

HOUSE BILL No. 5295

November 13, 2003, Introduced by Reps. Taub, Julian, Garfield, LaJoy, DeRoche, Voorhees, Vander Veen, Wojno and Tabor and referred to the Committee on Regulatory Reform.

A bill to amend 1955 PA 224, entitled

"An act to regulate sales at public auction; to provide for the issuing of licenses; and to prescribe penalties for violations of the provisions of this act,"

by amending sections 1, 2, 3, 4, 5, 6, 7, 9, and 10 (MCL 446.51, 446.52, 446.53, 446.54, 446.55, 446.56, 446.57, 446.59, and 446.60) and by adding sections 1a and 5a.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. ~~It shall be unlawful for any person, firm or~~
2 ~~corporation to~~ **A person shall not** sell, dispose of, or offer **any**
3 **merchandise** for sale at public auction ~~at any place outside the~~
4 ~~limits of any city or village in the state of Michigan~~ **within**
5 **the limits of any township in this state**, or within the limits of
6 any **city or village** in ~~the~~ **this** state ~~of Michigan that has not~~
7 ~~by ordinance provided for the licensing of sales by auction, any~~
8 ~~new merchandise~~ **that is not a city or village described in**

1 **section 5(2)**, unless ~~such~~ **the** person, ~~firm or corporation,~~
2 and the owners of ~~such~~ **the** merchandise ~~—~~ if it is not owned
3 by ~~the vendors,~~ shall have first secured **that person, has**
4 **obtained** a license ~~as herein provided~~ **under** and ~~shall have~~
5 complied with ~~the regulations hereinafter set forth~~ **this act.**

6 **Sec. 1a. This act shall be known and may be cited as the**
7 **"public auction licensing act".**

8 **Sec. 2.** ~~Any person, firm or corporation desiring such~~
9 ~~license shall, at~~ **At least 10 days prior to such before a**
10 proposed auction sale, ~~file~~ **a person seeking a license under**
11 **this act shall file an application** with the ~~township~~ clerk of
12 the ~~township wherein it is proposed to hold such~~ **city, village,**
13 **or township where the person proposes to hold the** auction sale.
14 ~~—, an application in writing duly verified by the person, firm or~~
15 ~~corporation proposing to sell, dispose of or offer for sale any~~
16 ~~new merchandise at public auction, which~~ **the** application shall
17 ~~state the following facts~~ **include all of the following**
18 **information:**

19 ~~(1) The name, residence and postoffice address of the~~
20 ~~person, firm or corporation making the application, and if a firm~~
21 ~~or corporation, the name and address of the members of the firm~~
22 ~~or officers of the corporation, as the case may be;~~

23 **(a) The name and street address of the applicant and the**
24 **name and street address of 1 of the following, if applicable:**

25 **(i) If the applicant is a corporation, its officers and**
26 **directors.**

27 **(ii) If the applicant is an association, its officers and**

1 directors.

2 (iii) If the applicant is a partnership, its partners.

3 (iv) If the applicant is a limited liability company, its
4 manager or managers.

5 (v) If the applicant is any other legal entity, its manager
6 or other person designated to control the operation of that legal
7 entity.

8 (b) ~~-(2)-~~ The name ~~, residence and postoffice~~ and street
9 address of the auctioneer who will conduct ~~such~~ the auction
10 sale. ~~;~~

11 (c) ~~-(3)-~~ A detailed inventory and description of all ~~such~~
12 ~~new~~ merchandise to be offered for sale at ~~such~~ the auction and
13 a valuation ~~thereof;~~ of the merchandise.

14 (d) ~~-(4)-~~ A statement ~~as to~~ whether ~~or not the~~ a sale at
15 the public auction ~~shall be~~ is with or without reservation.

16 Sec. 3. (1) At the time of filing ~~said application, and as~~
17 ~~a part thereof~~ an application described in section 2, the
18 applicant shall ~~file and deposit with the township clerk a bond,~~
19 ~~with sureties to be approved by the township board, in the penal~~
20 ~~sum of~~ furnish a surety bond to the city, village, or township
21 clerk issued by a surety approved by the clerk. The amount of
22 the surety bond must equal or exceed 2 times the value of the
23 merchandise proposed to be offered for sale at ~~such~~ the auction
24 as shown by the inventory filed. ~~, running to~~ The surety bond
25 shall run to the people of the state of Michigan and for the use
26 and benefit of any purchaser of any merchandise at ~~such~~ the
27 auction who might have a cause for action of any nature arising

