

AMENDED IN SENATE JUNE 29, 2002

AMENDED IN ASSEMBLY APRIL 2, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2009

Introduced by Assembly Member Nakano
(Principal coauthor: Assembly Member Alquist)
(Coauthor: Senator Oller)

February 15, 2002

An act to amend Sections 21660, 21661, 21662, and 21663 of, to amend the heading of Article 6 (commencing with Section 21660) of Chapter 9 of Division 8 of, and to add Section 21663.1 to, the Business and Professions Code, relating to swap meets, flea markets, and open-air markets.

LEGISLATIVE COUNSEL'S DIGEST

AB 2009, as amended, Nakano. Swap meets: open-air markets.

Existing law regulates the operation of swap meets, *defined to include flea markets, indoor swap meets, and outdoor swap meets or flea markets*, where merchandise is offered for sale and exchange. *Existing law requires a vendor to report all personal property offered or displayed for sale or exchange at a swap meet on a form approved by the California Department of Justice, unless the personal property is new. Existing law requires the completed report to be submitted to the chief of police or the sheriff depending on the location of the swap meet.* Under existing law, a violation of the provisions regulating these events is punishable as a misdemeanor offense.

This bill would ~~specify that these provisions regulating swap meets apply equally to the operation of an open-air market or flea market~~ *instead specify that all merchandise offered for sale or exchange by a vendor at a swap meet, flea market, or open-air market be reported unless the merchandise is new.*

Because a violation of the provisions regulating swap meets is punishable as a misdemeanor offense, to the extent the bill would make additional events subject to this sanction, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. The heading of Article 6 (commencing with
2 Section 21660) of Chapter 9 of Division 8 of the Business and
3 Professions Code is amended to read:

4
5 Article 6. Swap Meets, Flea Markets, and Open-Air Markets

6
7 SEC. 2. Section 21660 of the Business and Professions Code
8 is amended to read:

9 21660. It is the intent of the Legislature in enacting this article
10 ~~to provide for the uniform regulation of~~ *require the reporting of*
11 *personal property exchanged, sold, or offered for sale or exchange*
12 *at swap meets, flea markets, and ~~open-air~~ open-air markets, and*
13 *information regarding vendors selling or displaying new*
14 *merchandise, for the purpose of ensuring that swap meet, open-air*
15 *market, and flea market operators and vendors are in complete*
16 *compliance with all state laws and regulations applicable to*
17 *displaying, offering for sale, selling, and exchanging new and*
18 *previously owned merchandise.*

19 This article shall apply to operators and vendors at swap meets,
20 flea markets, and ~~open-air~~ *open-air* markets unless the



1 merchandise or the transaction is specifically exempt under this
2 article and shall not be superseded or supplanted by any provisions
3 or ordinances or charters of any city, county, or city and county, nor
4 supplemented by any local ordinances or charters or provisions.
5 Nothing contained in this article shall be deemed to affect the land
6 use and zoning regulatory power of a local agency, nor be
7 construed to require any local agency to permit swap meets, flea
8 markets, or open air markets if local land use or zoning regulations
9 prohibit those operations.

10 Any transaction that is regulated by this article shall not be
11 subject to the provisions of Article 4 (commencing with Section
12 21625), regulating transactions in identifiable secondhand
13 tangible personal property. No person, partnership, or corporation
14 shall be considered a “secondhand dealer” within the meaning of
15 Section 21626 because of activities regulated by this article.

16 Article 5 (commencing with Section 21650) of this chapter shall
17 not apply to operators or vendors at swap meets, flea markets, or
18 ~~open-air~~ *open-air* markets.

19 SEC. 3. Section 21661 of the Business and Professions Code
20 is amended to read:

21 21661. (a) As used in this article, the term “swap meet”
22 includes a flea market or an ~~open-air~~ *open-air* market and means
23 an event at which two or more persons offer merchandise for sale
24 or exchange and that meets one of the following conditions:

25 (1) A fee is charged for the privilege of offering or displaying
26 merchandise for sale or exchange.

27 (2) A fee is charged to prospective buyers for parking or for
28 admission to the area where merchandise is offered or displayed
29 for sale or exchange.

30 (3) The event is held more than six times in any 12-month
31 period.

32 (b) *Notwithstanding subdivision (a), the term “swap meet,” as*
33 *used in this article, includes a flea market or an open-air market*
34 *and means an event, regardless of the number of persons offering*
35 *or displaying personal property or the absence of fees, at which*
36 *used personal property is offered or displayed for sale or exchange*
37 *if the event is held more than six times in any 12-month period.*

38 (c) The term “swap meet,” as used in this article, is
39 interchangeable and applicable to “flea markets,” “indoor swap
40 meets,” ~~“open-air~~ “*open-air* markets,” or other similar terms,



1 regardless of whether these events are held either inside a building
2 or outside in the open. The primary characteristic is that these
3 activities involve a series of sales sufficient in number, scope, and
4 character to constitute a regular course of business.

5 ~~(e)~~

6 (d) "Operator," as used in this article, means any person,
7 partnership, organization or corporation that controls, manages,
8 conducts or otherwise administers a swap meet.

