

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2966 Session of
1994

INTRODUCED BY GORDNER, YANDRISEVITS, DeLUCA, LAUB, BELFANTI,
VEON, SURRA, COLAIZZO, MUNDY AND DeWEESE, JUNE 22, 1994

REFERRED TO COMMITTEE ON BUSINESS AND ECONOMIC DEVELOPMENT,
JUNE 22, 1994

AN ACT

1 Amending the act of July 31, 1963 (P.L.410, No.217), entitled
2 "An act regulating and licensing all sales at retail when
3 such sales are advertised as 'Closing Out Sale,' 'Fire, Smoke
4 or Water Damage Sale,' or 'Defunct Business Sale,' with
5 exceptions; requiring filing of inventory and bond; and
6 providing for appeals and penalties," providing for issuance
7 of county licenses.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Sections 2, 4(a), 6, 9, 10 and 12 of the act of
11 July 31, 1963 (P.L.410, No.217), entitled "An act regulating and
12 licensing all sales at retail when such sales are advertised as
13 'Closing Out Sale,' 'Fire, Smoke or Water Damage Sale,' or
14 'Defunct Business Sale,' with exceptions; requiring filing of
15 inventory and bond; and providing for appeals and penalties,"
16 are amended to read:

17 Section 2. Unlawful Advertisement.--It shall be unlawful for
18 any person in municipalities or townships of this Commonwealth
19 to advertise or hold out by any means that the sale of any
20 goods, wares or merchandise is a "closing-out sale," "a sale of

1 goods damaged by fire, smoke or water," or a "defunct business
2 sale," unless a license is first obtained to conduct such a sale
3 from the treasurer of the city, or the secretary of the borough,
4 or the secretary of the board of commissioners or board of
5 supervisors of the township in which such sale is to be held, or
6 from the treasurer of the county in which the sale is to be held
7 when no such license is available from the township or
8 municipality.

9 Section 4. Application Requirements.--(a) Any person
10 desiring to conduct a sale regulated by this act shall make a
11 written application under oath to the treasurer of the city, or
12 to the secretary of the borough, or the secretary of the board
13 of commissioners [of the township] or board of supervisors of
14 the township in which the sale is to be held, or to the
15 treasurer of the county in which the sale is to be held when no
16 such application is available from the township or municipality.

17 * * *

18 Section 6. Bond Required.--No license shall be issued unless
19 there is filed with the treasurer of the city, or the secretary
20 of the borough, or the secretary of the board of commissioners
21 of the township where such is to be held, or with the treasurer
22 of the county in which the sale is to be held where no such
23 license is available from the township or municipality, a bond
24 payable to the Commonwealth of Pennsylvania conditioned upon the
25 faithful observance of all the provisions of this act, and the
26 indemnifying of any purchaser at such sale who suffers any loss
27 by reason of misrepresentation made in connection with such
28 sale, and for the payment to any municipality or the
29 Commonwealth of all taxes due and owing or which may become due,
30 and authorizing actions thereunder by the city, borough, [or]

1 township, or county and by any purchaser at such sale for damage
2 or loss suffered by him by reason of any misrepresentation made
3 in connection with such sale: Provided, however, That the
4 aggregate liability of the surety for all breaches of the
5 conditions of the bond shall in no event exceed the amount of
6 said bond. The amount of said bond shall be determined as
7 follows: five percent of the first one hundred thousand dollars
8 (\$100,000) of the retail value of all the goods, wares and
9 merchandise to be offered at such sale; two percent of the next
10 four hundred thousand dollars (\$400,000); and one percent of the
11 balance. Said bond shall be approved as to form and sufficiency
12 by the city, borough, [or] township, or county solicitor and by
13 the city treasurer, borough council, or township board of
14 commissioners or board of supervisors, or by the county
15 treasurer.

