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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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.
(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 and human resources 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 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 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 two hundred dollars 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 and human resources 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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

Governor