WEST VIRGINIA CODE: §16-7-8

§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.

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

(b) For the purposes of this section:

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

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

(3) The term "medical device" means any apparatus or tool which is defined by federal law as a medical device and which has been specified by the Secretary of the Department of Health through legislative rules as a device which may be marketed or sold by transient vendors.

(c) Any transient vendor who sells babyfood, nonprescription drugs or medical devices at any flea market or swap meet in this state shall keep and make available records of the sources of such babyfood, nonprescription drugs or medical devices offered for sale or sold. The records may be receipts or invoices from the persons who sold the babyfood, nonprescription drugs or medical devices to the transient vendor or any other documentation that establishes the sources of the babyfood, nonprescription drugs or medical devices. The transient vendor shall keep those records with the babyfood, nonprescription drugs or medical devices being offered for sale so long as such goods are in his or her possession and shall maintain those records for a period of two years after the babyfood, nonprescription drugs or medical devices are sold.

(d) Upon the request of a law-enforcement agent or a representative of the state department of health, a transient vendor shall produce records of the sources of babyfood, nonprescription drugs or medical devices offered for sale or sold. If the transient vendor fails to immediately produce the requested records for goods offered for sale, the law-enforcement agent or representative for the state department of health may confiscate the

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babyfood, nonprescription drugs or medical devices then in possession of the vendor. If the transient vendor fails to produce the requested records for goods previously sold within a reasonable time, the law-enforcement agent or representative for the state department of health may confiscate any babyfood, nonprescription drugs or medical devices then in the possession of the vendor.

(e) Any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 for each babyfood item, nonprescription drug or medical device offered for sale or sold.

(f) The provisions of this section do not apply to a merchant who is licensed by the state Department of Tax and Revenue; who sells food or nonprescription drugs or medical devices by sample, catalog or brochure for future delivery; or who sells at a residential premises pursuant to an invitation issued by the owner or legal occupant of the premises.

(g) The secretary of the Department of Health shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the designation and authorized sale of medical devices sold by transient vendors pursuant to this subdivision.

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