
By: Delegates Krysiak, McClenahan, Harrison, Fulton, Goldwater, Exum, Love, and Wood

Introduced and read first time: January 31, 1997

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Sales at Flea Markets**

3 FOR the purpose of requiring that vendors at flea markets keep a record of the source of
4 new merchandise in a certain manner; prohibiting the sale of certain items at flea
5 markets unless certain conditions are met; authorizing seizure of merchandise of
6 vendors at flea markets under certain circumstances; establishing certain duties for
7 promoters; establishing certain penalties for vendors who violate this Act; defining
8 certain terms; and generally relating to sales of merchandise at flea markets.

9 BY adding to

10 Article - Business Regulation

11 The subtitle designation "Subtitle 1. Tourism Services" to immediately precede

12 Section 19-101; and 19-201 through 19-206, inclusive, to be under the new

13 subtitle "Subtitle 2. Flea Markets"

14 Annotated Code of Maryland

15 (1992 Volume and 1996 Supplement)

16 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

17 MARYLAND, That the subtitle designation "Subtitle 1. Tourism Services" be added to

18 immediately precede § 19-101 of Article - Business Regulation of the Annotated Code of

19 Maryland.

20 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland

21 read as follows:

22 **Article - Business Regulation**

23 **SUBTITLE 2. FLEA MARKETS.**

24 19-201.

25 (A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS

26 INDICATED.

27 (B) (1) "FLEA MARKET" MEANS AN EVENT:

28 (I) THAT IS HELD INSIDE A BUILDING OR OUTSIDE;

2

1 (II) AT WHICH NEW OR USED PERSONAL PROPERTY IS OFFERED
2 OR DISPLAYED FOR SALE OR EXCHANGE; AND

3 (III) 1. AT WHICH A FEE IS CHARGED FOR THE PRIVILEGE OF
4 OFFERING OR DISPLAYING PERSONAL PROPERTY FOR SALE OR EXCHANGE;

5 2. AT WHICH A FEE IS CHARGED TO PROSPECTIVE BUYERS
6 FOR ADMISSION TO THE AREA WHERE PERSONAL PROPERTY IS OFFERED OR
7 DISPLAYED FOR SALE OR EXCHANGE;

8 3. THAT IS HELD MORE THAN THREE TIMES IN ANY
9 12-MONTH PERIOD; OR

10 4. THAT IS LONGER THAN 2 CONSECUTIVE DAYS.

11 (2) "FLEA MARKET" INCLUDES ANY EVENT THAT MEETS THE
12 DESCRIPTION IN PARAGRAPH (1) OF THIS SUBSECTION WHETHER IT IS CALLED A
13 FLEA MARKET OR ANY OTHER NAME.

14 (3) "FLEA MARKET" DOES NOT INCLUDE:

15 (I) AN EVENT THAT IS ORGANIZED FOR THE EXCLUSIVE BENEFIT
16 OF A COMMUNITY FUND OR A FUND, FOUNDATION, ASSOCIATION, OR
17 CORPORATION THAT IS ORGANIZED AND OPERATED FOR RELIGIOUS,
18 EDUCATIONAL, OR CHARITABLE PURPOSES;

19 (II) AN EVENT AT WHICH ALL OF THE PERSONAL PROPERTY
20 OFFERED OR DISPLAYED FOR SALE OR EXCHANGE IS NEW AND ALL PERSONS
21 SELLING OR EXCHANGING PERSONAL PROPERTY OR OFFERING OR DISPLAYING
22 PERSONAL PROPERTY FOR SALE OR EXCHANGE ARE MANUFACTURERS,
23 WHOLESALERS, DISTRIBUTORS, OR RETAILERS AUTHORIZED BY MANUFACTURERS,
24 WHOLESALERS, OR DISTRIBUTORS TO SELL PERSONAL PROPERTY; OR

25 (III) A PERMANENT RETAIL STORE.

26 (C) "MANUFACTURER'S OR DISTRIBUTOR'S REPRESENTATIVE" MEANS AN
27 INDIVIDUAL WHO IS AUTHORIZED BY A MANUFACTURER OR DISTRIBUTOR FOR
28 THE PUBLIC RETAIL SALE OF THOSE PRODUCTS THAT ARE OFFERED FOR SALE.

29 (D) "PROMOTOR" MEANS A PERSON WHO:

30 (1) OWNS OR LEASES THE PREMISES ON WHICH A FLEA MARKET IS
31 HELD;

32 (2) COLLECTS A FEE FROM PERSONS OFFERING OR DISPLAYING
33 PERSONAL PROPERTY FOR SALE OR EXCHANGE AT A FLEA MARKET; OR

34 (3) COLLECTS A FEE CHARGED TO PROSPECTIVE BUYERS FOR
35 ADMISSION TO THE AREA WHERE PERSONAL PROPERTY IS OFFERED OR DISPLAYED
36 FOR SALE OR EXCHANGE.

