

## REGULATION OF CERTAIN SALES

### Act 39 of 1961

AN ACT to regulate insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's removal and closing out sales, and sales of goods, wares and merchandise damaged by fire, smoke, water or otherwise; to provide penalties for the violation hereof; and to repeal certain acts and parts of acts.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

*The People of the State of Michigan enact:*

#### **442.211 Conduct of certain sales; definitions.**

Sec. 1. As used in this act:

(a) "Going out of business sale" means any sale, whether described by such name or by any other name such as, but not limited to, "closing out sales", "liquidation sales", "lost our lease sale", "forced to vacate sale", held in such a manner as to indicate a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted.

(b) "Goods" means all goods, wares, merchandise and other personal property, excepting, choses in action and money.

(c) "Person" includes a person, firm, corporation, partnership, association or 2 or more persons having a joint or common interest.

(d) "Removal sale" means any sale held in such a manner as to induce a belief that upon disposal of the stock of goods on hand, the business will cease and discontinue at the premises where the sale is conducted, and thereafter will be moved to and occupy another location.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

#### **442.212 Conduct of certain sales; license required; application of act.**

Sec. 2. No person shall advertise, represent or hold out that any sale of goods is an insurance, bankruptcy, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or sale, going out of business or sale of goods damaged by fire, smoke, water or otherwise, unless he first obtains a license to conduct the sale from the clerk of the city, village or township in which he proposes to conduct a sale. This act shall not apply to any sales by a person regularly engaged in insurance or salvage sale of goods, or the sale of goods which have been damaged by fire, smoke, water or otherwise, who acquired the goods for the account of others as a result of fire or other casualty.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

#### **442.213 Licenses; application, contents.**

Sec. 3. Any applicant for a license under this act shall file an application in writing and under oath with the appropriate clerk setting out the following facts and information regarding such a proposed sale:

(a) The name and address of the applicant for the license, who must be the owner of the goods to be sold, and in addition, if the applicant is a partnership, corporation, firm or association, the name and the position of the individual filing such application.

(b) The name and style in which such sale is to be conducted, and the address where the sale is to be conducted.

(c) The dates and period of time during which the sale is to be conducted.

(d) The name and address of the person who will be in charge and responsible for the conduct of the sale.

(e) A full explanation with regard to the condition or necessity which is the occasion for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. If the application is for a license to conduct a going out of business sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the application is for a license to conduct a removal sale, it shall also contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the application is for a license to conduct a sale of goods damaged by fire, smoke, water or otherwise, it shall also contain a statement as to the time, location and cause of the damage.

(f) A full, detailed and complete inventory of the goods that are to be sold, which inventory shall:

(1) Itemize the goods to be sold and contain sufficient information concerning each item, including make and brand name, if any, to clearly identify it.

(2) List separately any goods which were purchased during a 60-day period immediately prior to the date of making application for the license.

(3) Show the cost price of each item in the inventory together with the name and address of the seller of the items to the applicant, the date of the purchase, the date of the delivery of each item to the applicant and the total value of the inventory at cost.

(4) In no case exceed 200% of the total value of merchandise upon which personal property tax was paid by the applicant or his predecessor as evidenced by a copy of the last personal property tax receipt issued.

(g) A statement that no goods will be added to the inventory after the application is made or during the sale and that the inventory contains no goods received on consignment.

**History:** 1961, Act 39, Eff. Sept. 8, 1961;—Am. 1963, Act 219, Eff. Sept. 6, 1963.

#### **442.214 Licenses; issuance, restrictions.**

Sec. 4. (1) The clerk, upon receipt of an application giving fully and completely the information under oath as required by section 3 and upon receipt of the fee provided for in section 6, may issue a license to the applicant, authorizing the applicant to advertise, represent, and sell the particular goods so inventoried at the time and place stated in the application and in true accordance with the provisions of this act. The license shall be issued in duplicate and shall bear a number and date of its expiration. A license issued under this act shall be granted and valid only for the sale of the inventoried goods which are the property of the licensee. The license shall apply only to the premises specified in the application, and it may not be transferred or assigned. If a licensee under this act is engaged in business in other locations, advertising or offering of goods on behalf of such location shall not represent or imply any participation in or cooperation with the sale on the premises specified in the license, nor shall any advertising or other offering or goods on behalf of the premises where the licensed sale is being conducted represent or imply any participation in or cooperation with such sale at other locations. No license under this act shall be issued to any person:

(a) To conduct a sale in the trade name or style of a person in whose goods the applicant for the license has acquired a right or title thereto within 6 months prior to the time of making application for such a license.

(b) To continue a sale in the name of a licensee under this act in whose goods such person acquired a right or title while such a sale is in progress.

(c) To conduct a sale, other than an insurance sale, a salvage sale or a sale of damaged goods, on the same premises within 1 year from the conclusion of a prior sale of the nature covered by this act.

(2) Subdivisions (a), (b) and (c) shall not apply to any person who has acquired a right, title or interest in goods as an heir, devisee or legatee or pursuant to an order or process of a court of competent jurisdiction.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

#### **442.215 Conduct of certain sales; conditions.**

Sec. 5. No person shall advertise or otherwise to represent, for sale, or sell, any goods as a bankruptcy, executor's, administrator's, receiver's, or trustee's sales, except pursuant to, and in compliance with, federal or state statutory authority or judicial process, or as an assignee's or insolvent sale except where there is a bona fide assignment for the benefit of creditors.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

#### **442.216 Licenses; terms, renewal, fee.**

Sec. 6. (1) A license to conduct a sale issued under this act shall not be issued or valid for a period of more than 30 days from the start of the sale, and the sale may be conducted only during the period set forth in the license.