16 Section 9. Investigation of Application; Grounds for Denial;
17 Revocation of License.--(a) Upon receipt of the application, the
18 treasurer of the city, or the secretary of the borough, or the
19 secretary of the board of commissioners or board of supervisors
20 of the township [in which such sale is to be held may], or the
21 treasurer of the county in which the sale is to be held may, in
22 his discretion, make or cause to be made an examination, or
23 order an investigation of the applicant, and all the facts
24 contained in the application and inventory in relation to the
25 proposed sale. A license shall be denied or refused if any one
26 or more of the following facts or circumstances are found by him
27 to exist:

28 (1) That the applicant has not been the owner of the
29 business advertised or described in the application for a
30 license hereunder for a period of at least three months prior to

1 the date of the application, or if the applicant be a
2 partnership, corporation or association, controlling interest in
3 the corporation or association was transferred within six months
4 prior to the date of the application for a license hereunder,
5 except--

6 (i) Where the application is for a license for a "sale of
7 goods damaged by fire, smoke, or water," or a "defunct business
8 sale," and the inventory listed in the application contains only
9 those goods, wares or merchandise which were on the premises at
10 the time of the occurrence of the circumstances warranting the
11 granting of a license hereunder;

12 (ii) Upon the death of a person doing business in this
13 Commonwealth, his or her heirs, distributees, devisees,
14 legatees, or their successors and assignees, shall have the
15 right to apply at anytime for a license hereunder;

16 (iii) Where a business is required or compelled to be
17 discontinued because the premises whereupon it is being
18 conducted has been condemned, taken for purposes of urban
19 renewal or development or because the premises must be vacated
20 because of legal or judicial proceedings.

21 (2) That in the case of a "closing out sale," the applicant,
22 either as owner, partner, member of an association, or principal
23 stockholder of a corporation, was granted a prior license
24 hereunder within one year preceding the date of the filing of
25 the application.

26 (3) That the inventory contains goods, wares or merchandise
27 not purchased by the applicant for resale on bona fide orders
28 without cancellation privileges.

29 (4) That the inventory contains goods, wares or merchandise
30 purchased by the applicant on consignment, except if the

1 consigned goods, wares or merchandise have been damaged while in
2 the consignee's possession.

3 (5) That the applicant, except in the case of an application
4 for a license to conduct a "sale of goods damaged by fire,
5 smoke, or water," or a "defunct business sale," either as owner,
6 partner, officer of an association, or principal stockholder of
7 a corporation, was granted a prior license hereunder within one
8 year preceding the date of the filing of the application at the
9 particular location for which the license is sought, or within
10 one year prior to the date of filing of the application, has
11 conducted a sale in connection with which he advertised or
12 represented that the entire business conducted at the particular
13 location for which the license is sought was to be closed out or
14 terminated.

15 (6) That the applicant has within one year prior to the
16 filing of the application been convicted of a violation of this
17 act.

18 (7) That the goods, wares or merchandise as described in the
19 inventory, where transferred or assigned to the applicant prior
20 to the date of the filing of the application and that said
21 transfer or assignment was not made for a valuable and adequate
22 consideration.

23 (8) That the inventory contains goods, wares or merchandise
24 purchased by the applicant or added to his stock in
25 contemplation of such sale and for the purpose of selling the
26 same at such sale. For this purpose any unusual purchase or
27 addition to the stock of such goods, wares and merchandise made
28 within ninety days prior to the date of the filing of such
29 application shall be presumptive evidence that such purchase or
30 additions were made in contemplation of such sale and for the

1 purpose of selling the same at such sale.

2 (9) That any representation made in the application is
3 false.

4 (b) Revocation. Upon written and signed complaint being
5 filed with the treasurer of the city, or the secretary of the
6 borough, or the secretary of the board of commissioners or board
7 of supervisors of the township [where such sale is to be held],
8 or the treasurer of the county where the sale is to be held, by
9 a resident of the municipality or township in which the sale is
10 to be held, or a resident of any adjoining municipality or
11 township, or upon the initiative of such treasurer or secretary
12 of the municipality, township or county after making an
13 investigation, the treasurer or secretary shall revoke any
14 license granted under the provisions of this act if he shall
15 determine:

16 (1) That any sale by the applicant is conducted in violation
17 of any provision of this act.