37 (E) (1) "VENDOR" MEANS A PERSON WHO ENGAGES IN THE RETAIL SALE
38 OF PERSONAL PROPERTY AT A FLEA MARKET.

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1 (2) "VENDOR" DOES NOT INCLUDE A PERSON WHO:

2 (I) SELLS BY CATALOGUE, SAMPLE, OR BROCHURE FOR FUTURE
3 DELIVERY; OR

4 (II) MAKES SALES TO THE OWNER OR LEGAL OCCUPANT OF A
5 PREMISES AT THE INVITATION OF THE OWNER OR LEGAL OCCUPANT OF THE
6 PREMISES.

7 19-202.

8 (A) (1) EACH VENDOR SHALL KEEP A RECORD OF THE SOURCE OF NEW
9 MERCHANDISE THAT THE VENDOR OFFERS FOR SALE.

10 (2) THE RECORD MAY BE A RECEIPT OR INVOICE FROM THE PERSON
11 WHO SOLD THE MERCHANDISE TO THE VENDOR OR ANY OTHER DOCUMENTATION
12 THAT ESTABLISHES THE SOURCE OF THE MERCHANDISE.

13 (3) THE RECORD OR DOCUMENTATION MUST INCLUDE:

14 (I) THE NAME OF THE SOURCE OF THE MERCHANDISE;

15 (II) THE PHYSICAL ADDRESS OF THE SOURCE;

16 (III) THE DATE WHEN THE MERCHANDISE WAS PURCHASED BY THE
17 VENDOR;

18 (IV) THE PRICE PAID FOR THE MERCHANDISE; AND

19 (V) THE QUANTITY OF THE MERCHANDISE.

20 (B) THE VENDOR SHALL KEEP THE RECORD REQUIRED UNDER SUBSECTION
21 (A) OF THIS SECTION AT THE SAME LOCATION AS THE NEW MERCHANDISE BEING
22 OFFERED FOR SALE AND SHALL RETAIN THE RECORD FOR 1 YEAR AFTER THE
23 MERCHANDISE IS SOLD.

24 (C) THE VENDOR SHALL MAKE THE RECORD REQUIRED UNDER SUBSECTION
25 (A) OF THIS SECTION AVAILABLE FOR INSPECTION BY ANY LAW ENFORCEMENT
26 OFFICER DURING THE VENDOR'S REGULAR BUSINESS HOURS AND AT ANY OTHER
27 REASONABLE TIME.

28 (D) ON REQUEST OF A LAW ENFORCEMENT OFFICER, THE VENDOR SHALL
29 PRODUCE THE RECORD REQUIRED UNDER SUBSECTION (A) OF THIS SECTION.

30 19-203.

31 (A) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, A PERSON
32 MAY NOT SELL, OFFER FOR SALE, OR KNOWINGLY ALLOW THE SALE AT A FLEA
33 MARKET OF ANY OF THE FOLLOWING ITEMS:

34 (1) FOOD THAT IS MANUFACTURED AND PACKAGED FOR SALE FOR
35 CONSUMPTION BY A CHILD UNDER 2 YEARS OF AGE;

36 (2) A DRUG, COSMETIC, OR DEVICE, AS THOSE TERMS ARE DEFINED IN
37 § 21-101 OF THE HEALTH - GENERAL ARTICLE; OR

4

1 (3) A PRODUCT THAT HAS AN EXPIRATION DATE.

2 (B) (1) SUBSECTION (A) OF THIS SECTION DOES NOT APPLY TO AN
3 AUTHORIZED MANUFACTURER'S OR DISTRIBUTOR'S REPRESENTATIVE WHO KEEPS
4 WITH THE INDIVIDUAL AT ALL TIMES AND AVAILABLE FOR PUBLIC INSPECTION
5 CREDENTIALS OR WRITTEN PROOF THAT THE INDIVIDUAL IS AUTHORIZED BY THE
6 MANUFACTURER OR DISTRIBUTOR FOR THE PUBLIC RETAIL SALE OF THOSE
7 PRODUCTS THAT ARE OFFERED FOR SALE.

8 (2) THE CREDENTIALS OR WRITTEN PROOF REQUIRED BY PARAGRAPH
9 (1) OF THIS SUBSECTION SHALL INCLUDE THE SELLER'S NAME AND MAY INCLUDE A
10 DATE AFTER WHICH THE AUTHORIZATION EXPIRES.

11 (C) ON REQUEST OF A LAW ENFORCEMENT OFFICER, A VENDOR SHALL
12 PRODUCE THE CREDENTIALS REQUIRED UNDER SUBSECTION (B) OF THIS SECTION.

13 19-204.

