

LICENSING AND REGULATING “FIRE SALES” ACT OF 1963, P.L. 410, No. 217

AN ACT: Regulating and licensing all sales at retail when such sales are advertised as “**CLOSING OUT SALE**”, “**FIRE, SMOKE** or **WATER DAMAGE SALE**”, or “**DEFUNCT BUSINESS SALE**”, with exceptions; requiring filing of inventory and bond; and providing for appeals and penalties.

The General Assembly of the commonwealth of Pennsylvania hereby enacts as follows:

SECTION 1. FACTUAL BACKGROUND – That sales to be licensed and regulated pursuant to the provisions of this act have often been conducted and advertised in such a manner as to mislead and defraud the public and otherwise to result in harm to the public interest.

That such fraud and imposition on the public has included, by way of partial enumeration only: the misrepresentation of the condition or necessity which is the occasion of such sale; the misrepresentation of the identity of the person conducting such sale and/or the name and style in which such sale is to be conducted; the misrepresentation that the goods offered at such sale are selling at sacrifice prices; the misrepresentation that the operator of the sale is selling merchandise on hand at the time when the necessity, which is the occasion of such sale, arose, when in fact he is replenishing his stock with additional merchandise both prior to the commencement and during the conduct of such sale so as to keep foisting upon the public such added merchandise as though it were part of the original stock; and the excessive valuation and misrepresentation of the quality, former price and ownership of the goods to be sold at such sale; in order to prevent such fraud and imposition, the public interest requires the regulation of such sales and the duration and conduct thereof; that the public interest therefor requires that no such sale should be conducted without a license or otherwise than in accordance with this act.

SECTION 2. UNLAWFUL ADVERTISEMENT – It shall be unlawful for any person in municipalities or townships of this Commonwealth to advertise or hold out by any means that the sale of any goods, wares or merchandise is a “**CLOSING OUT SALE**” or a “**DEFUNCT BUSINESS SALE**” unless a license is first obtained to conduct such a sale from the Treasurer of the City or the Secretary of the Borough or the Secretary of the Board of Commissioners or Board of Supervisors of the Township in which such sale is to be held.

SECTION 3. DEFINITIONS – For the purpose of this act, the following terms, phrases, words and their derivations shall have the meaning given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number, and words in the singular number include the plural number, the word “shall” is always mandatory and not merely directory;

1. The term “**CLOSING OUT SALE**” shall include, but not be limited to, all sales advertised, represented, or held forth under the designation of “**QUITTING BUSINESS**”, “**GOING OUT OF BUSINESS**”, “**DISCONTINUANCE OF BUSINESS**”, “**SELLING OUT**”, “**LIQUIDATION**”, “**LOST OUR LEASE**”, “**MUST VACATE**”, “**FORCED OUT**”, “**REMOVAL**”, “**BRANCH STORE DISCONTINUANCE SALE**”, “**BUILDING COMING DOWN**”, “**END**”, “**LAST DAYS**”, “**LEASE EXPIRES**”, “**WE GIVE UP SALE**”, “**WE QUIT SALE**”, “**WAREHOUSE CLOSING SALE**”, “**WAREHOUSE REMOVAL SALE**”, “**REORGANIZATION SALE**” and any other advertising or designation by any other expression or characterization similar to any of the foregoing and giving notice to the public that the sale will precede the abandonment of a business location.
2. The term “**SALE OF GOODS DAMAGED BY FIRE, SMOKE OR WATER**” shall include, but not be limited to, all sales advertised, represented or held forth under the designation of “**FIRE SALE**”, “**SMOKE DAMAGE SALE**”, “**WATER DAMAGE SALE**”, “**FLOOD DAMAGE SALE**”, “**INSURANCE SALE**” and any other advertising or designation by any other expression or characterization similar to any of the foregoing and giving notice to the public that the goods, wares or merchandise offered for sale have been damaged.

