

HOUSE BILL No. 4087

February 1, 2005, Introduced by Rep. Taub and referred to the Committee on Regulatory Reform.

A bill to regulate insurance, bankruptcy, mortgage, insolvency, assignee's, executor's, administrator's, receiver's, trustee's, removal, and going-out-of-business sales and sales of damaged goods; to require licenses to conduct those sales; to provide for the powers and duties of certain local governmental officers and entities; to prescribe penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "liquidation sale licensing act".

3 Sec. 2. As used in this act:

4 (a) "County clerk" means the clerk of a county in this state
5 where a regulated sale is conducted.

1 (b) "Going-out-of-business sale" means a sale of goods
2 advertised, presented, or conducted in a manner that indicates or
3 implies that the business will cease and discontinue at the
4 premises where the sale is conducted. The term includes, but is not
5 limited to, sales commonly known as a "closing-out sale",
6 "liquidation sale", "lost-our-lease sale", or "forced-to-vacate
7 sale".

8 (c) "Goods" means all tangible personal property except money.

9 (d) "Person" means an individual, partnership, corporation,
10 limited liability company, association, or other legal entity.

11 (e) "Regulated sale" means an insurance, bankruptcy, mortgage,
12 insolvency, assignee's, executor's, administrator's, receiver's,
13 trustee's, removal, or going-out-of-business sale of goods or a
14 sale of damaged goods.

15 (f) "Removal sale" means a sale of goods advertised,
16 presented, or conducted in a manner that indicates or implies that
17 the business will cease and discontinue at the premises where the
18 sale is conducted and move to and occupy another location after
19 disposal of the goods on hand.

20 Sec. 3. (1) Subject to subsection (2), a person shall not
21 conduct a regulated sale or advertise, represent, or hold out that
22 a sale of goods is an insurance, bankruptcy, mortgage, insolvency,
23 assignee's, executor's, administrator's, receiver's, trustee's,
24 removal, or going-out-of-business sale or a sale of damaged goods
25 without obtaining a license to conduct that sale from the county
26 clerk.

27 (2) The licensing requirement of this act does not apply to a

1 sale of goods by a person regularly engaged in insurance or salvage
2 sale of goods or a sale of goods by a sheriff, another public or
3 court officer, or any other person acting under the license,
4 direction, or authority of any court, in the course of his or her
5 official duties.

6 Sec. 4. An applicant for a license to conduct a regulated sale
7 under this act shall file a written application with the county
8 clerk. The application shall include all of the following
9 information about the proposed sale:

10 (a) The name and street address of the applicant for the
11 license and, if the applicant is a partnership, corporation,
12 association, or other legal entity, the name and the position of
13 the individual filing the application on behalf of the entity.

14 (b) The name under which the applicant will conduct the sale,
15 the street address of the location where the applicant will conduct
16 the sale, and the type of regulated sale the applicant will
17 conduct.

18 (c) The dates and period of time during which the applicant
19 will conduct the sale.

20 (d) The name and street address of the individual who is in
21 charge and responsible for the conduct of the sale.

22 (e) A full explanation with regard to the condition or
23 necessity that is the occasion for the sale, including a statement
24 of the descriptive name of the sale and the reasons why the name is
25 truthfully descriptive of the type of regulated sale. If the
26 application is for a license to conduct a going-out-of-business
27 sale, it shall also contain a statement that the applicant will

1 discontinue business at the premises where the applicant is
2 conducting the sale upon termination of the sale. If the
3 application is for a license to conduct a removal sale, it shall
4 also contain a statement that the applicant will discontinue
5 business at the premises where the applicant is conducting the sale
6 upon termination of the sale, in addition to the location of the
7 premises to which the applicant is moving the business. If the
8 application is for a license to conduct a sale of damaged goods, it
9 shall also contain a statement as to the time, location, and cause
10 of the damage.

11 (f) A full, detailed, and complete inventory of the goods that
12 will be sold. The inventory shall do all of the following:

13 (i) Itemize the goods to be sold and contain sufficient
14 information concerning each item, including any make or brand name,
15 to clearly identify it.

