

Senate Fiscal Agency
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SFA**BILL ANALYSIS**

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House Bill 5677 (Substitute H-1 as passed by the House)
Sponsor: Representative Valde Garcia
House Committee: Economic Development
Senate Committee: Local, Urban and State Affairs

Date Completed: 9-25-00

CONTENT

The bill would amend the Michigan Penal Code to establish a misdemeanor for an unused property merchant who sold or offered to sell, at an unused property market, food manufactured, packaged, and labeled specifically for sale or consumption by a child less than two years of age, a nonprescription drug that was past its expiration date, or a medical device, without authorization from the manufacturer or distributor; who provided a false authorization for someone to examine; or who falsified or obliterated a receipt, failed to make a receipt available to a law enforcement official, or failed to keep a receipt for two years. A violation of the bill would be a misdemeanor punishable by up to 93 days' imprisonment and/or a maximum fine of \$1,000.

The penalty would not apply if the unused property merchant who sold or offered to sell an item described above were authorized in writing to sell the item at retail by the manufacturer of the item or the manufacturer's authorized distributor. The authorization would have to state the person's name and the date the authorization expired, and the person would have to provide the authorization for examination to any person at the unused property market who requested to examine it. An unused property merchant who provided an authorization that was forged, contained a false statement, or was obtained by fraud would be in violation of the bill.

An unused property merchant would have to obtain and retain for at least two years a purchase receipt for each item of new and unused property the merchant acquired. The receipt would have to show the date of the acquisition, the name and address of the person from whom the item was acquired, an identification and description of the item, and the price paid for it. An unused property merchant would be in violation of the bill if he or she falsified or obliterated a receipt, destroyed or disposed of a receipt before the end of the two-year period, or refused or failed to make a receipt available for inspection by a law enforcement official within a reasonable time after an inspection of the receipt was requested. The bill specifies that a merchant would not be required to possess the receipt on his or her person without reasonable notice.

"Unused property market" would mean either an event at which two or more persons offered tangible personal property for sale or exchange for a fee, an event at which a fee is charged to prospective buyers for admission, or an event at which one or more persons offered or displayed tangible personal property for sale or exchange more than six times a year. An unused property market would include an event or location commonly known as a swap meet, indoor swap meet, or flea market, but would not include an industry or association trade show; an event organized for the exclusive benefit of a community chest, fund, foundation, association, or corporation organized and operated for religious, educational, or charitable purposes, if no portion of any fee charged vendors or prospective purchasers and none of the gross receipts or net earnings of the sale or exchange of personal property benefitted a private shareholder or person participating in the event or the organization of the event; or an event or location at which all of the personal property offered for sale or on display was new and each person selling, exchanging, offering, or displaying personal property was the manufacturer of the property or an authorized representative or distributor of the manufacturer.

"Unused property merchant" would mean a person who offered, displayed, sold, or exchanged tangible

property at an unused property market. "Unused property merchant" would not include a person who only sold tangible personal property for future delivery by sample, catalog, or brochure or a person who sold or offered to sell tangible personal property to a consumer pursuant to an individual invitation issued directly to the consumer at a location or premises owned or legally occupied by the person.

"New and unused property" would mean tangible personal property properly acquired by an unused property merchant directly from a producer, manufacturer, wholesaler, or retailer in the ordinary course of business, and that had never been used since its production or manufacture, or was in its original and unopened package or container if it were packaged when originally produced or manufactured. "New and unused property" would not include a vehicle subject to the registration and certificate of title requirements of the Michigan Vehicle Code; firewood, ice, or livestock; unused antique property; arts, crafts, or similar merchandise sold or offered for sale by the individual who made or produced it or an employee or agent of the individual; or personal property sold for future delivery solely by use of a sample of the property, a catalog, or a brochure.

Proposed MCL 750.411r

Legislative Analyst: N. Nagata

FISCAL IMPACT

The bill would have an indeterminate fiscal impact on local government.

There are no data available to indicate how many people could be convicted of selling or offering to sell food for children less than two years of age, nonprescription drugs past their expiration date, or medical devices at an unused property market. Also, there are no data available to indicate how many people could be convicted of forging a manufacture's authorization to sell the property, falsifying or obliterating a receipt, destroying or disposing of a receipt for goods sold within two years, or withholding records from law enforcement. A violation of any of these sections would result in a misdemeanor charge for which local units of government would incur the costs of incarceration and/or receive the fine revenue.

Fiscal Analyst: K. Firestone

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.