

HOUSE BILL No. 5296

November 13, 2003, Introduced by Reps. Taub, Julian, Garfield, LaJoy, Voorhees, Vander Veen, Wojno and Tabor 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 state 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) "Department" means the department of consumer and
5 industry services.

6 (b) "Going-out-of-business sale" means a sale of goods
7 advertised, presented, or conducted in a manner that indicates or

1 implies that the business will cease and discontinue at the
2 premises where the sale is conducted. The term includes, but is
3 not limited to, sales commonly known as a "closing-out sale",
4 "liquidation sale", "lost-our-lease sale", or "forced-to-vacate
5 sale".

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

8 (d) "Person" means an individual, partnership, corporation,
9 limited liability company, association, or other legal entity.
10 The term includes 2 or more persons that have a joint or common
11 interest.

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

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

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

1 (2) The licensing requirement of this act does not apply to a
2 sale of goods by a person regularly engaged in insurance or
3 salvage sale of goods or a sale of goods by a sheriff, another
4 public or court officer, or any other person acting under the
5 license, direction, or authority of any court, in the course of
6 his or her official duties.

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

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

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

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

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

23 (e) A full explanation with regard to the condition or
24 necessity that is the occasion for the sale, including a
25 statement of the descriptive name of the sale and the reasons why
26 the name is truthfully descriptive of the type of regulated
27 sale. If the application is for a license to conduct a

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

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

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

17 (ii) List separately any goods that were purchased during the
18 90-day period preceding the date of the license application.

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

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

1 (h) A copy of each advertisement to be published in
2 connection with the sale. Each advertisement must display the
3 license number issued by the department, the name and street
4 address of the applicant, and the applicant's state sales tax
5 number.

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

13 (2) If the department issues a license, it shall issue the
14 license in duplicate. The license shall show a license number
15 and an expiration date.

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

25 (4) Subject to subsection (5), the department shall not issue
26 a license to a person that meets any of the following:

27 (a) The applicant is requesting a license to conduct a

1 regulated sale of goods in the name of another person and the
2 applicant acquired a right or title to those goods in the 6-month
3 period preceding the application.

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

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

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

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

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

22 Sec. 7. (1) The department shall not issue a license to
23 conduct a regulated sale that is valid for a period that exceeds
24 30 days. A licensee may conduct a regulated sale only during the
25 period set forth in the license.

26 (2) A licensee may renew a license not more than twice, and
27 the period of each renewal shall not exceed 30 days. A licensee

1 shall submit an affidavit of the licensee with the application
2 for renewal that states that the goods listed in the filed
3 inventory have not been disposed of and that no new goods have
4 been or will be added to the inventory by purchase, acquisition
5 on consignment, or otherwise. The licensee shall submit the
6 application for renewal of the license within 13 days before the
7 expiration date of the license that contains a revised inventory
8 of goods remaining on hand at the time the application for
9 renewal is made. The licensee shall prepare and furnish the
10 revised inventory in the same manner and form as the original
11 inventory. The department shall not grant a renewal of a license
12 if any goods have been added to the stock listed in the inventory
13 since the date of the issuance of the original license.

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

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

26 (2) Any advertisement or announcement published in
27 connection with a regulated sale shall conspicuously show on its

1 face the number of the license and the date of its expiration,
2 the name and business address of the applicant, and the
3 applicant's state sales tax number.

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

19 Sec. 10. Within 10 days after the last day of a regulated
20 sale, the applicant shall file in duplicate with the department a
21 list of all merchandise sold at the regulated sale and the prices
22 received and a detailed list of all merchandise unsold at the
23 close of the regulated sale. The department shall forward a copy
24 of the lists to the department of treasury.

25 Sec. 11. A license to conduct a regulated sale is valid
26 only for a sale of the goods inventoried and described in the
27 license application and at the time and place described in the

1 license. If any goods described in the application are removed
2 from the place of sale, those goods shall not be sold at another
3 regulated sale or advertised or sold as an insurance, bankruptcy,
4 mortgage, insolvency, assignee's, executor's, administrator's,
5 receiver's, or trustee's stock of goods, a stock of goods being
6 removed or closed out, or a stock of damaged goods.

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

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

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

27 (2) A person that advertises, represents, or holds out a sale

1 of goods as an insurance, bankruptcy, mortgage, insolvency,
2 assignee's, executor's, administrator's, receiver's, trustee's,
3 removal, or going-out-of-business sale, or a sale of goods
4 damaged by fire, water, smoke, or otherwise, without having first
5 complied with this act, is guilty of a misdemeanor punishable by
6 a fine of not more than \$1,000.00.

7 (3) Except as provided in subsections (1) and (2), a person
8 who violates this act is guilty of a misdemeanor punishable by
9 imprisonment for not more than 93 days or a fine of not more than
10 \$5,000.00, or both.

11 (4) Whether or not a person seeks damages under subsection
12 (5) or has an adequate remedy at law, a person may bring an
13 action to do either or both of the following:

14 (a) Obtain a declaratory judgment that a practice is in
15 violation of this act.

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

19 (5) In addition to obtaining equitable relief under
20 subsection (4), a person who suffers loss as a result of a
21 violation of this act may bring an individual or a class action
22 to recover actual damages or \$250.00, whichever is greater, for
23 each day the violation occurs, and reasonable attorney fees.

24 Enacting section 1. 1961 PA 39, MCL 442.211 to 442.226, is
25 repealed.