

By Senators Hargrett, Diaz-Balart, Bronson, Lee and Horne

21-1584-99

See HB

1                                   A bill to be entitled  
2           An act relating to flea markets; providing  
3           definitions; requiring flea market vendors to  
4           retain invoices or receipts for any new and  
5           unused merchandise purchased or obtained for  
6           resale; providing requirements with respect to  
7           invoices or receipts; providing a time period  
8           for the maintenance of such records;  
9           authorizing law enforcement officers to request  
10          the production of such records under certain  
11          circumstances; providing a list of violations;  
12          providing exceptions to the act; providing a  
13          procedure for hold orders; providing penalties  
14          for violations; providing for an affirmative  
15          defense; providing an effective date.

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17 Be It Enacted by the Legislature of the State of Florida:

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19           Section 1. Flea market vendors; definitions; invoices  
20 or receipts; requirements; violations; penalties; exceptions;  
21 hold orders.--

- 22           (1) For the purposes of this section:  
23           (a)1. "Flea market" means any event at which:  
24           a. Two or more persons offer personal property for  
25 sale or exchange; and  
26           b. A fee is charged for the privilege of offering or  
27 displaying property for sale or exchange; or  
28           c. A fee is charged to prospective buyers for  
29 admission to the area where property is offered or displayed  
30 for sale or exchange.

1           2. The term "flea market" is interchangeable with and  
2 applicable to the term "swap meet," the term "indoor swap  
3 meet," or any other similar term regardless of whether these  
4 events are held inside a building or outside in the open.

5           3. The term "flea market" does not mean and does not  
6 apply to any event at which all of the personal property  
7 offered for sale or displayed is new and all persons selling,  
8 exchanging, offering, or displaying personal property for sale  
9 or exchange are manufacturers or distributors or authorized  
10 representatives of manufacturers or distributors.

11           (b)1. "Flea market vendor" means any person who  
12 transports an inventory of goods to a flea market and who, at  
13 that location, displays, sells, or offers the goods for sale  
14 at retail.

15           2. The term "flea market vendor" does not include any  
16 person who is a merchant with an established retail store if  
17 the merchant is selling his or her own inventory; nor does the  
18 term include any person selling merchandise at an event  
19 sponsored by a not-for-profit charitable, religious,  
20 educational, or scientific organization.

21           (c) "New and unused merchandise" means tangible  
22 personal property acquired by the flea market vendor which has  
23 never been used since its production or manufacture or which  
24 is in its original and unopened package or container.

25           (2)(a) Every flea market vendor shall retain an  
26 invoice or receipt for any new and unused merchandise  
27 purchased or obtained for resale. The invoice or receipt must  
28 have been issued by the person who sold such merchandise to  
29 the flea market vendor, must specifically identify such  
30 merchandise by merchandise name, quantity purchased, date  
31 sold, and price, and must contain the complete business name,

1 business address, and description of the type of business  
2 operated by the person who sold the new and unused merchandise  
3 to the flea market vendor. If the person who sold the  
4 merchandise to the flea market vendor was an individual, the  
5 invoice or receipt must contain such person's driver license  
6 number or a state-issued identification card number, the dates  
7 of issuance and expiration of the driver license or  
8 identification card, and such person's date of birth.

9 (b) A flea market vendor shall keep invoices or  
10 receipts required under this section available for immediate  
11 inspection and shall retain such records for 1 year after the  
12 date the merchandise is sold.

13 (3)(a) If a law enforcement officer reasonably  
14 believes that merchandise sold or offered for sale by a flea  
15 market vendor may have been stolen, the law enforcement  
16 officer has the authority to request the flea market vendor to  
17 produce the invoice or receipt required under this section.

18 (b) In lieu of an invoice or receipt that shows the  
19 source of merchandise, a flea market vendor may provide a  
20 sworn affidavit that contains the information required in an  
21 invoice or receipt under this section.