1 from or out of ~~such~~ **the** auction sale against the auctioneer or
2 applicant. ~~;~~ ~~the~~ **The** bond ~~to be further conditioned on~~ **shall**
3 **also cover** the payment by the applicant of all taxes ~~that may be~~
4 ~~payable by, or due from, the applicant to the state of Michigan,~~
5 ~~or any department or subdivision thereof, the payment of any~~ **and**
6 fines that ~~may be assessed by~~ any court **may assess** against the
7 applicant or auctioneer for violation of ~~the provisions of~~ this
8 act. ~~, and the satisfaction of all causes of action commenced~~
9 ~~within 1 year from date of such auction sale and arising~~
10 ~~therefrom:~~ ~~Provided, however, That the~~ **The** aggregate liability
11 of the surety for all ~~said~~ taxes, fines, and causes of action
12 shall ~~in no event~~ **not** exceed the ~~sum of such~~ **amount of the**
13 bond.

14 (2) In ~~such bond~~ **a surety bond provided under**
15 **subsection (1)**, the applicant and the surety shall appoint the
16 **city, village, or** township clerk ~~of the township in which such~~
17 ~~bond is filed,~~ **as** the agent of the applicant and the surety for
18 ~~the~~ service of process. In the event of ~~such~~ service ~~, the~~
19 ~~agent on whom such service is made~~ **under this subsection, the**
20 **city, village, or township clerk who is served** shall, within
21 5 days after the service, mail by ordinary mail a true copy of
22 the process served upon him **or her** to each party ~~for whom he is~~
23 **on whose behalf he or she was** served, addressed to the last known
24 address of ~~such~~ **that** party. Failure to ~~so~~ mail ~~said~~ **the**
25 copy ~~shall not, however,~~ **of a process under this subsection**
26 **does not** affect ~~the~~ a court's jurisdiction.

27 (3) ~~Such bond~~ **A surety bond provided under subsection (1)**

1 shall contain the consent of the applicant and surety that the
 2 circuit court of the county ~~or the justice court of the township~~
 3 ~~wherein~~ **in which** the application and bond is filed ~~shall have~~
 4 **has** jurisdiction of all actions ~~within the jurisdiction of the~~
 5 ~~respective courts~~ against the applicant or surety ~~, or both,~~
 6 arising out of ~~said~~ **the** sale.

7 ~~(4) The~~ **This** state ~~of Michigan, or any~~ a subdivision
 8 ~~thereof~~ **of this state**, or ~~any~~ a person ~~having~~ **that has** a
 9 cause of action against ~~the~~ **an** applicant arising out of the
 10 sale of ~~such new~~ merchandise ~~,~~ may join the applicant and the
 11 surety on ~~such bond~~ **a surety bond provided under subsection (1)**
 12 in the same action. ~~, or may in such action sue either such~~
 13 ~~applicant or the surety alone.~~

14 Sec. 4. At the time of filing ~~said~~ **an** application and
 15 **surety bond under this act**, the applicant shall pay to the **city,**
 16 **village, or** township clerk a license fee ~~in the sum of \$25.00~~
 17 **of \$100.00** for each day ~~it is supposed to hold such~~ **the**
 18 **applicant proposed holding the** auction sale as shown by the
 19 application for ~~such~~ **the** license.

20 Sec. 5. (1) ~~Upon the filing of such application and after~~
 21 ~~the applicant has~~ **Subject to subsection (2), if an applicant has**
 22 **filed an application under this act and** fully complied with ~~all~~
 23 ~~the provisions of~~ this act, the ~~township board, by the~~ **city,**
 24 **village, or** township clerk ~~,~~ **with whom the application was**
 25 **filed** shall issue to the applicant a license authorizing the
 26 holding of ~~such~~ **the** auction sale as proposed in ~~said~~ **the**
 27 application. ~~Such~~ **The** license ~~shall not be~~ **is not**

1 transferable ~~—, and shall be~~ **is** valid only in the **city,**
2 **village, or** township where issued. ~~—, and shall not be valid in~~
3 ~~any village which has enacted an ordinance providing for the~~
4 ~~licensing of sales by auction.~~

5 (2) If a city or village has enacted an ordinance providing
6 for the licensing of sales by auction and the ordinance provides
7 the same or more restrictive requirements for the regulation of
8 public auctions than this act, a license issued under this act is
9 not valid in that city or village.

10 Sec. 5a. (1) The applicant shall post a copy of the
11 application for a license to conduct a sale under this act,
12 including the inventory filed with the application, in a
13 conspicuous place in the sales room or place where the sale is
14 conducted, but the copy does not need to show the purchase price
15 of the goods. The applicant shall attach a duplicate copy of the
16 license to the front door of the premises where the sale is
17 conducted in such a manner that it is clearly visible from the
18 street.