16 (ii) List separately any goods that were purchased during the
17 90-day period preceding the date of the license application.

18 (iii) Show the cost price of each item in the inventory, the
19 name and street address of the seller of each item to the
20 applicant, the date of purchase of each item by the applicant, the
21 date of delivery of each item to the applicant, and the total value
22 of the inventory at cost.

23 (g) A statement that the applicant will not add goods to the
24 inventory after the application is made or during the sale and that
25 the inventory does not contain goods received on consignment.

26 (h) A copy of each advertisement to be published in connection
27 with the sale. Each advertisement must display the license number

1 issued by the county clerk, the name and street address of the
2 applicant, and the applicant's state sales tax number.

3 Sec. 5. (1) If a county clerk receives an application
4 containing all of the information required by this act and the
5 appropriate license fee, the county clerk may issue a license to
6 the applicant. A license authorizes the applicant to advertise,
7 represent, and sell the particular goods described in the inventory
8 at the time and place stated in the application, in accordance with
9 the provisions of this act.

10 (2) If a county clerk issues a license, it shall issue the
11 license in duplicate. The license shall show a license number and
12 an expiration date.

13 (3) A license issued under this act is valid only for the sale
14 of the inventoried goods that are the property of the licensee. The
15 license shall apply only at the premises specified in the
16 application and may not be transferred or assigned. If a licensee
17 is engaged in business at another location, the licensee shall not
18 represent or imply in any advertisement or offer of goods that
19 goods available from the other location are part of the regulated
20 sale or that goods available at the regulated sale are part of the
21 goods available from the other location.

22 (4) Subject to subsection (5), the county clerk shall not
23 issue a license to a person that meets any of the following:

24 (a) The applicant is requesting a license to conduct a
25 regulated sale of goods in the name of another person and the
26 applicant acquired a right or title to those goods in the 6-month
27 period preceding the application.

1 (b) The applicant is requesting a license to continue a sale
2 that is in progress under the name of another person in the name of
3 the applicant and the applicant acquired a right or title in the
4 goods while that sale is in progress.

5 (c) The applicant is requesting a license to conduct a
6 regulated sale, other than an insurance sale, a salvage sale, or a
7 sale of damaged goods, within 1 year after the conclusion of
8 another regulated sale at the same location.

9 (5) Subsection (4) does not apply to a person who has acquired
10 a right, title, or interest in goods as an heir, devisee, or
11 legatee or pursuant to an order or process of a court of competent
12 jurisdiction.

13 Sec. 6. (1) A person shall comply with any applicable law or
14 judicial process in conducting or advertising a regulated sale.

15 (2) A person shall not conduct or advertise an assignee's or
16 insolvent sale if there is not a bona fide assignment for the
17 benefit of creditors.

18 Sec. 7. (1) A county clerk shall not issue a license to
19 conduct a regulated sale that is valid for a period that exceeds 30
20 days. A licensee may conduct a regulated sale only during the
21 period set forth in the license.

22 (2) A licensee may renew a license not more than twice, and
23 the period of each renewal shall not exceed 30 days. A licensee
24 shall submit an affidavit of the licensee with the application for
25 renewal that states that the goods listed in the filed inventory
26 have not been disposed of and that no new goods have been or will
27 be added to the inventory by purchase, acquisition on consignment,

1 or otherwise. The licensee shall submit the application for renewal
2 of the license within 13 days before the expiration date of the
3 license that contains a revised inventory of goods remaining on
4 hand at the time the application for renewal is made. The licensee
5 shall prepare and furnish the revised inventory in the same manner
6 and form as the original inventory. The county clerk shall not
7 grant a renewal of a license if any goods have been added to the
8 stock listed in the inventory since the date of the issuance of the
9 original license.

10 (3) A fee of \$100.00 shall accompany an application for a
11 license and for a renewal of a license.

12 Sec. 8. (1) The applicant shall post a copy of the application
13 for a license to conduct a regulated sale, including the inventory
14 filed with the application and any revised inventory prepared under
15 section 7(2), in a conspicuous place in the sales room or place
16 where the regulated sale is conducted, but the copy does not have
17 to show the purchase price of the goods. The applicant shall attach
18 a duplicate copy of the license to the front door of the premises
19 where the regulated sale is conducted in such a manner that it is
20 clearly visible from the street.

