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BUSINESS AND PROFESSIONS CODE - BPC

DIVISION 8. SPECIAL BUSINESS REGULATIONS [18400 - 22949.92.2] (*Division 8 added by Stats. 1941, Ch. 44.*)

CHAPTER 9. Secondhand Goods [21500 - 21672] (*Chapter 9 added by Stats. 1941, Ch. 50.*)

ARTICLE 6. Swap Meets, Flea Markets, and Open-Air Markets [21660 - 21669.1] (*Heading of Article 6 amended by Stats. 2002, Ch. 334, Sec. 1.*)

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

This article shall apply to operators and vendors at swap meets, flea markets, and open-air markets unless the merchandise or the transaction is specifically exempt under this article and shall not be superseded or supplanted by any provisions or ordinances or charters of any city, county, or city and county, nor supplemented by any local ordinances or charters or provisions. Nothing contained in this article shall be deemed to affect the land use and zoning regulatory power of a local agency, nor be construed to require any local agency to permit swap meets, flea markets, or open-air markets if local land use or zoning regulations prohibit those operations.

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

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

(Amended by Stats. 2002, Ch. 334, Sec. 2. Effective January 1, 2003.)

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

- (1) A fee is charged for the privilege of offering or displaying merchandise for sale or exchange.
- (2) A fee is charged to prospective buyers for parking or for admission to the area where merchandise is offered or displayed for sale or exchange.
- (3) The event is held more than six times in any 12-month period.

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

(c) The term "swap meet," as used in this article, is interchangeable and applicable to "flea markets," "indoor swap meets," "open-air markets," or other similar terms, regardless of whether these events are held either inside a building or outside in the open. The primary characteristic is that these activities involve a series of sales sufficient in number, scope, and character to constitute a regular course of business.

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

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

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

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

(Amended by Stats. 2002, Ch. 334, Sec. 3. Effective January 1, 2003.)

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

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

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

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

(Amended by Stats. 2002, Ch. 334, Sec. 4. Effective January 1, 2003.)

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

(1) The name and address of the vendor.

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

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

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

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

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

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

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

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

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

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

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

(c) In no case shall a swap meet owner or operator be liable or responsible for the accuracy of, or any discrepancy in, any information submitted by the vendors on the forms provided to them by the swap meet owners or operators.

(Amended by Stats. 2002, Ch. 334, Sec. 5. Effective January 1, 2003.)

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

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

(1) The name and address of the vendor.

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

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

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

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

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

(Added by Stats. 2002, Ch. 334, Sec. 6. Effective January 1, 2003.)

21664. (a) The swap meet operator shall obtain sufficient blank forms from the Department of Justice at a cost not to exceed the actual cost to the department, or shall cause to be printed and be available sufficient forms approved by the department, for the use of vendors attending the swap meet, and shall distribute them to vendors as needed. The vendor shall submit the completed form to the operator who shall note on the vendor's copy that the vendor has submitted the form. The vendor shall submit the form to the swap meet operator prior to the close of the business day on which the item is to be placed on sale. The swap meet operator shall provide this form required by subdivision (a) of Section 21663 to the chief of police, if the swap meet occurs within the territorial limits of an incorporated city, or the sheriff, if the swap meet occurs outside a city, within 24 hours, or, before the end of the first working day following the swap meet. The original shall also be available to the State Board of Equalization to permit them to detect possible sales tax evasion. The reports shall not be utilized by a chief of police, a sheriff, the Department of Justice, or any other governmental agency for the purpose of providing a permanent record of property ownership, nor shall the information derived from these reports form the basis for any record other than reports which assist in tracing and recovering of stolen property or assist in detecting sales tax evasion.

(b) Every vendor shall submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 for each swap meet at which he or she is a vendor prior to the close of the business day at which the item is to be placed on sale. Items described in reports previously submitted pursuant to paragraph (2) of subdivision (a) of Section 21663 may be omitted from the description on the forms submitted at subsequent swap meets if the vendor furnishes the swap meet operator of each subsequent swap meet with two copies of the report previously submitted, marked to indicate personal property currently being offered or displayed.

(c) A vendor who regularly offers or displays for sale or exchange any new or used personal property or merchandise shall be required to submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 only once every 60 days. The vendor shall, however, submit a new report at any swap meet at which he or she is a vendor and offers or displays for sale or exchange any personal property not included by generic classification in the previously submitted report. For purposes of this subdivision, a vendor shall be deemed to regularly offer or display for sale or exchange any items of merchandise if such vendor participates for four or more days in a month at a swap meet conducted at the same location. Any vendor claiming to be a regular seller of new or used merchandise under the provisions of this subdivision shall so indicate on the bimonthly report.

