATE BILL 104, as amended

has had it under consideration and reports same with
recommendation that it DO PASS, amended as follows:

1. On page 2, line 22, after "merchandise" insert "and expiration date of the merchandise".
2. On page 7, line 4, strike "produced" and insert in lieu thereof "processed".
3. On page 7, line 4, strike "vendor's principal" and insert in lieu thereof "grower".

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FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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4. On page 7, line 5, strike "and".

5. On page 7, line 7, strike "vendor's principal." and
insert in lieu thereof "grower; and".

6. On page 7, between lines 7 and 8, insert the following
new paragraph:

"(8) fresh produce."

7. On page 7, line 10, after "misdemeanor" insert "and
shall be sentenced in accordance with Section 31-19-1 NMSA
1978." and strike the remainder of the sentence.

8. On page 7, strike lines 11 and 12 in their entirety.

FORTY-FOURTH LEGISLATURE
FIRST SESSION, 1999

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Respectfully submitted,

Michael S. Sanchez, Chairman

Adopted _____ Not

Adopted _____

(Chief Clerk)

(Chief Clerk)

Date _____

The roll call vote was 3 For 2 Against

Yes: 3

No: Davis, McSorley

Excused: Aragon, Stockard, Tsosie

Absent: None

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FIRST SESSION, 1999

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FORTY- FOURTH LEGISLATURE

FIRST SESSION

March 12, 1999

SENATE FLOOR AMENDMENT number _____ to SENATE BILL 104, as amended

Amendment sponsored by Senator Ben D. Altamirano

1. On page 2, line 13, after "market" insert ", except a person who offers five or less items of the same unused merchandise for sale or exchange at an open market".

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FORTY- FOURTH LEGISLATURE
FIRST SESSION

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Ben D. Altami rano

Adopted _____ Not Adopted

(Chi ef Clerk)

(Chi ef Clerk)

Date _____

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