21 (2) Any advertisement or announcement published in connection
22 with a regulated sale shall conspicuously show on its face the
23 number of the license and the date of its expiration, the name and
24 business address of the applicant, and the applicant's state sales
25 tax number.

26 Sec. 9. If an application for a license or renewal under this
27 act is filed with a county clerk, the county clerk shall note the

1 date of the filing on the application, retain the application in
2 the county clerk's records, and make an abstract of the facts
3 contained in the application in a book kept for that purpose. The
4 county clerk shall maintain an index of the abstract book. Each
5 abstract shall contain the name of the person applying for the
6 license, the type of the proposed regulated sale, the place where
7 the licensee is conducting the regulated sale, the duration of the
8 regulated sale, the inventory of the goods to be sold, a general
9 statement of where the goods came from, and a notation of whether a
10 license was issued or refused. The county clerk shall note the date
11 the license is granted or refused on the application. An
12 application and abstract are prima facie evidence of all statements
13 contained in the application.

14 Sec. 10. Within 10 days after the last day of a regulated
15 sale, the applicant shall file in duplicate with the county clerk a
16 list of all merchandise sold at the regulated sale and the prices
17 received and a detailed list of all merchandise unsold at the close
18 of the regulated sale. The county clerk shall forward a copy of the
19 lists to the department of treasury.

20 Sec. 11. A license to conduct a regulated sale is valid only
21 for a sale of the goods inventoried and described in the license
22 application and at the time and place described in the license. If
23 any goods described in the application are removed from the place
24 of sale, those goods shall not be sold at another regulated sale or
25 advertised or sold as an insurance, bankruptcy, mortgage,
26 insolvency, assignee's, executor's, administrator's, receiver's, or
27 trustee's stock of goods, a stock of goods being removed or closed

1 out, or a stock of damaged goods.

2 Sec. 12. A person who intends to conduct a regulated sale
3 shall not acquire any goods for the purpose of selling and
4 disposing of those goods at the regulated sale. Any unusual
5 acquisition of goods within the 90-day period preceding the license
6 application is presumptive evidence that the acquisition was made
7 in contemplation of the regulated sale and for the purpose of
8 selling those goods at the regulated sale.

9 Sec. 13. A person conducting a regulated sale shall not add
10 any goods to the stock of goods described and inventoried in the
11 license application during the regulated sale or sell any goods
12 that are not described and inventoried in the application. Each
13 addition of goods to the stock of goods described and inventoried
14 in the application and each sale of goods not inventoried and
15 described in the application is a separate violation of this act,
16 and any violation of this section terminates the license to conduct
17 the regulated sale.

18 Sec. 14. (1) A person shall not make a false statement in an
19 application for a license to conduct a regulated sale. A person who
20 violates this subsection is guilty of a felony punishable by
21 imprisonment for not more than 5 years.

22 (2) A person that advertises, represents, or holds out a sale
23 of goods as an insurance, bankruptcy, mortgage, insolvency,
24 assignee's, executor's, administrator's, receiver's, trustee's,
25 removal, or going-out-of-business sale, or a sale of goods damaged
26 by fire, water, smoke, or otherwise, without having first complied
27 with this act, is guilty of a misdemeanor punishable by a fine of

1 not more than \$1,000.00.

2 (3) Except as provided in subsections (1) and (2), a person
3 who violates this act is guilty of a misdemeanor punishable by
4 imprisonment for not more than 93 days or a fine of not more than
5 \$5,000.00, or both.

6 (4) Whether or not a person has an adequate remedy at law, a
7 person may bring an action to do either or both of the following:

8 (a) Obtain a declaratory judgment that a practice is in
9 violation of this act.

10 (b) Enjoin by temporary or permanent injunction a person who
11 is engaging or is about to engage in a practice in violation of
12 this act.

13 Enacting section 1. 1961 PA 39, MCL 442.211 to 442.226, is
14 repealed.