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

24 Sec. 6. Within 10 days after the last day of ~~said~~ **an**
25 auction **subject to this act,** the applicant shall file in
26 duplicate with the **city, village, or** township ~~board~~ **clerk** a
27 ~~listing~~ **list** of all merchandise sold at ~~such~~ **the** auction and

1 the prices received ~~therefor, together with~~ **and** a detailed
 2 ~~inventory~~ **list** of all merchandise unsold at the close of ~~such~~
 3 **the** auction. ~~sale.~~ The **city, village, or** township clerk shall
 4 ~~, immediately after receiving such listing of sales,~~ forward a
 5 copy ~~thereof~~ **of the lists** to the department of ~~revenue~~
 6 **treasury.**

7 Sec. 7. ~~"New merchandise" as used in this act shall mean~~
 8 ~~all merchandise not previously sold at retail. "Auction sale"~~
 9 ~~as~~ **As** used in this act, ~~shall mean the~~ **"auction sale" means**
 10 offering for sale or selling ~~of~~ personal property to the
 11 highest bidder, or offering for sale or selling ~~of~~ personal
 12 property at a high price and then offering ~~the same~~ **that**
 13 **property** at successive lower prices until a buyer is secured.

14 Sec. 9. ~~The provisions of this act shall not extend to~~
 15 ~~the~~ **This act does not apply to any of the following:**

16 **(a) A** sale at public auction of livestock, farm machinery,
 17 ~~or~~ farm produce, **or** used homestead goods or other items
 18 commonly sold at farm or homestead sales. ~~, or to auction sales~~
 19 ~~by individuals of new~~

20 **(b) An auction sale by an individual of** merchandise ~~, which~~
 21 ~~was assessed for payment of~~ personal property ~~tax in the~~ **taxes**
 22 **of this** state ~~of Michigan~~ or ~~is~~ **of** replacement stock of
 23 merchandise inventory ~~which was assessed for payment of~~
 24 personal property ~~tax~~ **taxes** in the county ~~in which~~ **where** the
 25 sale is ~~to be had, and to auction sales under a mortgage~~
 26 ~~foreclosure or under the direction of a court or court officers~~
 27 ~~of such sales as may be required by law~~ **proposed.** The owner of

1 ~~the~~ personal property ~~specified in this section~~ **described in**
2 **this subdivision** may furnish the person ~~or persons~~ conducting
3 the public auction with a statement that the **proceeds of the sale**
4 **of the** property ~~set forth~~ **listed** in the statement ~~has been~~
5 ~~assessed as~~ **are for payment of** personal property ~~in the~~ **taxes**
6 **of this** state, ~~of Michigan or that it has been purchased as~~
7 ~~replacement for property that has been assessed,~~ and the
8 possession of ~~such a~~ **that** statement ~~shall absolve~~ **relieves**
9 the person ~~or persons to whom it is given~~ **conducting the**
10 **auction** from ~~all~~ **any** liability under ~~the provisions of~~ this
11 act.

12 (c) An auction sale in a mortgage foreclosure or a sale made
13 pursuant to court order in a foreclosure proceeding.

14 (d) A regularly scheduled auction sale of motor vehicles held
15 at a permanent location and conducted by an auctioneer who has
16 complied with sections 26 to 35 of 1846 RS 21, MCL 446.26 to
17 446.35.

18 Sec. 10. (1) ~~Any person, firm or corporation found to be~~
19 ~~in violation of~~ **A person who violates** this act ~~shall be~~ **is**
20 guilty of a misdemeanor ~~and may be punished by a fine not to~~
21 ~~exceed \$100.00, or~~ **punishable** by imprisonment ~~in the county~~
22 ~~jail not to exceed 90 days, or by both fine and imprisonment~~ **for**
23 **not more than 93 days or a fine of not more than \$5,000.00, or**
24 **both.**

25 (2) Whether the person seeks damages or has an adequate
26 remedy at law, or whether the attorney general or a prosecuting
27 attorney takes action under subsection (1), a person may bring an

1 action to do any of the following:

2 (a) Obtain a declaratory judgment that a practice is in
3 violation of this act.

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

7 (3) A person who suffers loss as a result of a violation of
8 this act may bring an individual or a class action to recover
9 actual damages or \$250.00, whichever is greater, for each day the
10 violation occurs, and reasonable attorney fees.