22 (4) The provisions of this section shall not apply to:

23 (a) The sale of a motor vehicle or trailer that is  
24 required to be registered or that is subject to the  
25 certificate-of-title laws of this state.

26 (b) The sale of ice or of wood for fuel.

27 (c) Business conducted in an industry or association  
28 trade show.

29 (d) Property, although never used, whose style,  
30 packaging, or material clearly indicates that such property  
31 was not produced or manufactured within recent times.

1           (e) Anyone who sells by sample, catalog, or brochure  
2 for future delivery.

3           (f) Arts or crafts made by a seller or a person in the  
4 seller's household who produces such arts or crafts.

5           (g) Any farm, dairy, seafood, or nursery product.

6           (5)(a) When a law enforcement officer has probable  
7 cause to believe that property in the possession of a flea  
8 market vendor is counterfeit or stolen or otherwise wrongfully  
9 appropriated against the will of the rightful owner, the  
10 officer may place a written hold order on the property, which  
11 order shall impose a holding period not to exceed 21 days  
12 unless extended by court order. A law enforcement officer may  
13 place only one hold order on property and may rescind, in  
14 writing, any hold order.

15           (b) A hold order must specify:

16           1. The name and address of the flea market vendor.

17           2. The name, title, address, and identification number  
18 of the law enforcement officer or the court placing the hold  
19 order.

20           3. A complete description of the property to be held,  
21 including model number and serial number if applicable.

22           4. The mailing address of the flea market vendor where  
23 the property is held.

24           5. The expiration date of the holding period.

25           (c) The flea market vendor or the flea market vendor's  
26 representative must sign and date a copy of the hold order as  
27 evidence of receipt of the hold order and the beginning of the  
28 21-day holding period.

29           (d) A flea market vendor may not release or dispose of  
30 property subject to a hold order, except pursuant to a court  
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1 order, a written release from the law enforcement officer, or  
2 the expiration of the holding period of the hold order.

3 (e) While a hold order is in effect, the flea market  
4 vendor must upon request release the property subject to the  
5 hold order to the custody of the appropriate law enforcement  
6 officer for use in a criminal investigation. The release of  
7 the property to the custody of the appropriate law enforcement  
8 officer is not considered a waiver or release of the flea  
9 market vendor's property rights or interest in the property.  
10 Upon completion of the criminal proceeding, the property must  
11 be returned to the flea market vendor unless the court orders  
12 other disposition.

13 (6)(a) It is a violation of this section for a flea  
14 market vendor to knowingly:

15 1. Falsify, obliterate, or destroy the records  
16 required by this section;

17 2. Refuse or fail upon request to make such records  
18 available when requested by a law enforcement officer;

19 3. Fail to maintain the records required by this  
20 section; or

21 4. Dispose of property subject to a hold order except  
22 as provided in paragraph (5)(d).

23 (b) It is an affirmative defense to a charge of  
24 failing to maintain or provide records as required by this  
25 section if the offender provides to the state and to the court  
26 a valid receipt or invoice for the merchandise in question.

27 (c) Penalty for violations of this subsection are as  
28 follows:

29 1. A first violation is a misdemeanor of the second  
30 degree, punishable as provided in section 775.082, Florida  
31 Statutes, or section 775.083, Florida Statutes.

1           2. A second violation is a misdemeanor of the first  
2 degree, punishable as provided in section 775.082, Florida  
3 Statutes, or section 775.083, Florida Statutes.

4           3. A third or subsequent violation is a felony of the  
5 third degree, punishable as provided in section 775.082,  
6 Florida Statutes, section 775.083, Florida Statutes, or  
7 section 775.084, Florida Statutes.

8           Section 2. This act shall take effect July 1, 1999.

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LEGISLATIVE SUMMARY

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Provides regulations with respect to flea markets and  
13 flea market vendors. Requires the keeping of described  
14 records with respect to sales of certain goods. (See bill  
for details.)

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