(2) A license to conduct a sale issued under this act may be renewed not more than twice, for a period not to exceed 30 days for each renewal. A person requesting a renewal under this subsection must provide an affidavit of the licensee that the goods listed in the inventory have not been disposed of and that no new goods have been or will be added to the inventory previously filed pursuant to this act, by purchase, acquisition on consignment, or otherwise. The application for renewal of the license shall be made not more than 13 days before the time of the expiration of the license and shall contain a new inventory of goods remaining on hand at the time the application for renewal is made, prepared and furnished in the same manner and form as the original inventory. A renewal shall not be granted if any goods have been added to the stock listed in the inventory since the date of the issuance of the license.

(3) A fee of \$50.00 shall accompany an application for the license and for the renewal of a license, unless the clerk of the city, village, or township receiving the application waives that fee.

**History:** 1961, Act 39, Eff. Sept. 8, 1961;—Am. 1963, Act 219, Eff. Sept. 6, 1963;—Am. 2007, Act 65, Imd. Eff. Sept. 28, 2007.

**442.217 Licenses; application, inventory, posting; advertisement, announcement; contents.**

Sec. 7. A copy of the application for a license to conduct a sale under this act, including the inventory filed herewith, shall be posted in a conspicuous place in the sales room or place where the inventoried goods are to be sold, so that the public may be informed of the facts relating to the goods before purchasing same, but the copy need not show the purchase price of the goods. The duplicate copy of a license shall be attached to the front door of the premises where the sale is conducted in such a manner that it be clearly visible from the street. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of license and the date of its expiration.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.218 Licenses; application, clerk's records.**

Sec. 8. Every city, village or township clerk to whom application is made, shall indorse upon the application the date of its filing, shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in the application in a book kept for that purpose, properly indexed, containing the name of the person asking such license, the nature of the proposed sale, the place where the sale is to be conducted, its duration, the inventory of the goods to be sold and a general statement as to where the same came from and shall make in the book a notation as to the issuance or refusal of the license applied for together with the date of the same. The clerk shall indorse on the application the date the license is granted or refused, and the application and abstract shall be prima facie evidence of all statements therein contained.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.219 Licenses; false statement, penalty.**

Sec. 9. Any person making a false statement in the application provided for in this act is guilty of perjury and shall be imprisoned in the state prison for not more than 5 years.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.220 Licenses; scope; goods, removal; effect.**

Sec. 10. The license as provided for in section 2 of this act shall be valid only for a sale of the goods inventoried and described in the application for such license, in the manner and at the time and place set forth in the application. Any removal of the goods so inventoried and described in the application from the place of sale mentioned in the application shall cause the goods to lose their identity as an insurance, bankrupt, mortgaged, insolvent's, assignee's, executor's, administrator's, receiver's or trustee's stock of goods or a stock of goods being removed or closed out, or a stock of goods damaged by fire, smoke or water, or otherwise, and no license shall be issued for the conducting of a sale of any of such goods removed from the place described in the application, under the provisions of this act, at any other place or places.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.221 Conduct of sales; purchase of goods prior to sale prohibited; evidence.**

Sec. 11. No person in contemplation of conducting an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, smoke, water or otherwise, under a license as provided in this act shall order any goods for the purpose of selling and disposing of the same at such sale. Any unusual purchase and additions to the stock of goods within 60 days prior to the filing of the application for license to conduct the sale shall be presumptive evidence that the purchases and additions to stock were made in contemplation of the sale and for the purpose of selling the same at the sale.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.222 Conduct of sales; addition of goods during sale, false description or inventory prohibited.**

Sec. 12. No person carrying on or conducting an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or sale of goods damaged by fire, smoke, water or otherwise, under a license as provided in this act shall add, during the continuance of the sale, any goods to the stock of goods described and inventoried in his original application for the license. No goods shall be sold at or during the sale, excepting the goods described and inventoried in the original application. Every addition of goods to the stock of goods described and inventoried in the application and each sale of goods not inventoried and described in the application, shall constitute a separate offense under this act, and shall void any license issued to conduct a sale under this act.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.223 Advertisement before compliance with act, penalty.**

Sec. 13. Any person who advertises, represents or holds out any sale of goods to be an insurance, bankrupt, mortgage, insolvent, assignee's, executor's, administrators, receiver's, trustee's, removal or going out of business sale, or a sale of goods damaged by fire, water, smoke or otherwise, without having first complied with the provisions of this act, is guilty of a misdemeanor and shall be fined in a sum not less than \$100.00 nor more than \$500.00 or shall be imprisoned in the county jail for not less than 10 days and not more than 6 months, or both.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.224 Violation of act; misdemeanor, penalty.**

Sec. 14. Any person who holds, conducts, or carries on any sale of goods as an insurance, bankrupt, mortgage, insolvent's, assignee's, executor's, administrator's, receiver's, trustee's, removal or going out of business sale, or sale of goods damaged by fire, smoke, water, or otherwise, contrary to the provisions of this act, or who violates any of the provisions of this act is guilty of a misdemeanor, and shall be fined in a sum of not less than \$100.00 nor more than \$500.00 or shall be imprisoned in the county jail for not less than 10 days and not more than 6 months, or both.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.225 Persons exempt from act.**

Sec. 15. The provisions of this act shall not apply to sheriffs, constables, or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, state or federal, selling goods, wares or merchandise in the course of their official duties.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.

**442.226 Repeal.**

Sec. 16. Act No. 319 of the Public Acts of 1917, as amended, being sections 442.201 to 442.209 of the Compiled Laws of 1948, is hereby repealed.

**History:** 1961, Act 39, Eff. Sept. 8, 1961.