

HOUSE No. 239

By Miss Garry of Dracut, petition of Colleen M. Garry for legislation to restrict sales of certain items and products at flea markets, so-called. Consumer Protection and Professional Licensure.

The Commonwealth of Massachusetts

In the Year Two Thousand and Seven.

AN ACT RESTRICTING THE SALE OF CERTAIN ITEMS AT FLEA MARKETS.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 Chapter 101 of the General Laws, as appearing in the 2000 Offi-
2 cial Edition, is hereby amended by deleting section 18A and
3 inserting in place thereof the following section:—

4 Section 18A. (A) No person, except an authorized manufacturer’s
5 or distributor’s representative possessing on his or her person written
6 proof of that authorization for public retail sales, shall sell, offer for
7 sale, or knowingly permit the sale at any flea market, so-called, any
8 of the following items:

9 (i) food manufactured and packaged for sale for consumption by a
10 child under the age of five years;

11 (ii) drugs and cosmetics, as those terms are defined in section one
12 of chapter ninety-four;

13 (iii) any product which has an expiration date.

14 (B) In this section, “manufacturer’s or distributor’s representa-
15 tive” shall mean a person who has on his person and available for
16 public inspection written proof that he or she is authorized by the
17 manufacturer or distributor for the public retail sale of those prod-
18 ucts which are offered for sale. Such credentials shall include the
19 seller’s name and may include a date upon which such authorization
20 shall expire.

21 (C) In this section, “flea market” shall mean any location other
22 than a permanent retail store at which space is rented or otherwise
23 made available to others for the conduct of business as transient or
24 limited vendors; Transient or limited vendors shall not include those

25 persons who sell by sample, catalogue or brochure for future
26 delivery, or those persons who make sales presentations pursuant to
27 a prior invitation issued by the owner or the legal occupant of the
28 premises.

29 (D) Any person who violates the provisions of this section shall
30 be punished by a fine of not less than \$100 or more than \$1,000 per
31 violation. The sale of each product unit shall constitute a separate
32 offense, and all such product shall be seized and forfeited to the
33 Massachusetts Department of Public Health.

34 (E) The presenting of credentials pursuant to the requirements of
35 this section which are false, fraudulent, forged, fraudulently obtained
36 or the nature of which is misrepresented shall also be considered a
37 prohibited act punishable by the same means as subsection (D) of
38 this section.

39 (F) The appropriate law enforcement agency investigating any
40 violation of this Act shall maintain a record of such violation avail-
41 able for public inspection.