



HOUSE BILL No. 5677

April 25, 2000, Introduced by Reps. Garcia, Van Woerkom, Faunce, Richardville, Kowall, DeRossett, Birkholz, Bisbee, Lockwood, Bob Brown and Mans and referred to the Committee on Economic Development.

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 A FINE OF NOT MORE THAN \$100.00:

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

7 (B) A COSMETIC, TOILETRY, OR PERSONAL CARE PRODUCT.

8 (C) A NONPRESCRIPTION DRUG.

9 (D) A MEDICAL DEVICE.

10 (2) SUBSECTION (1) DOES NOT APPLY IF THE UNUSED PROPERTY
11 MERCHANT WHO SELLS OR OFFERS TO SELL AN ITEM DESCRIBED IN

1 SUBSECTION (1) IS AUTHORIZED IN WRITING TO SELL THE ITEM AT
2 RETAIL BY THE MANUFACTURER OF THE ITEM OR THE MANUFACTURER'S
3 AUTHORIZED DISTRIBUTOR, THE AUTHORIZATION STATES THE PERSON'S
4 NAME AND THE DATE THE AUTHORIZATION EXPIRES, AND THE PERSON PRO-
5 VIDES FOR EXAMINATION THE AUTHORIZATION TO ANY PERSON AT THE
6 UNUSED PROPERTY MARKET WHO REQUESTS TO EXAMINE THE
7 AUTHORIZATION. AN UNUSED PROPERTY MERCHANT WHO PROVIDES TO
8 ANOTHER PERSON FOR EXAMINATION PURSUANT TO THIS SUBSECTION AN
9 AUTHORIZATION THAT IS FORGED, CONTAINS A FALSE STATEMENT, OR WAS
10 OBTAINED BY FRAUD IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE
11 OF NOT MORE THAN \$100.00.

12 (3) AN UNUSED PROPERTY MERCHANT SHALL OBTAIN AND RETAIN FOR
13 NOT LESS THAN 2 YEARS A PURCHASE RECEIPT FOR EACH ITEM OF NEW AND
14 UNUSED PROPERTY THE UNUSED PROPERTY MERCHANT ACQUIRES. THE
15 RECEIPT MUST SHOW THE DATE OF THE ACQUISITION, THE NAME AND
16 ADDRESS OF THE PERSON FROM WHICH THE ITEM WAS ACQUIRED, AN IDEN-
17 TIFICATION AND DESCRIPTION OF THE ITEM, AND THE PRICE PAID FOR
18 THE ITEM. IT IS A MISDEMEANOR, PUNISHABLE BY A FINE OF NOT MORE
19 THAN \$100.00, FOR AN UNUSED PROPERTY MERCHANT TO KNOWINGLY DO ANY
20 OF THE FOLLOWING WITH RESPECT TO A RECEIPT THE UNUSED PROPERTY
21 MERCHANT IS REQUIRED TO OBTAIN AND RETAIN UNDER THIS SUBSECTION:

22 (A) FALSIFY OR OBLITERATE A RECEIPT.

23 (B) REFUSE OR FAIL TO MAKE A RECEIPT AVAILABLE FOR INSPEC-
24 TION BY A LAW ENFORCEMENT OFFICIAL WITHIN A REASONABLE TIME AFTER
25 AN INSPECTION OF THE RECEIPT IS REQUESTED. THIS SUBDIVISION DOES
26 NOT REQUIRE AN UNUSED PROPERTY MERCHANT TO POSSESS THE RECEIPT ON
27 HIS OR HER PERSON WITHOUT REASONABLE NOTICE.

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

3 (4) AS USED IN THIS SECTION:

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

6 (B) "MEDICAL DEVICE" MEANS A DEVICE AS THAT TERM IS DEFINED
7 IN SECTION 17703 OF THE PUBLIC HEALTH CODE, 1978 PA 368, MCL
8 333.17703.

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

17 (i) A VEHICLE SUBJECT TO THE REGISTRATION AND CERTIFICATE OF
18 TITLE REQUIREMENTS OF THE MICHIGAN VEHICLE CODE, 1949 PA 300, MCL
19 257.1 TO 257.923.

20 (ii) FIREWOOD, ICE, OR LIVESTOCK.

21 (iii) UNUSED ANTIQUE PROPERTY.

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

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

1 (D) "NONPRESCRIPTION DRUG" MEANS A NONNARCOTIC DRUG THAT MAY
2 BE SOLD WITHOUT A PRESCRIPTION AND THAT IS LABELED AND PACKAGED
3 IN COMPLIANCE WITH APPLICABLE STATE OR FEDERAL LAW.

4 NONPRESCRIPTION DRUG DOES NOT INCLUDE VITAMINS OR AN HERBAL PRO-
5 DUCT, DIETARY SUPPLEMENT, OR BOTANICAL EXTRACT.

6 (E) "UNUSED PROPERTY MARKET" MEANS EITHER AN EVENT AT WHICH
7 2 OR MORE PERSONS OFFER TANGIBLE PERSONAL PROPERTY FOR SALE OR
8 EXCHANGE, AND A FEE IS CHARGED FOR THE SALE OR EXCHANGE OF PER-
9 SONAL PROPERTY OR A FEE IS CHARGED TO PROSPECTIVE BUYERS FOR
10 ADMISSION TO THE EVENT, OR AN EVENT AT WHICH MORE THAN 6 TIMES A
11 YEAR 1 OR MORE PERSONS OFFER OR DISPLAY TANGIBLE PERSONAL PROP-
12 ERTY FOR SALE OR EXCHANGE. UNUSED PROPERTY MARKET INCLUDES, BUT
13 IS NOT LIMITED TO, EVENTS OR LOCATIONS COMMONLY KNOWN AS SWAP
14 MEETS, INDOOR SWAP MEETS, OR FLEA MARKETS. UNUSED PROPERTY
15 MARKET DOES NOT INCLUDE ANY OF THE FOLLOWING:

16 (i) AN INDUSTRY OR ASSOCIATION TRADE SHOW.

17 (ii) AN EVENT ORGANIZED FOR THE EXCLUSIVE BENEFIT OF A COM-
18 MUNITY CHEST, FUND, FOUNDATION, ASSOCIATION, OR CORPORATION ORGA-
19 NIZED AND OPERATED FOR RELIGIOUS, EDUCATIONAL, OR CHARITABLE PUR-
20 POSES, IF NO PORTION OF ANY FEE CHARGED VENDORS OR PROSPECTIVE
21 PURCHASERS AND NONE OF THE GROSS RECEIPTS OR NET EARNINGS OF THE
22 SALE OR EXCHANGE OF PERSONAL PROPERTY BENEFIT A PRIVATE SHARE-
23 HOLDER OR PERSON PARTICIPATING IN THE EVENT OR THE ORGANIZATION
24 OF THE EVENT.

25 (iii) AN EVENT OR LOCATION AT WHICH ALL OF THE PERSONAL
26 PROPERTY OFFERED FOR SALE OR ON DISPLAY IS NEW AND EACH PERSON
27 SELLING, EXCHANGING, OFFERING, OR DISPLAYING PERSONAL PROPERTY

1 FOR SALE OR EXCHANGE IS THE MANUFACTURER OF THE PROPERTY OR AN
2 AUTHORIZED REPRESENTATIVE OR DISTRIBUTOR OF THE MANUFACTURER.

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