3. The term "**DEFUNCT BUSINESS SALE**" shall include, but not be limited to, all sales advertised, represented or held forth under the Designation of "**ADJUSTER'S SALE**", "**ADMINISTRATOR'S SALE**", "**ASSIGNEE'S SALE**", "**BANKRUPT SALE**", "**BANKRUPT STOCK SALE**", "**BENEFIT OF ADMINISTRATOR'S SALE**", "**BENEFIT OF CREDITOR'S SALE**", "**BENEFIT OF TRUSTEE'S SALE**", "**CREDITOR'S COMMITTEE SALE**", "**CREDITOR'S SALE**", "**EXECUTOR'S SALE**", "**INSOLVENT SALE**", "**MORTGAGE SALE**", "**RECEIVER'S SALE**", "**TRUSTEE'S SALE**" and any other advertising or designation by any other expression or characterization similar to any of the foregoing, and conveying the same meaning or giving notice to the public of a sale resulting from death, business failure or other adversity.
4. "**UNUSUAL PURCHASE OR ADDITION**" shall mean any purchase of goods, wares or merchandise during the ninety days preceding the application for a license, the total value of which is at least 25% greater than purchases made by the applicant for a like 90 period during any one of the 3 years next immediately preceding the year in which the application is made or his peak purchases for any 90 day period if he has been in business for less than 3 years.
5. "**PERSON**" shall mean any individual, partnership, association, firm or corporation.

SECTION 4. APPLICATION REQUIREMENTS – (a) Any person desiring to conduct a sale regulated by this act shall make a written application under oath to the Treasurer of the City, or to the Secretary of the Borough or the Secretary of the Board of Commissioners of the Township or Board of Supervisors in which the sale is to be held. **APPLICATION AT END OF THIS DOCUMENT**

- (b) If the application is for a "**CLOSING OUT SALE**" or a "**DEFUNCT BUSINESS SALE**", it shall be filed at least 15 days prior to the date on which such sale is to commence.
- (c) If the application is for a "**SALE OF GOODS DAMAGED BY FIRE, SMOKE OR WATER**", it may be made at any time prior to the date on which such sale is to commence.
- (d) All applications for a licensed sale regulated by this act shall set forth and contain the following information:
 1. The name and address of the applicant who must be the true owner of the goods, wares or merchandise to be sold, and if the applicant be a partnership, the names and addresses of all partners or if the applicant be a corporation or association, the date and place of incorporation or organization, the address of the principal office within the Commonwealth and the names and addresses of all the officers of the applicant.
 2. The name and address of the person or persons who will be in charge and responsible for the conduct of such sale.
 3. The exact address of the place at which the proposed sale is to be conducted and the length of time the applicant has been engaged in business at such location.
 4. The date on which it is proposed to begin the sale.
 5. The nature of the occupancy where such sale is to be held, whether by lease or otherwise and the effective date of termination of such occupancy.
 6. The reason for the urgent and expeditious disposal of the goods, wares or merchandise to be offered at such sale.
 7. A statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale.
 8. A statement that the business is to be terminated permanently or reopened at another location; the location of the premises at which the business is to be moved if the applicant intends to resume the operation of the business upon the termination of the sale; and the name or designation under which such business is to be resumed.
 9. A full, complete, detailed, and itemized inventory of the goods, wares and merchandise to be offered at such sale as disclosed by applicant's records, which inventory shall:
 - (i) Itemize the goods to be offered for sale and contain sufficient information concerning each item, including quantity, make, brand name, model and manufacturer's number, if any, to clearly identify it;

- (ii) List separately any goods to be offered for sale which were purchased and received during a 90 day period immediately prior to the date of making application for the license;
 - (iii) The total retail value of the inventory of goods, wares and merchandise to be offered at such sale based on the inventory used for applicant's most recent Federal Income Tax return adjusted for sales and purchases;
 - (iv) If the application is for a license to conduct a "**SALE OF GOODS DAMAGED BY FIRE, SMOKE OR WATER**" and the applicant was not the owner at the time when the goods, wares and merchandise to be offered at the contemplated sale were damaged, he shall attach to the said application certified copies of the bill of sale and all other documents connected with such transfer obtained by him from the previous owner of such goods, wares and merchandise;
 - (v) If the application is for a license to conduct a "**DEFUNCT BUSINESS SALE**" and the applicant was not the owner of the goods, wares and merchandise to be offered at the contemplated sale at the time of occurrence of the circumstances warranting the termination of such business, he shall attach to the application certified copies of the bill of sale and the official appraisal made by the trustee, receiver, assignee for benefit of creditor, referee in bankruptcy or the personal representative of a decedent.
10. A statement that no goods will be added to the inventory after the application is made.
11. A statement that all goods included in such inventory have been purchased by the applicant for resale on bona fide orders without cancellation privileges and that said inventory comprises no goods purchased on consignment.
12. A statement that no merchandise listed in the inventory has been the subject of a licensed sale conducted within 1 year prior to the date of the application, unless such merchandise was damaged by fire, smoke, or water while in the possession of the applicant.

