

AB 4072

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



ENROLLED

Com. Sub. for
HOUSE BILL No. 4072

(By Delegates Compton, Gallagher and Douglas)



Passed March 5, 1996

In Effect ninety days from Passage



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COMMITTEE SUBSTITUTE

FOR

H. B. 4072

(BY DELEGATES COMPTON, GALLAGHER AND DOUGLAS)

[Passed March 5, 1996; in effect ninety days from passage.]

AN ACT to amend article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section eight, relating to the sale of items at flea markets or swap meets; setting forth legislative findings; defining terms; requiring transient vendors who sell babyfood, medical devices or nonprescription drugs at flea markets or swap meets to keep and maintain records of the source of such items; requiring the production of records; providing for confiscation of babyfood, nonprescription drugs or medical devices for which there is no required record; providing for criminal penalties; setting forth exceptions to applicability of the section; and authorizing the promulgation of rules.

Be it enacted by the Legislature of West Virginia:

That article seven, chapter sixteen of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section eight, to read as follows:

ARTICLE 7. PURE FOOD AND DRUGS.

§16-7-8. Resale of certain food, drug, and medical devices prohibited; definitions; source documentation required; confiscation of food, drugs or medical devices; penalty and exceptions; rules.

1 (a) The Legislature finds that food manufactured and
2 packaged for sale for consumption by a child under the
3 age of two and nonprescription drugs sold by transient
4 vendors at places such as flea markets and swap meets,
5 where the sources of the food and nonprescription drugs
6 are unknown, may be adulterated and thus constitute a
7 hazard to the public's health and welfare. It further finds
8 that these foods, nonprescription drugs or medical devices
9 are likely to have been stolen. The Legislature determines
10 that it is the policy of this state to prohibit the sale of these
11 foods, nonprescription drugs and medical devices if the
12 transient vendor cannot provide and document the sources
13 of the merchandise.

14 (b) For the purposes of this section:

15 (1) The term "babyfood" or "food" means any food
16 manufactured and packaged for sale for consumption by
17 a child under the age of two;

18 (2) The term "nonprescription drugs" does not include
19 natural or herbal nonprescription drugs;

20 (3) The term "medical device" means any apparatus or
21 tool which is defined by federal law as a medical device
22 and which has been specified by the secretary of the
23 department of health and human resources through
24 legislative rules as a device which may be marketed or sold
25 by transient vendors.

26 (c) Any transient vendor who sells babyfood,
27 nonprescription drugs or medical devices at any flea
28 market or swap meet in this state shall keep and make
29 available records of the sources of such babyfood,
30 nonprescription drugs or medical devices offered for sale
31 or sold. The records may be receipts or invoices from the
32 persons who sold the babyfood, nonprescription drugs or
33 medical devices to the transient vendor or any other
34 documentation that establishes the sources of the
35 babyfood, nonprescription drugs or medical devices. The
36 transient vendor shall keep those records with the
37 babyfood, nonprescription drugs or medical devices being
38 offered for sale so long as such goods are in his
39 possession and shall maintain those records for a period of

40 two years after the babyfood, nonprescription drugs or
41 medical devices are sold.

42 (d) Upon the request of a law-enforcement agent or a
43 representative of the state department of health, a transient
44 vendor shall produce records of the sources of babyfood,
45 nonprescription drugs or medical devices offered for sale
46 or sold. If the transient vendor fails to immediately
47 produce the requested records for goods offered for sale,
48 the law-enforcement agent or representative for the state
49 department of health may confiscate the babyfood,
50 nonprescription drugs or medical devices then in
51 possession of the vendor. If the transient vendor fails to
52 produce the requested records for goods previously sold
53 within a reasonable time, the law-enforcement agent or
54 representative for the state department of health may
55 confiscate any babyfood, nonprescription drugs or
56 medical devices then in the possession of the vendor.

57 (e) Any person who violates the provisions of this
58 section is guilty of a misdemeanor, and, upon conviction
59 thereof, shall be fined not more than two hundred dollars
60 for each babyfood item, nonprescription drug or medical
61 device offered for sale or sold.

62 (f) The provisions of this section do not apply to a
63 merchant who is licensed by the state department of tax
64 and revenue; who sells food or nonprescription drugs or
65 medical devices by sample, catalog or brochure for future
66 delivery; or who sells at a residential premises pursuant to
67 an invitation issued by the owner or legal occupant of the
68 premises.

69 (g) The secretary of the department of health and
70 human resources shall promulgate rules in accordance
71 with the provisions of chapter twenty-nine-a of this code
72 regarding the designation and authorized sale of medical
73 devices sold by transient vendors pursuant to this
74 subdivision.

Enr. Com. Sub. for H. B. 4072] 4

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Randy Schoover

Chairman Senate Committee

Randy Seaman

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Carroll Phillips

Clerk of the Senate

Bonny G. King

Clerk of the House of Delegates

Earl Ray Tomblin

President of the Senate

Paul E. Baker

Speaker of the House of Delegates

The within is approved this the 13th
day of March, 1996.

Walter D. Rife

Governor

PRESENTED TO THE
GOVERNOR

Date 3/8/96

Time 7:15pm