

SUBSTITUTE FOR  
HOUSE BILL NO. 5677

(As amended May 30, 2000)

A bill to amend 1931 PA 328, entitled  
"The Michigan penal code,"  
(MCL 750.1 to 750.568) by adding section 411r.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 SEC. 411R. (1) SUBJECT TO SUBSECTION (2), AN UNUSED PROP-  
2 ERTY MERCHANT WHO SELLS OR OFFERS TO SELL 1 OR MORE OF THE FOL-  
3 LOWING ITEMS AT AN UNUSED PROPERTY MARKET IS GUILTY OF A MISDE-  
4 MEANOR PUNISHABLE BY IMPRISONMENT FOR NOT MORE THAN [93] DAYS OR A  
5 FINE OF NOT MORE THAN \$1,000.00, OR BOTH:

6 (A) FOOD MANUFACTURED, PACKAGED, AND LABELED SPECIFICALLY  
7 FOR SALE OR CONSUMPTION BY A CHILD LESS THAN 2 YEARS OF AGE.

8 [ ]

9 [(B)] A NONPRESCRIPTION DRUG [THAT IS PAST ITS EXPIRATION  
DATE].

10 [(C)] A MEDICAL DEVICE.

1           (2) SUBSECTION (1) DOES NOT APPLY IF THE UNUSED PROPERTY  
2 MERCHANT WHO SELLS OR OFFERS TO SELL AN ITEM DESCRIBED IN  
3 SUBSECTION (1) IS AUTHORIZED IN WRITING TO SELL THE ITEM AT  
4 RETAIL BY THE MANUFACTURER OF THE ITEM OR THE MANUFACTURER'S  
5 AUTHORIZED DISTRIBUTOR, THE AUTHORIZATION STATES THE PERSON'S  
6 NAME AND THE DATE THE AUTHORIZATION EXPIRES, AND THE PERSON PRO-  
7 VIDES FOR EXAMINATION THE AUTHORIZATION TO ANY PERSON AT THE  
8 UNUSED PROPERTY MARKET WHO REQUESTS TO EXAMINE THE  
9 AUTHORIZATION. AN UNUSED PROPERTY MERCHANT WHO PROVIDES TO  
10 ANOTHER PERSON FOR EXAMINATION PURSUANT TO THIS SUBSECTION AN  
11 AUTHORIZATION THAT IS FORGED, CONTAINS A FALSE STATEMENT, OR WAS  
12 OBTAINED BY FRAUD IS GUILTY OF A MISDEMEANOR PUNISHABLE BY  
13 IMPRISONMENT FOR NOT MORE THAN [93] DAYS OR A FINE OF NOT MORE THAN  
14 \$1,000.00, OR BOTH.

15           (3) AN UNUSED PROPERTY MERCHANT SHALL OBTAIN AND RETAIN FOR  
16 NOT LESS THAN 2 YEARS A PURCHASE RECEIPT FOR EACH ITEM OF NEW AND  
17 UNUSED PROPERTY THE UNUSED PROPERTY MERCHANT ACQUIRES. THE  
18 RECEIPT MUST SHOW THE DATE OF THE ACQUISITION, THE NAME AND  
19 ADDRESS OF THE PERSON FROM WHICH THE ITEM WAS ACQUIRED, AN IDEN-  
20 TIFICATION AND DESCRIPTION OF THE ITEM, AND THE PRICE PAID FOR  
21 THE ITEM. IT IS A MISDEMEANOR, PUNISHABLE BY IMPRISONMENT FOR  
22 NOT MORE THAN [93] DAYS OR A FINE OF NOT MORE THAN \$1,000.00, OR  
23 BOTH, FOR AN UNUSED PROPERTY MERCHANT TO KNOWINGLY DO ANY OF THE  
24 FOLLOWING WITH RESPECT TO A RECEIPT THE UNUSED PROPERTY MERCHANT  
25 IS REQUIRED TO OBTAIN AND RETAIN UNDER THIS SUBSECTION:

26           (A) FALSIFY OR OBLITERATE A RECEIPT.

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1 (B) REFUSE OR FAIL TO MAKE A RECEIPT AVAILABLE FOR  
2 INSPECTION BY A LAW ENFORCEMENT OFFICIAL WITHIN A REASONABLE TIME  
3 AFTER AN INSPECTION OF THE RECEIPT IS REQUESTED. THIS SUBDIVI-  
4 SION DOES NOT REQUIRE AN UNUSED PROPERTY MERCHANT TO POSSESS THE  
5 RECEIPT ON HIS OR HER PERSON WITHOUT REASONABLE NOTICE.

6 (C) DESTROY OR DISPOSE OF A RECEIPT BEFORE THE END OF THE  
7 2-YEAR PERIOD DESCRIBED IN THIS SUBSECTION.

8 (4) AS USED IN THIS SECTION:

9 (A) "DRUG" MEANS THAT TERM AS DEFINED IN SECTION 17703 OF  
10 THE PUBLIC HEALTH CODE, 1978 PA 368, MCL 333.17703.

11 (B) "MEDICAL DEVICE" MEANS A DEVICE AS THAT TERM IS DEFINED  
12 IN SECTION 17703 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL  
13 333.17703.