14 (A) IN ACCORDANCE WITH ARTICLE 27, § 551 OF THE CODE, A LAW
15 ENFORCEMENT OFFICER MAY SEIZE THE VENDOR'S MERCHANDISE AND HOLD IT IN
16 CUSTODY AS EVIDENCE IF THE VENDOR:

17 (1) FAILS TO PRODUCE A RECORD ON REQUEST AS REQUIRED BY §
18 19-202 OF THIS SUBTITLE;

19 (2) DOES NOT HAVE A RECORD THAT ESTABLISHES THE SOURCE OF A
20 PARTICULAR PIECE OF NEW MERCHANDISE;

21 (3) MAKES A FALSE RECORD THAT ESTABLISHES THE SOURCE OF NEW
22 MERCHANDISE;

23 (4) FALSIFIES, OBLITERATES, OR DESTROYS A RECORD FROM THE
24 VENDOR'S PLACE OF BUSINESS;

25 (5) SELLS OR ATTEMPTS TO SELL MERCHANDISE LISTED IN § 19-203 OF
26 THIS SUBTITLE WITHOUT THE PROPER CREDENTIALS;

27 (6) PRESENTS CREDENTIALS IN ACCORDANCE WITH THE
28 REQUIREMENTS OF THIS SUBTITLE THAT ARE FALSE, FRAUDULENT, FORGED, OR
29 FRAUDULENTLY OBTAINED OR THE NATURE OF WHICH IS MISREPRESENTED;

30 (7) REFUSES TO ALLOW A LAW ENFORCEMENT OFFICER TO INSPECT
31 THE VENDOR'S RECORD OF THE SOURCE OF NEW MERCHANDISE OR THE
32 CREDENTIALS REQUIRED BY § 19-203 OF THIS SUBTITLE DURING THE VENDOR'S
33 REGULAR BUSINESS HOURS OR AT ANY REASONABLE TIME; OR

34 (8) FAILS TO MAINTAIN THE RECORDS REQUIRED BY THIS SUBTITLE
35 FOR THE REQUIRED PERIOD OF TIME.

36 (B) (1) ALL RIGHTS, TITLE, AND INTEREST IN THE PROPERTY SEIZED
37 UNDER THIS SECTION SHALL VEST IMMEDIATELY IN THE LOCAL GOVERNMENT, IF
38 THE PROPERTY IS SEIZED BY A LAW ENFORCEMENT OFFICER OF A LOCAL
39 GOVERNMENT, OR THE STATE, IF THE PROPERTY IS SEIZED BY STATE AUTHORITIES.

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1 (2) THE SEIZED PROPERTY MAY BE RETURNED ONLY:

2 (I) TO THE VENDOR OR ANOTHER PERSON AS PROVIDED IN
3 ARTICLE 27, § 551 OF THE CODE; OR

4 (II) TO THE RETAILER OR OTHER RIGHTFUL OWNER OF THE
5 PROPERTY IF THE OWNER CAN BE IDENTIFIED FROM A MARK OR OTHER FORM OF
6 IDENTIFICATION ON THE PROPERTY OR CAN OTHERWISE PROVE OWNERSHIP OF
7 THE PROPERTY.

8 (3) A CONVICTION, PLEA OF GUILTY OR NOLO CONTENDERE, OR
9 PROBATION UNDER THE PROVISIONS OF ARTICLE 27, § 641 OF THE CODE IS PRIMA
10 FACIE EVIDENCE THAT THE PROPERTY IS CONTRABAND.

11 (C) THIS SECTION SHALL BE ENFORCED BY STATE OR LOCAL LAW
12 ENFORCEMENT OFFICERS.

13 19-205.

14 A PROMOTER, TO THE EXTENT POSSIBLE, SHALL REQUIRE THAT EACH
15 VENDOR SELLING NEW MERCHANDISE HAVE THE RECORDS REQUIRED UNDER §
16 19-202 OF THIS SUBTITLE OR THE CREDENTIALS REQUIRED UNDER § 19-203 OF THIS
17 SUBTITLE.

18 19-206.

19 (A) A VENDOR WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY
20 OF A MISDEMEANOR AND ON CONVICTION FOR A FIRST OFFENSE IS SUBJECT TO A
21 FINE OF NOT MORE THAN \$500 OR IMPRISONMENT OF NOT MORE THAN 30 DAYS OR
22 BOTH.

23 (B) A VENDOR WHO VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY
24 OF A MISDEMEANOR AND ON CONVICTION FOR A SECOND OR FURTHER OFFENSE IS
25 SUBJECT TO A FINE OF NOT LESS THAN \$1,000 AND NOT MORE THAN \$5,000 OR
26 IMPRISONMENT OF NOT LESS THAN 30 DAYS AND NOT MORE THAN 60 DAYS OR
27 BOTH.

28 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
29 October 1, 1997.