

Act No. 332
Public Acts of 2000
Approved by the Governor
December 14, 2000
Filed with the Secretary of State
December 14, 2000
EFFECTIVE DATE: February 1, 2001

**STATE OF MICHIGAN
90TH LEGISLATURE
REGULAR SESSION OF 2000**

**Introduced by Reps. Garcia, Van Woerkom, Faunce, Richardville, Kowall, DeRossett, Birkholz, Bisbee,
Lockwood, Bob Brown and Mans**

ENROLLED HOUSE BILL No. 5677

AN ACT to amend 1931 PA 328, entitled "An act to revise, consolidate, codify and add to the statutes relating to crimes; to define crimes and prescribe the penalties therefor; to provide for restitution under certain circumstances; to provide for the competency of evidence at the trial of persons accused of crime; to provide immunity from prosecution for certain witnesses appearing at such trials; and to repeal certain acts and parts of acts inconsistent with or contravening any of the provisions of this act," (MCL 750.1 to 750.568) by adding section 411r.

The People of the State of Michigan enact:

Sec. 411r. (1) Subject to subsection (2), an unused property merchant who sells or offers to sell 1 or more of the following items at an unused property market is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both:

- (a) Food manufactured, packaged, and labeled specifically for sale or consumption by a child less than 2 years of age.
- (b) A nonprescription drug that is past its expiration date.
- (c) A medical device.

(2) Subsection (1) does not apply if the unused property merchant who sells or offers to sell an item described in subsection (1) is authorized in writing to sell the item at retail by the manufacturer of the item or the manufacturer's authorized distributor, the authorization states the person's name and the date the authorization expires, and the person provides for examination the authorization to any person at the unused property market who requests to examine the authorization. An unused property merchant who provides to another person for examination pursuant to this subsection an authorization that is forged, contains a false statement, or was obtained by fraud is guilty of a misdemeanor punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both.

(3) An unused property merchant shall obtain and retain for not less than 2 years a purchase receipt for each item of new and unused property the unused property merchant acquires. The receipt must show the date of the acquisition, the name and address of the person from which the item was acquired, an identification and description of the item, and the price paid for the item. It is a misdemeanor, punishable by imprisonment for not more than 93 days or a fine of not more than \$1,000.00, or both, for an unused property merchant to knowingly do any of the following with respect to a receipt the unused property merchant is required to obtain and retain under this subsection:

- (a) Falsify or obliterate a receipt.
- (b) Refuse or fail to make a receipt available for inspection by a law enforcement official within a reasonable time after an inspection of the receipt is requested. This subdivision does not require an unused property merchant to possess the receipt on his or her person without reasonable notice.
- (c) Destroy or dispose of a receipt before the end of the 2-year period described in this subsection.
- (4) As used in this section:
 - (a) "Drug" means that term as defined in section 17703 of the public health code, 1978 PA 368, MCL 333.17703.

(b) "Medical device" means a device as that term is defined in section 17703 of the public health code, 1978 PA 368, MCL 333.17703.

(c) "New and unused property" means 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 has never been used since its production or manufacture, or is in its original and unopened package or container if it was packaged when originally produced or manufactured. New and unused property does not include any of the following:

(i) A vehicle subject to the registration and certificate of title requirements of the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923.

(ii) Firewood, ice, or livestock.

(iii) Unused antique property.

(iv) 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.

(v) Personal property sold for future delivery solely by use of a sample of the property, a catalog, or a brochure.

(d) "Nonprescription drug" means a nonnarcotic drug that may be sold without a prescription and that is labeled and packaged in compliance with applicable state or federal law. Nonprescription drug does not include vitamins or an herbal product, dietary supplement, or botanical extract.

(e) "Unused property market" means either an event at which 2 or more persons offer tangible personal property for sale or exchange, and a fee is charged for the sale or exchange of personal property or a fee is charged to prospective buyers for admission to the event, or an event at which more than 6 times a year 1 or more persons offer or display tangible personal property for sale or exchange. Unused property market includes, but is not limited to, events or locations commonly known as swap meets, indoor swap meets, or flea markets. Unused property market does not include any of the following:

(i) An industry or association trade show.

(ii) 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 benefit a private shareholder or person participating in the event or the organization of the event.

(iii) An event or location at which all of the personal property offered for sale or on display is new and each person selling, exchanging, offering, or displaying personal property for sale or exchange is the manufacturer of the property or an authorized representative or distributor of the manufacturer.

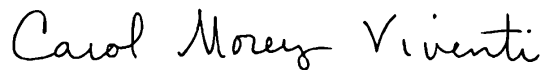
(f) "Unused property merchant" means a person who offers, displays, sells, or exchanges tangible personal property at an unused property market. Unused property merchant does not include a person who only sells tangible personal property for future delivery by sample, catalog, or brochure or a person who sells or offers 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.

Enacting section 1. This amendatory act takes effect February 1, 2001.

This act is ordered to take immediate effect.



Clerk of the House of Representatives.



Secretary of the Senate.

Approved _____

Governor.