

Legislative Analysis



STATE LICENSURE OF LIQUIDATION SALES

Mitchell Bean, Director
Phone: (517) 373-8080
<http://www.house.mi.gov/hfa>

House Bill 5296

Sponsor: Rep. Shelley Taub

Committee: Regulatory Reform

Complete to 6-14-04

A SUMMARY OF HOUSE BILL 5296 AS INTRODUCED 11-12-03

The bill would create the Liquidation Sale Licensing Act, which would require the state licensing of certain kinds of sales, such as going-out-of-business sales, damaged goods sales, and removal sales. Licenses would have to be obtained from the Department of Labor and Economic Growth (which is the successor department to the Department of Consumer and Industry Services cited in the bill); a fee of \$100 would have to accompany each application for a license and for a renewal of a license. The act also would provide penalties for violations and private remedies.

The bill would repeal Public Act 39 of 1961, which currently requires similar kinds of sales to obtain a license from a city, village, or township. Many of the provisions in House Bill 5296 are virtually identical to those in current law; however, House Bill 5296 would require licensing at the state rather than local level. (Current license and renewal fees are \$50 rather than \$100.)

Under the bill, a person could not hold the following sales of goods without a license: an insurance, bankruptcy, mortgage, insolvency, assignee's, executor's, administrator's receiver's, trustee's, removal, or going-out-of-business sale of goods or a sale of damaged goods. Moreover, a person could not advertise, represent, or hold out that a sale of goods is one of the listed kinds without a license. The application for a license would be similar to that currently required and would have to include, among other things, a full explanation of the condition or necessity that is the occasion for the sale; a full, detailed, and complete inventory of the goods that will be sold, including a separate listing of those goods purchased during the 90 days prior to the license application; a statement that goods will not be added after the date of application; and a copy of each advertisement to be published in connection with a sale.

The application would also have to include a statement that the applicant will discontinue business (if a going-out-of-business sale) at the termination of the sale, or will discontinue business at the current premises (if a removal sale), or a statement as to the time, location, and cause of damage to goods (if a sale of damaged goods).

The bill specifies that the licensing requirement would not apply to a sale of goods by a person regularly engaged in insurance or salvage sales of goods or a sale of goods by a

sheriff, another public or court officer, or any other person acting under the license, direction, or authority of any court, in the course of his or her official duties. (Such persons are also exempt under current law.)

Licenses would be issued for no more than a 30-day period, and a licensee could renew a license no more than twice, and each renewal would be limited to 30 days. A licensee could conduct a regulated sale only during the period set forth in the license. A license would only be valid for the sale of the inventoried goods that are the property of the licensee and only for those goods inventoried and described in the license application and at the time and place described in the application. Goods could not be acquired for the purpose of a regulated sale. Any unusual acquisition of goods within the 90-day period preceding application for a license would be presumptive evidence that the goods were acquired in contemplation of the regulated sale. (Current law refers to a 60-day period.)

The list of persons to whom a license could not be issued appears to be substantially the same as in current law.

A false statement in an application would be a felony punishable by imprisonment for not more than five years. The act being repealed contains a similar penalty but refers to the violation as perjury. The misdemeanor penalty for advertising or representing that a sale is one of the kinds of sale regulated under the new act without complying with the act would be a maximum fine of \$1,000. (Currently, the fine is from \$100 to \$500 and a jail sentence is also available.) Other kinds of violations would be misdemeanors punishable by imprisonment for not more than 93 days and/or a fine of not more than \$5,000. (Currently, the penalty is imprisonment in the county jail for between 10 days and 6 months and/or a fine of from \$100 to \$500.)

The bill also would allow a person to bring an action to obtain a declaratory judgment that a practice is in violation of the new act and/or enjoin by temporary or permanent injunction a person who is engaging or is about to engage in a practice in violation of the new act. A person who suffers a loss as a result of a violation could also bring an individual or class action to recover actual damages or \$250, whichever is greater, for each day a violation occurs, as well as reasonable attorney fees. (The provisions regarding private actions do not appear to be in the statute being repealed.)

Legislative Analyst: Chris Couch

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