SECTION 5. EXEMPTIONS – (a) the provisions of this act shall not apply to nor affect the following persons:

- 1. Persons acting pursuant to an order or process of a court of competent jurisdiction;
 - 2. Persons who are required to file an accounting with a court of competent jurisdiction;
 - 3. Persons acting in accordance with their powers and duties as public officers such as sheriffs, constables and marshals;
 - 4. Any publisher or employee of a newspaper, magazine or any operator or employee of a radio or television broadcasting station, who publishes or broadcasts any such advertisement in good faith without knowledge of its false, deceptive and misleading character or without knowledge that the provisions of this act are not being complied with.
- (b) Nor shall the provisions of this act apply to any sale advertised as an "**ALTERATION SALE**", "**REMODELING SALE**", "**CLEARANCE SALE**", "**SURPLUS STOCK LIQUIDATION SALE**" or "**SPECIAL PURCHASE SALE**".

SECTION 6. BOND REQUIRED – No license shall be issued unless there is filed with the Treasurer of the City, or the Secretary of the Borough, or the Secretary of the Board of Commissioners of the Township where such is to be held, a bond payable to the Commonwealth of Pennsylvania conditioned upon the faithful observance of all the provisions of this act and the indemnifying of any purchaser at such sale who suffers any loss by reason of misrepresentation made in connection with such sale, and for the payment to any municipality or the Commonwealth of all taxes due and owing or which may become due and authorizing actions thereunder by the City, Borough or Township and by any purchaser at such sale for damage or loss suffered by him by reason of any misrepresentation made in connection with such sale: provided, however, that the aggregate liability of the surety for all breaches of the conditions of the bond shall in no event exceed the amount of said bond. The amount of said bond shall be determined as follows: 5% of the first \$100,000 of the retail value of all the goods, wares and merchandise to be offered at such sale; 2% of the next \$400,000; and 1% of the balance. Said bond shall be approved as to form and sufficiency by the City, Borough or Township solicitor and by the City Treasurer, Borough Council or Township Board of Commissioners or Board of Supervisors.

SECTION 7. BRANCH STORES AND WAREHOUSES – If the applicant for a license hereunder owns, conducts or operates more than one store or a warehouse in connection with such store or stores, the license issued will apply only to the one store or warehouse for which it was issued, and no other store, branch or warehouse may advertise or represent in any way that it is cooperating with or participating in any way in the licensed sale nor shall the licensed store or any person advertise or represent that any other store or warehouse is cooperating with or participating in the licensed sale. The licensed sale conducted by any store of a chain or group of stores shall be conducted solely at the location of the store for which the license was obtained and no goods, wares or merchandise shall be brought from any other store and placed on sale at the store licensed to conduct a sale hereunder.

SECTION 8. SUBSTITUTION, ADDITION AND COMMINGLING OF GOODS; LICENSE VOID; CERTAIN PURCHASES PROHIBITED – (a) Any substitution for or addition to goods described in an inventory filed pursuant to this act, or any change in the time or place for a sale conducted pursuant to this act, shall be unlawful and shall void any license issued to conduct a sale pursuant to this act, and such license shall be revoked.

- (b) In the case of a sale licensed under this act conducted by the applicant in addition to conducting a business of selling other goods, wares or merchandise not included in the inventory accompanying the application, the goods to be sold at such sale shall be clearly and distinctly segregated, marked or identified and advertised if at all, so that both on display and in advertising such goods may be readily distinguished from other stocks and their identity readily ascertained. Any commingling of such goods with other stocks of the licensee in such a manner as to cause the goods to lose their separate identity, either on display or in advertising, shall be unlawful and shall void any license issued to conduct such a sale pursuant to this act and such license shall be revoked.

SECTION 9. INVESTIGATION OF APPLICATION; GROUNDS FOR DENIAL; REVOCATION OF LICENSE – (a) Upon receipt of the application, the Treasurer of the City or the Secretary of the Borough or the Secretary of the Board of Commissioners or Board of Supervisors of the Township in which such sale is to be held may, in his discretion, make or cause to be made an examination or order an investigation of the applicant and all the facts contained in the application and inventory in relation to the proposed sale. A license shall be denied or refused if any one or more of the following facts or circumstances are found by him to exist:

