

SENATE BILL NO. 392—SENATOR PORTER

MARCH 12, 1999

Referred to Committee on Commerce and Labor

SUMMARY—Regulates certain trade practices. (BDR 52-1196)

FISCAL NOTE: Effect on Local Government: Yes.
Effect on the State or on Industrial Insurance: Yes.

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EXPLANATION – Matter in ***bolded italics*** is new; matter between brackets ~~[omitted material]~~ is material to be omitted.

AN ACT relating to trade practices; regulating the merchandise sold at informal markets and the records required to be kept; prohibiting certain use of retail sales receipts or Universal Price Code Labels; providing penalties; and providing other matters properly relating thereto.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN SENATE
AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** Chapter 597 of NRS is hereby amended by adding thereto
2 the provisions set forth as sections 2 to 13, inclusive, of this act.
3 **Sec. 2.** *As used in sections 2 to 12, inclusive, of this act, the words*
4 *and terms defined in sections 3 to 8, inclusive, of this act have the*
5 *meanings ascribed to them in those sections.*
6 **Sec. 3.** *“Infant formula” means food manufactured, packaged and*
7 *labeled for consumption by children who have not attained 2 years of*
8 *age.*
9 **Sec. 4.** *“Informal market” means:*
10 **1.** *A gathering at which:*
11 **(a)** *Two or more persons offer personal property for sale or exchange;*
12 **(b)** *A fee is charged for sale or exchange of personal property; or*
13 **(c)** *A fee is charged for admission to the area in which personal*
14 *property is offered for sale or exchange; or*
15 **2.** *A place at which personal property is offered or displayed for sale*
16 *or exchange on more than six occasions in a period of 12 months,*
17 *whether held in a building, or under cover, or in the open air.*

1 **Sec. 5. “Informal merchant” means a person who does not have an**
2 **established retail store in the county and who transports an inventory of**
3 **goods to an informal market and displays the goods for sale, offers them**
4 **for sale at retail or sells them at retail.**

5 **Sec. 6. “Medical device” means:**

6 **1. An article, or any part of an article, required under federal law to**
7 **bear the label: “Caution: Federal law requires dispensing by or on the**
8 **order of a physician”; or**

9 **2. An article defined by federal law as a medical device which:**

10 **(a) Is intended for use in the diagnosis of disease or other conditions**
11 **or in the cure, mitigation, treatment or prevention of disease in man or**
12 **other animals or to affect the structure or any function of the body of**
13 **man or other animals;**

14 **(b) Does not achieve any intended purpose through chemical action**
15 **within the body; and**

16 **(c) Does not depend upon being metabolized for the achievement of**
17 **any intended purpose.**

18 **Sec. 7. “Nonprescription drug” means a nonnarcotic medicine or**
19 **drug that may be sold without a prescription and is prepackaged for use**
20 **by the customer or prepared by the manufacturer or producer for use by**
21 **the customer. The term does not include herbal products, dietary**
22 **supplements, botanical extracts or vitamins.**

23 **Sec. 8. “Unused property” means tangible personal property**
24 **acquired by an informal merchant directly from the manufacturer,**
25 **producer, wholesaler or retailer of the property in the ordinary course of**
26 **business which has never been used since its manufacture or production**
27 **or which is in its original, unopened package or container.**

28 **Sec. 9. Sections 2 to 12, inclusive, of this act do not apply to:**

29 **1. The sale or exchange of personal property organized for the sole**
30 **benefit of a religious, educational or charitable purpose, if no part of any**
31 **fee for admission or parking charged to vendors or prospective**
32 **purchasers, or receipts from the sale or exchange inures to the benefit of**
33 **any private person participating in the organization or conduct of the**
34 **gathering;**

35 **2. Offering for sale or displaying new personal property if all**
36 **participants are manufacturers, their authorized representatives or**
37 **distributors;**

38 **3. Business conducted in an industrial or commercial trade show;**

39 **4. The sale of a vehicle that is required to be registered or is the**
40 **subject of a certificate of title issued in this state;**

41 **5. A farmers’ market or the sale of firewood or livestock;**

42 **6. The sale of the product of the seller’s art or craft;**

1 7. Property, even if never used, whose style, packaging or material
2 indicates that it was not recently manufactured or produced;

3 8. A sale by sample, catalog or brochure for future delivery; or

4 9. Presentation for sale made pursuant to a previous individual
5 invitation to the prospective purchaser by the owner or occupant of the
6 premises.

7 **Sec. 10.** An informal merchant shall not offer for sale at an
8 informal market, or knowingly allow the sale of, infant formula, medical
9 devices, nonprescription drugs, cosmetics or products for personal care,
10 unless the seller keeps available for public inspection a genuine written
11 authorization from the manufacturer or distributor of the product sold.

12 **Sec. 11.** 1. An informal merchant shall maintain a receipt for each
13 purchase of unused property, containing:

14 (a) The date of the purchase;

15 (b) The name of the person from whom the property was acquired;

16 (c) An identification or description of the property;

17 (d) The price paid for the property; and

18 (e) The signatures of the merchant and the seller to him.

19 2. It is unlawful for a merchant required by subsection 1 to maintain
20 a receipt to:

21 (a) Falsify, obliterate or destroy the receipt;

22 (b) Refuse, or fail upon request, to produce the receipt for inspection
23 within a time reasonable under the circumstances of the request, but an
24 informal merchant need not keep such receipts on his person without
25 reasonable notice; or

26 (c) Fail to maintain the receipt for at least 2 years.

27 **Sec. 12.** An informal merchant who violates a provision of sections 2
28 to 11, inclusive, of this act is guilty of:

29 1. For the first offense, a misdemeanor.

30 2. For the second offense, a gross misdemeanor.

31 3. For the third or a subsequent offense, a category E felony and
32 shall be punished as provided in NRS 193.130.

33 **Sec. 13.** 1. A person who, with intent to cheat or defraud a retailer,
34 possesses, uses, utters, transfers, makes, alters, counterfeits or reproduces
35 a retail sales receipt or a Universal Price Code Label, is guilty of a
36 category E felony and shall be punished as provided in NRS 193.130 and
37 by a fine not exceeding three times the value represented on the retail
38 sales receipts or the Universal Price Code Labels.

39 2. A person who, with intent to cheat or defraud a retailer, possesses
40 15 or more fraudulent receipts or Universal Price Code Labels, or
41 possesses the device that manufactures fraudulent receipts or Universal
42 Price Code Labels, is guilty of a category D felony and shall be punished
43 as provided in NRS 193.130.

1 **Sec. 14.** The amendatory provisions of this act do not apply to
2 offenses that were committed before October 1, 1999.

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