18 (2) That the applicant has made any material misstatement in
19 his application for said license.

20 (3) That the applicant has failed to include in the
21 inventory, required by the provisions of this act, the goods,
22 wares or merchandise required to be contained in such inventory.

23 (4) That the applicant has added or permitted to be added to
24 said sale or offered or permitted to be offered at said sale,
25 any goods, wares or merchandise not described in the original
26 application and inventory.

27 (5) That the applicant made or permitted to be made any
28 false, misleading or deceptive statements in advertising said
29 sale, whether written or oral, or in displaying, ticketing, or
30 pricing goods, wares or merchandise offered for sale.

1 Section 10. Appeal from Denial or Revocation of License.--

2 Any applicant for a license, who is aggrieved by the denial,
3 refusal or revocation of a license, may appeal within five days
4 from the date of denial, refusal or revocation of the court of
5 common pleas of the county in which the license is sought. The
6 appeal shall be upon petition of the applicant for an injunction
7 prohibiting the denial, refusal or revocation of a license. A
8 copy of such appeal shall be served upon the treasurer of any
9 city, or the secretary of any borough, or the secretary of the
10 board of commissioners of the township, or the treasurer of the
11 county who has refused, denied or revoked the license. The court
12 shall hear the application for an injunction expeditiously at a
13 time as it shall fix of which notice shall be given to the
14 treasurer of the city, or the secretary of the borough or the
15 secretary of the board of commissioners of the township, or the
16 treasurer of the county from whose refusal, denial or revocation
17 of a license the appeal has been taken. The court shall either
18 sustain the denial, revocation or refusal of the license or
19 order the issuance of the license to the applicant.

20 Section 12. Duration of Sale; License Fee.--A license to

21 conduct a sale issued pursuant to this act shall be good for no
22 more than a period of thirty consecutive calendar days and may
23 be renewed for one consecutive period not exceeding thirty
24 consecutive calendar days upon the affidavit of the applicant
25 that the goods listed in the inventory have not been disposed of
26 and that no new goods have been or will be added to the
27 inventory previously filed pursuant to this act by purchase,
28 acquisition, on consignment or otherwise. The application for
29 renewal shall be made not more than ten days prior to the time
30 of the expiration of the license and shall contain a new

1 inventory of the goods remaining on hand at the time the
2 application for renewal is made, which new inventory shall be
3 prepared and furnished in the same manner and form as the
4 original inventory. The treasurer of the city, or the secretary
5 of the borough, or the secretary of the board of commissioners
6 or board of supervisors of the township, or the treasurer of the
7 county where such sale is to be conducted shall receive from the
8 applicant for such license, upon the granting thereof, a fee of
9 fifty dollars (\$50), and upon the renewal thereof, a fee of one
10 hundred dollars (\$100). The applicant shall not be entitled to a
11 refund of the fee paid if said application is refused, denied or
12 revoked.

13 Section 2. The act is amended by adding a section to read:

14 Section 12.1. County License.--Each county shall require
15 that a license be obtained to advertise or conduct sales
16 governed by the provisions of this act. In the event that a
17 municipality or township has not enacted an ordinance regulating
18 sales defined by this act, and no license is available from a
19 township or municipality, a person shall apply for a license to
20 conduct the sale from the county government wherever the
21 municipality or township is located. The county treasurer shall
22 either grant or deny permission to conduct a sale to the
23 applicant in accordance with the provisions of this act.

24 Section 3. Section 14(b) of the act is amended to read:

25 Section 14. Records.--* * *

26 (b) Upon the termination of a sale licensed hereunder, the
27 applicant shall, within thirty days of such termination, file a
28 statement with the treasurer of the city, or the secretary of
29 the borough, or the secretary of the board of commissioners or
30 board of supervisors of the township, or the treasurer of the

1 county in which the sale was held stating:

2 (1) The total retail value of the goods, wares or
3 merchandise not disposed of during the sale; and

4 (2) The ultimate disposition thereof, and if transferred to
5 another, the name and address of the transferee.

6 Section 4. This act shall take effect in 60 days.