

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 Product 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 9, inclusive, of this act.
- 3 **Sec. 2.** *As used in sections 2 to 8, inclusive, of this act, unless the*
- 4 *context otherwise requires, the words and terms defined in sections 3 and*
- 5 *4 of this act have the meanings ascribed to them in those sections.*
- 6 **Sec. 3.** *“Informal market” means:*
- 7 *1. A gathering at which:*
- 8 *(a) Two or more persons offer personal property for sale or exchange;*
- 9 *(b) A fee is charged for sale or exchange of personal property; or*
- 10 *(c) A fee is charged for admission to the area in which personal*
- 11 *property is offered for sale or exchange; or*
- 12 *2. A place at which personal property is offered or displayed for sale*
- 13 *or exchange on more than six occasions in a period of 12 months,*
- 14 *whether held in a building, or under cover, or in the open air.*
- 15 **Sec. 4.** *“Informal merchant” means a person who does not have an*
- 16 *established retail store in the county and who transports an inventory of*
- 17 *goods to an informal market and displays the goods for sale, offers them*
- 18 *for sale at retail or sells them at retail.*

1 **Sec. 5.** *Sections 2 to 8, inclusive, of this act do not apply to:*

2 1. *The sale or exchange of personal property organized for the sole*
3 *benefit of a religious, educational or charitable purpose, if no part of any*
4 *fee for admission or parking charged to vendors or prospective*
5 *purchasers, or receipts from the sale or exchange inures to the benefit of*
6 *any private person participating in the organization or conduct of the*
7 *gathering;*

8 2. *Offering for sale or displaying new personal property if all*
9 *participants are manufacturers, their authorized representatives or*
10 *distributors;*

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

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

14 5. *A farmers' market or the sale of firewood or livestock;*

15 6. *The sale of the product of the seller's art or craft;*

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

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

19 9. *Presentation for sale made pursuant to a previous individual*
20 *invitation to the prospective purchaser by the owner or occupant of the*
21 *premises.*

22 **Sec. 6.** 1. *An informal merchant shall not offer for sale at an*
23 *informal market, or knowingly allow the sale of, infant formula, medical*
24 *devices, nonprescription drugs, cosmetics or products for personal care,*
25 *unless the seller keeps available for public inspection a genuine written*
26 *authorization from the manufacturer or distributor of the product sold.*

27 2. *As used in this section:*

28 (a) *"Infant formula" means food manufactured, packaged and*
29 *labeled for consumption by children who have not attained 2 years of*
30 *age.*

31 (b) *"Medical device" means:*

32 (1) *An article, or any part of an article, required pursuant to federal*
33 *law to bear the label: "Caution: Federal law requires dispensing by or on*
34 *the order of a physician"; or*

35 (2) *An article defined by federal law as a medical device which:*

36 (I) *Is intended for use in the diagnosis of disease or other*
37 *conditions or in the cure, mitigation, treatment or prevention of disease*
38 *in man or other animals or to affect the structure or any function of the*
39 *body of man or other animals;*

40 (II) *Does not achieve any intended purpose through chemical*
41 *action within the body; and*

1 (III) Does not depend upon being metabolized for the
2 achievement of any intended purpose.

3 (c) "Nonprescription drug" means a nonnarcotic medicine or drug
4 that may be sold without a prescription and is prepackaged for use by the
5 customer or prepared by the manufacturer or producer for use by the
6 customer. The term does not include herbal products, dietary
7 supplements, botanical extracts or vitamins.

8 **Sec. 7. 1.** An informal merchant shall maintain a receipt for each
9 purchase of unused property, containing:

10 (a) The date of the purchase;

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

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

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

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

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

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

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

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

23 3. As used in this section, "unused property" means tangible
24 personal property acquired by an informal merchant directly from the
25 manufacturer, producer, wholesaler or retailer of the property in the
26 ordinary course of business which has never been used since its
27 manufacture or production or which is in its original, unopened package
28 or container.

29 **Sec. 8.** An informal merchant who violates a provision of sections 2
30 to 7, inclusive, of this act is guilty of:

31 1. For the first offense, a misdemeanor.

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

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

35 **Sec. 9. 1.** A person who, with intent to cheat or defraud a retailer,
36 possesses, uses, utters, transfers, makes, alters, counterfeits or reproduces
37 a retail sales receipt or a Universal Product Code Label, is guilty of a
38 category E felony and shall be punished as provided in NRS 193.130 and
39 by a fine not exceeding three times the value represented on the retail
40 sales receipts or the Universal Product Code Labels.

1 **2. A person who, with intent to cheat or defraud a retailer, possesses**
2 **15 or more fraudulent receipts or Universal Product Code Labels, or**
3 **possesses a device that manufactures fraudulent receipts or Universal**
4 **Product Code Labels, is guilty of a category D felony and shall be**
5 **punished as provided in NRS 193.130.**

6 **Sec. 10.** The amendatory provisions of this act do not apply to
7 offenses that were committed before October 1, 1999.

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