14 (C) "NEW AND UNUSED PROPERTY" MEANS TANGIBLE PERSONAL PROP-  
15 ERTY PROPERLY ACQUIRED BY AN UNUSED PROPERTY MERCHANT DIRECTLY  
16 FROM A PRODUCER, MANUFACTURER, WHOLESALER, OR RETAILER IN THE  
17 ORDINARY COURSE OF BUSINESS, AND THAT HAS NEVER BEEN USED SINCE  
18 ITS PRODUCTION OR MANUFACTURE, OR IS IN ITS ORIGINAL AND UNOPENED  
19 PACKAGE OR CONTAINER IF IT WAS PACKAGED WHEN ORIGINALLY PRODUCED  
20 OR MANUFACTURED. NEW AND UNUSED PROPERTY DOES NOT INCLUDE ANY OF  
21 THE FOLLOWING:

22 (i) A VEHICLE SUBJECT TO THE REGISTRATION AND CERTIFICATE OF  
23 TITLE REQUIREMENTS OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL  
24 257.1 TO 257.923.

25 (ii) FIREWOOD, ICE, OR LIVESTOCK.

26 (iii) UNUSED ANTIQUE PROPERTY.

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1       (iv) ARTS, CRAFTS, OR SIMILAR MERCHANDISE SOLD OR OFFERED  
2 FOR SALE BY THE INDIVIDUAL WHO MADE OR PRODUCED IT OR AN EMPLOYEE  
3 OR AGENT OF THE INDIVIDUAL.

4       (v) PERSONAL PROPERTY SOLD FOR FUTURE DELIVERY SOLELY BY USE  
5 OF A SAMPLE OF THE PROPERTY, A CATALOG, OR A BROCHURE.

6       (D) "NONPRESCRIPTION DRUG" MEANS A NONNARCOTIC DRUG THAT MAY  
7 BE SOLD WITHOUT A PRESCRIPTION AND THAT IS LABELED AND PACKAGED  
8 IN COMPLIANCE WITH APPLICABLE STATE OR FEDERAL LAW.  
9 NONPRESCRIPTION DRUG DOES NOT INCLUDE VITAMINS OR AN HERBAL PRO-  
10 DUCT, DIETARY SUPPLEMENT, OR BOTANICAL EXTRACT.

11       (E) "UNUSED PROPERTY MARKET" MEANS EITHER AN EVENT AT WHICH  
12 2 OR MORE PERSONS OFFER TANGIBLE PERSONAL PROPERTY FOR SALE OR  
13 EXCHANGE, AND A FEE IS CHARGED FOR THE SALE OR EXCHANGE OF PER-  
14 SONAL PROPERTY OR A FEE IS CHARGED TO PROSPECTIVE BUYERS FOR  
15 ADMISSION TO THE EVENT, OR AN EVENT AT WHICH MORE THAN 6 TIMES A  
16 YEAR 1 OR MORE PERSONS OFFER OR DISPLAY TANGIBLE PERSONAL PROP-  
17 ERTY FOR SALE OR EXCHANGE. UNUSED PROPERTY MARKET INCLUDES, BUT  
18 IS NOT LIMITED TO, EVENTS OR LOCATIONS COMMONLY KNOWN AS SWAP  
19 MEETS, INDOOR SWAP MEETS, OR FLEA MARKETS. UNUSED PROPERTY  
20 MARKET DOES NOT INCLUDE ANY OF THE FOLLOWING:

21       (i) AN INDUSTRY OR ASSOCIATION TRADE SHOW.

22       (ii) AN EVENT ORGANIZED FOR THE EXCLUSIVE BENEFIT OF A COM-  
23 MUNITY CHEST, FUND, FOUNDATION, ASSOCIATION, OR CORPORATION ORGA-  
24 NIZED AND OPERATED FOR RELIGIOUS, EDUCATIONAL, OR CHARITABLE PUR-  
25 POSES, IF NO PORTION OF ANY FEE CHARGED VENDORS OR PROSPECTIVE  
26 PURCHASERS AND NONE OF THE GROSS RECEIPTS OR NET EARNINGS OF THE  
27 SALE OR EXCHANGE OF PERSONAL PROPERTY BENEFIT A PRIVATE

1 SHAREHOLDER OR PERSON PARTICIPATING IN THE EVENT OR THE  
2 ORGANIZATION OF THE EVENT.

3 (iii) AN EVENT OR LOCATION AT WHICH ALL OF THE PERSONAL  
4 PROPERTY OFFERED FOR SALE OR ON DISPLAY IS NEW AND EACH PERSON  
5 SELLING, EXCHANGING, OFFERING, OR DISPLAYING PERSONAL PROPERTY  
6 FOR SALE OR EXCHANGE IS THE MANUFACTURER OF THE PROPERTY OR AN  
7 AUTHORIZED REPRESENTATIVE OR DISTRIBUTOR OF THE MANUFACTURER.

8 (F) "UNUSED PROPERTY MERCHANT" MEANS A PERSON WHO OFFERS,  
9 DISPLAYS, SELLS, OR EXCHANGES TANGIBLE PERSONAL PROPERTY AT AN  
10 UNUSED PROPERTY MARKET. UNUSED PROPERTY MERCHANT DOES NOT  
11 INCLUDE A PERSON WHO ONLY SELLS TANGIBLE PERSONAL PROPERTY FOR  
12 FUTURE DELIVERY BY SAMPLE, CATALOG, OR BROCHURE OR A PERSON WHO  
13 SELLS OR OFFERS TO SELL TANGIBLE PERSONAL PROPERTY TO A CONSUMER  
14 PURSUANT TO AN INDIVIDUAL INVITATION ISSUED DIRECTLY TO THE CON-  
15 SUMER AT A LOCATION OR PREMISES OWNED OR LEGALLY OCCUPIED BY THE  
16 PERSON.