1. That the applicant has not been the owner of the business advertised or described in the application for a license hereunder for a period of at least 3 months prior to the date of the application or if the applicant be a partnership, corporation or association, controlling interest in the corporation or association was transferred within 6 months prior to the date of the application for a license hereunder, except –
 - (i) Where the application is for a license for a **"SALE OF GOODS DAMAGED BY FIRE, SMOKE OR WATER"** or a **"DEFUNCT BUSINESS SALE"** and the inventory listed in the application contains only those goods, wares or merchandise which were on the premises at the time of the occurrence of the circumstances warranting the granting of a license hereunder;
 - (ii) Upon the death of a person doing business in this Commonwealth, his or her heirs, distributees, devisees, legatees or their successors and assignees, shall have the right to apply at anytime for a license hereunder;
 - (iii) Where a business is required or compelled to be discontinued because the premises whereupon it is being conducted has been condemned, taken for purposes of urban renewal or development or because the premises must be vacated because of legal or judicial proceedings.
2. That in the case of a **"CLOSING OUT SALE"** the applicant, either as owner, partner, member of an association or principal stockholder of a corporation, was granted a prior license hereunder within 1 year preceding the date of the filing of the application.

3. That the inventory contains goods, wares or merchandise not purchased by the applicant for resale on bona fide orders without cancellation privileges.
4. That the inventory contains goods, wares or merchandise purchased by the applicant on consignment, except if the consigned goods, wares or merchandise have been damaged while in the consignee’s possession.
5. That the applicant, except in the case of an application for a license to conduct a “**SALE OF GOODS DAMAGED BY FIRE, SMOKE OR WATER**” or a “**DEFUNCT BUSINESS SALE**” either as owner, partner, officer of an association or principal stockholder of a corporation, was granted a prior license hereunder within 1 year preceding the date of the filing of the application at the particular location for which the license is sought or within 1 year prior to the date of filing of the application, has conducted a sale in connection with which he advertised or represented that the entire business conducted at the particular location for which the license is sought was to be closed out or terminated.
6. That the applicant has within 1 year prior to the filing of the application been convicted of a violation of this act.
7. That the goods, wares or merchandise as described in the inventory, where transferred or assigned to the applicant prior to the date of the filing of the application and that said transfer or assignment was not made for a valuable and adequate consideration.
8. That the inventory contains goods, wares or merchandise purchased by the applicant or added to his stock in contemplation of such sale and for the purpose of selling the same at such sale. For this purpose any unusual purchase or addition to the stock of such goods, wares and merchandise made within 90 days prior to the date of the filing of such application shall be presumptive evidence that such purchase or additions were made in contemplation of such sale and for the purpose of selling the same at such sale.
9. That any representation made in the application is false.

(b) **REVOCATION** – Upon written and signed complaint being filed with the Treasurer of the City or the Secretary of the Borough or the Secretary of the Board of Commissioners or Board of Supervisors of the township where such sale is to be held, by a resident of the municipality or township or a resident of any adjoining municipality or township; or upon the initiative of such treasurer or secretary after making an investigation, the treasurer or secretary shall revoke any license granted under the provisions of this act if he shall determine:

1. That any sale by the applicant is conducted in violation of any provision of this act.
2. That the applicant has made any material misstatement in his application for said license.
3. That the applicant has failed to include in the inventory, required by the provisions of this act, the goods, wares or merchandise required to be contained in such inventory.
4. That the applicant has added or permitted to be added to said sale or offered or permitted to be offered at said sale, any goods, wares or merchandise not described in the original application and inventory.
5. That the applicant made or permitted to be made any false, misleading or deceptive statements in advertising said sale, whether written or oral or in displaying, ticketing or pricing goods, wares or merchandise offered for sale.

SECTION 10. APPEAL FROM DENIAL OR REVOCATION OF LICENSE – Any applicant for a license, who is aggrieved by the denial, refusal or revocation of a license, may appeal within 5 days from the date of denial, refusal or revocation of the Court of Common Pleas of the county in which the license is sought. The appeal shall be upon petition of the applicant for an injunction prohibiting the denial, refusal or revocation of a license. A copy of such appeal shall be served upon the Treasurer of any City or the Secretary of any borough or the Secretary of the Board of Commissioners of the Township who has refused, denied or revoked the license. The court shall hear the application for an injunction expeditiously at a time as it shall fix of which notice shall be given to the Treasurer of the City or the Secretary of the Borough or the Secretary of the Board of Commissioners of the Township from whose refusal, denial or

revocation of a license the appeal has been taken. The court shall either sustain the denial, revocation or refusal of the license or order the issuance of the license to the applicant.