9 ~~(d)~~

10 (e) "Vendor," as used in this article, means any person,
11 partnership, organization or corporation who exchanges, sells, or
12 offers for sale or exchange any merchandise at a swap meet. A
13 swap meet vendor shall be classified according to the following
14 categories:

15 (1) A "casual swap meet vendor" means a vendor who
16 participates in a swap meet two times or less per year.

17 (2) A "regular swap meet vendor" means a vendor who
18 participates in a swap meet three or more times per year.

19 SEC. 4. Section 21662 of the Business and Professions Code
20 is amended to read:

21 21662. The provisions of this article shall not apply to:

22 (a) An event held not more than two times per calendar year
23 that is organized for the exclusive benefit of any community chest,
24 fund, foundation, association, or corporation organized and
25 operated for religious, educational, hospital, or charitable
26 purposes, if no part of any admission fee or parking fee charged
27 vendors or prospective purchasers, or the gross receipts or net
28 earnings from the sale or exchange of merchandise, whether in the
29 form of a percentage of the receipts or earnings, as salary, or
30 otherwise, inures to the benefit of any private shareholder or
31 person participating in the organization or conduct of the event.

32 (b) An event at which all of the merchandise offered or
33 displayed is new, and all persons selling, exchanging, offering, or
34 displaying merchandise for sale or exchange are manufacturers or
35 licensed retail or wholesale merchants.

36 (c) Any vehicle or trailer or any vehicle accessory or vehicle
37 part usable for a motor vehicle eligible for vehicle registration
38 under Section 5004 of the Vehicle Code, and items of memorabilia
39 or history, or both, relating to these vehicles.



1 SEC. 5. Section 21663 of the Business and Professions Code
2 is amended to read:

3 21663. (a) Except as provided in Section 21663.1, every
4 vendor shall report all merchandise offered or displayed for sale
5 or exchange on a form, prescribed or approved by the California
6 Department of Justice, containing all the following information:

7 (1) The name and address of the vendor.

8 (2) A description of the merchandise offered for sale or
9 exchange, including serial numbers and personal identification
10 marks, or if there is no serial number, other identification marks
11 or symbols, if any, or a general description of the item.

12 (3) A certification by the vendor that to his or her knowledge
13 and belief, the information contained on the form is true.

14 (4) The make, year, color, state of registration, and license
15 number of the vehicle or vehicles in which the merchandise is
16 transported to the swap meet.

17 (5) The California seller's permit number (State Board of
18 Equalization sales tax number), if any, of the vendor.

19 (6) The vendor's motor vehicle driver's license number and its
20 state of issuance or California identification card numbers.

21 (7) If the vendor is an agent of an individual, company,
22 partnership or corporation, the name and business address of the
23 principal.

24 (8) The dates of sale for which the report is made.

25 (9) A receipt number given by the operator for the dates of the
26 sale or the space used by the vendor.

27 (10) A requirement that the vendor check an appropriate box
28 that sets forth his or her permit number for sales tax purposes.

29 If the vendor's permit number is not listed in the appropriate
30 place on the form, the vendor shall indicate that he or she has not
31 and does not contemplate making more than two sales of sufficient
32 size, scope, and character within a 12-month period to require a
33 permit.

34 (b) In addition to the official governmental form, consisting of
35 an original and at least two copies, the information required may
36 be recorded on a computerized or other similar record that contains
37 the same information required by subdivision (a).

38 (c) In no case shall a swap meet owner or operator be liable or
39 responsible for the accuracy of, or any discrepancy in, any



1 information submitted by the vendors on the forms provided to
2 them by the swap meet owners or operators.

3 SEC. 6. Section 21663.1 is added to the Business and
4 Professions Code, to read:

5 21663.1. (a) A vendor selling or displaying new merchandise
6 and a vendor holding a business license issued by a city, county,
7 or city and county of this state are not required to comply with
8 Section 21633 if the swap meet is conducted at the same location
9 at least once per month on real property owned by the operator or
10 leased to the operator for a period of not less than one year.

11 (b) A vendor meeting the conditions of subdivision (a) shall, at
12 a minimum, provide the operator with the following information
13 prior to offering or displaying merchandise for sale at the event:

14 (1) The name and address of the vendor.

15 (2) The vendor's California seller's permit number (State
16 Board of Equalization sales tax number).

17 (3) The vendor's motor vehicle driver's license number and its
18 state of issuance or his or her California identification card
19 number.

20 (4) The vendor's business license number and its city or county
21 of issuance, unless the vendor is operating under a business license
22 issued to the operator.

23 (c) The operator shall maintain the information required by this
24 section in written or electronic form for six months after the date
25 of its receipt and shall make copies of the information available for
26 inspection, upon request, to any peace officer or any authorized
27 representative of the Board of Equalization or Department of
28 Justice.

29 (d) In no case shall the operator be liable for the accuracy of,
30 or any discrepancy in, any information submitted by a vendor.

31 SEC. 7. No reimbursement is required by this act pursuant to
32 Section 6 of Article XIII B of the California Constitution because
33 the only costs that may be incurred by a local agency or school
34 district will be incurred because this act creates a new crime or
35 infraction, eliminates a crime or infraction, or changes the penalty
36 for a crime or infraction, within the meaning of Section 17556 of
37 the Government Code, or changes the definition of a crime within



1 the meaning of Section 6 of Article XIII B of the California
2 Constitution.

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