(d) Every vendor shall submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 for each swap meet at which he or she is a vendor prior to the business day on which the item is to be placed on sale. A vendor who regularly offers or displays merchandise for sale or exchange shall be required to submit to the swap meet operator the form disclosing the information required by subdivision (a) of Section 21663 only once every six months, provided the vendor has a written agreement with the swap meet operator for a periodic term of one month or longer. All other casual vendors shall submit the form disclosing the information required by subdivision (a) of Section 21663 on each instance of offering merchandise for sale or exchange at the swap meet.

(Amended by Stats. 1988, Ch. 1138, Sec. 4.)

21665. (a) Swap meet operators shall retain a copy of the reports collected by them for six months and shall make the copies available for inspection, upon request, by a peace officer as defined in Section 830.1 or subdivision (a) of Section 830.3 of the Penal Code, or a peace officer of the Department of the California Highway Patrol as defined in subdivision (a) of Section 830.2 of the Penal Code, when the swap meet occurs on state property, or properly identified representatives of the State Board of Equalization or Department of Justice.

(b) Vendors shall have available for inspection during the swap meet a completed copy of the report form which was submitted to the swap meet operator describing the goods offered or displayed for sale or exchange at the swap meet.

(Amended by Stats. 1996, Ch. 305, Sec. 2. Effective January 1, 1997.)

21666. (a) Upon request, a vendor shall provide the purchaser a written receipt disclosing the vendor's name and address for any items purchased which has a selling price in excess of fifteen dollars (\$15).

(b) No vendor shall offer or display at a swap meet any new or used personal property or merchandise of a kind which the swap meet operator has expressly prohibited. Every swap meet owner shall post or display in prominent places at the swap meet, or give written notice to every vendor prior to the commencement of a swap meet of the kinds of personal property or merchandise which may be not offered for sale or exchange. The swap meet owner or operator shall also post a sign at the main entrance of the swap meet which states that vendors are required to issue receipts in accordance with subdivision (a).

(Amended by Stats. 1990, Ch. 538, Sec. 1.)

21667. A violation of any provision of this article, except subdivision (b) of Section 21666, is a misdemeanor and may be punishable by up to six months in county jail, a fine of fifty dollars (\$50) for the first violation, one hundred dollars (\$100) for the second violation, and two hundred dollars (\$200) for the third and subsequent violations.

(Amended by Stats. 1983, Ch. 1092, Sec. 58. Effective September 27, 1983. Operative January 1, 1984, by Sec. 427 of Ch. 1092.)

21668. A chief of police of a city or the sheriff of an area outside of the city may waive any requirement of this article for swap meet operators and vendors in the city or area outside of the city if the chief of police or sheriff determines it is not necessary or appropriate in the public interest to impose the requirement. If the swap meet is located in both the city and area outside of the city, the chief of police of the city has the authority to grant the waiver authorized by this section.

(Added by Stats. 1986, Ch. 732, Sec. 2.)

21669. (a) All swap meets which are conducted two or more times per calendar year on any premises or property owned or leased by any city, county, city and county, state, or any other local governmental agency, entity, or board, shall comply with all of the following procedures:

(1) The swap meet operator shall have a valid business license.

(2) The swap meet operator shall have a valid California seller's permit number (State Board of Equalization sales tax number), if applicable.

(3) The swap meet operator shall provide the state or local governmental entities described in this subdivision upon whose property the swap meet is being held, a certificate of insurance certifying that the swap meet operator maintains public liability and property damage insurance for the operation of the swap meet of at least two million dollars (\$2,000,000), and that the policy names that governmental entity as an additional insured under the policy.

(4) The swap meet operator shall provide the state or local governmental entity a hold harmless and indemnification agreement for his or her operation of the swap meet and activities and acts arising from that swap meet.

(5) The swap meet operator shall comply with all other provisions of this article relating to swap meets.

(b) State or local governmental entities shall not operate or manage a swap meet for profit in direct competition to a private enterprise, unless they comply with subdivision (a) of Section 21662.

(Added by Stats. 1988, Ch. 1138, Sec. 6.)

21669.1. In addition to the requirements specified in subdivision (a) of Section 21669, all swap meets conducted on the premises or property of a state or local governmental entity that has or expects to have an average daily attendance of 10,000 or more persons shall provide all of the following:

(a) A statement of ownership, including the identity of individuals holding a financial interest of 5 percent or more.

(b) A sworn statement that no individuals who have a financial interest of 5 percent or more in the swap meet have been convicted of any crime involving dishonesty or moral turpitude.

(c) A financial statement showing the operator's financial capability to operate a major swap meet and to meet any financial obligations to the lessor and subcontractors.

(d) A statement that the operator is not knowingly delinquent in any payments owed to a state or local governmental entity and that he or she is not knowingly in violation of any state or local law or ordinance related to public health or safety standards.

(e) Evidence that the operator has a minimum of five years of experience in the management and operation of a swap meet for profit with an average daily attendance of 5,000 or more.

(f) A plan for operations, including security, crowd control, sanitation, and emergency medical response.