SECTION 11. COPY OF APPLICATION, INVENTORY AND LICENSE TO BE POSTED; LICENSE TO BE REFERRED TO IN ADVERTISEMENTS – A copy of the application for a license to conduct a sale under this act, including the inventory filed therewith, 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. Any advertisement or announcement published in connection with the sale shall conspicuously show on its face the number of the license, the date of its expiration and if applicable, the location where the business is to be resumed.

SECTION 12. DURATION OF SALE; LICENSE FEE – A license to conduct a sale issued pursuant to this act shall be good for no more than a period of 30 consecutive calendar days and may be renewed for 1 consecutive period not exceeding 30 consecutive calendar days upon the affidavit of the applicant 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 shall be made not more than 10 days prior to the time of the expiration of the license and shall contain a new inventory of the goods remaining on hand at the time the application for renewal is made, which new inventory shall be prepared and furnished in the same manner and form as the original inventory. The Treasurer of the City or the Secretary of the Borough or the Secretary of the Board of Commissioners or Board of Supervisors of the Township where such sale is to be conducted shall receive from the applicant for such license, upon the granting thereof, a fee of \$50.00 and upon the renewal thereof, a fee of \$100.00. The applicant shall not be entitled to a refund of the fee paid if said application is refused, denied or revoked.

SECTION 13. OPENING OF A SIMILAR BUSINESS – Opening of a business similar to the one for which the sale, licensed pursuant to this act, was conducted, except the licensed "**SALE OF GOODS DAMAGED BY FIRE, SMOKE OR WATER**", by the person, partnership, association, corporation or partner of a partnership, officer of an association or principal stockholder of a corporation, who or which conducted the sale upon the same premises within 1 year of the termination of the sale, shall constitute a violation of this act. Every day in which business is conducted within the prohibited period of 1 year shall constitute a separate violation of this act.

SECTION 14. RECORDS – (a) Suitable books and records concerning said sale shall be kept by the licensee for the duration of the licensed sale and 1 year thereafter and shall be open for inspection by the Treasurer or the Secretary of their duly authorized representative.

(b) Upon the termination of a sale licensed hereunder, the applicant shall, within 30 days of such termination, file a statement with the Treasurer of the City or the Secretary of the Borough or the Secretary of the Board of Commissioners or Board of Supervisors of the Township in which the sale was held stating:

1. The total retail value of the goods, wares or merchandise not disposed of during the sale; and
2. The ultimate disposition thereof and if transferred to another, the name and address of the transferee.

SECTION 15. COMMON PLEAS COURT JURISDICTION – Upon complaint of any person, the Common Pleas Court of the county wherein a violation of this act occurred shall have jurisdiction in equity to restrain and enjoin any act forbidden or declared illegal by any provision of this act.

SECTION 16. PENALTIES – Any person, violating any provision of this act shall, upon conviction thereof in a summary proceeding, be sentenced to pay a fine of not more than \$100.00 or to imprisonment for a term of not exceeding 30 days. Each day any sale is conducted in violation of this section shall be a separate violation of this act. The right to appeal from such conviction shall exist as in other cases of summary proceedings.

SECTION 17. SEVERABILITY – The provisions of this act are severable and, if any provision or part hereof shall be held invalid or unconstitutional or inapplicable to any person or circumstances, such invalidity, unconstitutionality or inapplicability shall not affect or impair the remaining provisions of this act. It is hereby declared to be the legislative intent that this act would have been adopted if such invalid, unconstitutional or inapplicable provision had not been included therein.

SECTION 18. REPEALS – The act of July 2, 1937 (P.L. 2821), entitled, as amended, "An act to regulate the sale and advertising for sale of goods, wares and merchandise purporting to be an insurance, bankruptcy, mortgage, insolvent, assignees, receivers, trustees, removal or closing out sale or sale of goods damaged by fire, smoke or water, in municipalities and townships and to prevent fraudulent practices in connection therewith and providing penalties for violation thereof and for the imposition of license fees for permission to conduct the same", and all other acts and parts of acts inconsistent herewith are hereby repealed.

SECTION 19. EFFECTIVE DATE – This act shall take effect in 60 days.

Any questions can be directed to **814-231-3021**

Mail application to:

COLLEGE TOWNSHIP MUNICIPAL OFFICE
ZONING DEPARTMENT
1481 EAST COLLEGE AVENUE
STATE COLLEGE PA 16801