

The following statute sets out the criteria for “going out of business” in Illinois.

A license must be obtained “from the clerk of the city, village, incorporated town or (in unincorporated territory) township in which such sale is to be conducted” in order to conduct a “going out of business” sale.

Please review the following for the going out of business licensing requirements.

Illinois Compiled Statutes

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BUSINESS TRANSACTIONS

(815 ILCS 350/) Fraudulent Sales Act.

(815 ILCS 350/0.01) (from Ch. 121 1/2, par. 157.01)

Sec. 0.01. Short title. This Act may be cited as the Fraudulent Sales Act.

(Source: P.A. 86-1324.)

(815 ILCS 350/1) (from Ch. 121 1/2, par. 157.1)

Sec. 1. Findings and declaration of General Assembly.

The General Assembly has found and declares:

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; and the excessive valuation and misrepresentation of the quality and ownership of goods to be sold at such a sale;

That in order to prevent such fraud and imposition, the public interest requires the regulation of such sales and of the duration and conduct thereof; and

That the public interest therefore requires that no such

sale should be conducted without a license or otherwise than in accordance with this Act.
(Source: Laws 1959, p. 2228.)

(815 ILCS 350/2) (from Ch. 121 1/2, par. 157.2)
Sec. 2. Definitions.

In this Act, unless the context or subject matter otherwise requires:

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 sale", "liquidation sale", "lost our lease sale", "forced to vacate 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 be discontinued at the premises where the sale is conducted.

"Goods" includes all goods, wares, merchandise and other personal property, excepting choses in action and money.

"Person" includes a person, firm, corporation, partnership, association or two or more persons having a joint or common interest.

A "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 be discontinued at the premises where the sale is conducted, and thereafter will be moved to and occupy another location.

(Source: Laws 1959, p. 2228.)

(815 ILCS 350/3) (from Ch. 121 1/2, par. 157.3)

Sec. 3. Insurance, salvage, removal, going out of business, creditor's and other special sales-Sale of damaged goods-License required-Exceptions.

No person shall directly or indirectly advertise or cause to be advertised, represent or cause to be represented, or hold out to the public in any manner that any sale of goods is an insurance, salvage, removal, going out of business, insolvent's, assignee's, or creditor's sale of goods, or that it is a sale of goods which have been damaged by fire, smoke, water or otherwise, unless such person shall first have obtained a license to conduct such sale under one of such descriptive names, from the clerk of the city, village, incorporated town or (in unincorporated territory) township in which such sale is to be conducted; provided, however, that this Act shall not apply to any sales directly ordered by any court or referee in bankruptcy, or to any person acting under the direction and supervision of state or federal courts in the course of their official duties; provided further, that this Act shall not apply to any sales by a person regularly engaged in insurance or salvage sales of goods, or 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.

(Source: Laws 1959, p. 2228.)

(815 ILCS 350/4) (from Ch. 121 1/2, par. 157.4)

Sec. 4. Application for license - Contents - Inventory.

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 position of the individual filing such application.

(b) The name and style in which such sale is to be conducted, and the address where such 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 or persons who will be in charge of and responsible for the conduct of such sale.

(e) A full explanation with regard to the condition or necessity which is the occasion for such sale, including a statement of the descriptive name of the sale and the reasons why such 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 such damage.

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

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

(ii) list separately any goods which were purchased during a 60 day period immediately prior to the date of making application for the license; and

(iii) show the cost price of each item in the inventory together with the name and address of the seller of the item 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.

(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.

(h) A statement that the applicant has in the past maintained a place of business within the jurisdiction of the licensing authority where the goods so listed in his inventory have been sold or offered for sale for not less than 4 months

prior to the time of making application for such license. However this subparagraph shall not apply to any applicant who acquired a right, title or interest in the goods as:

1. An heir, legatee or surviving joint tenant, or
2. An executor, administrator, trustee, or guardian, or
3. Pursuant to an order or process of a court of competent jurisdiction.

(i) The application for license shall be subscribed and sworn to under oath by the applicant and shall, directly above the space reserved for the signature of the applicant, contain the following legend in at least 10 point bold type: "Warning to applicant. This application must be fully and accurately completed. False or misleading statements may subject applicant to the penalties of perjury in addition to other penalties provided by law."

(Source: P.A. 84-549.)

(815 ILCS 350/5) (from Ch. 121 1/2, par. 157.5)

Sec. 5. Issuance of license-Restrictions.

The clerk, upon receipt of an application giving fully and completely the information under oath as required by section 4 above and upon receipt of the fee hereinafter provided for, shall issue a license to the applicant therefor, authorizing such applicant to advertise, represent, and to sell the particular goods so inventoried at the time and place stated in the application and in 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. Such 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 locations 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 any other offering of 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; or

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

The previous sentence, including subparts (a), (b) and (c) thereof, shall not apply to any person who acquired a right,

title or interest in goods as an heir, legatee or pursuant to an order or process of a court of competent jurisdiction.
(Source: P.A. 84-549.)

(815 ILCS 350/6) (from Ch. 121 1/2, par. 157.6)
Sec. 6. Record of application.

Every clerk who issues a license under this Act shall endorse upon each such application the date of its filing and shall preserve it, and the inventory attached to it, as a public record of his office, and shall make a notation of it in a book to be kept for that purpose, properly indexed, showing the name of the applicant, the date of the application, the descriptive name of the proposed sale, the place where such sale is to be conducted, its duration, the date of the license issued thereon, and the total value of the goods thus to be sold. A copy of the inventory shall be available for public inspection in the office of the clerk who issued a license hereunder.

(Source: Laws 1959, p. 2228.)

(815 ILCS 350/7) (from Ch. 121 1/2, par. 157.7)
Sec. 7. Sales as bankrupt, etc.

It shall be unlawful for any person to advertise, or otherwise to represent, for sale, or to sell, any goods at a bankruptcy, executor's, administrator's, receiver's or trustee's sale, except pursuant to, and in compliance with, federal or state statutory authority or judicial process, or as an assignee's or insolvent's sale except when there is a bona fide assignment for the benefit of creditors.

(Source: Laws 1959, p. 2228.)

(815 ILCS 350/8) (from Ch. 121 1/2, par. 157.8)

Sec. 8. Duration of sale - License fee. A license to conduct a sale issued pursuant to this Act shall not be issued or valid for a period of more than 60 days from the start of such sale, and such sale may be conducted only during the period set forth in such license; provided, however, that such license may be renewed once only for a period not to exceed 30 days upon 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 14 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. No renewal shall be granted if any goods have been

added to the stock listed in the inventory since the date of the issuance of the license. A fee of no more than \$75.00 shall accompany an application for a license and for the renewal of a license.

(Source: P.A. 84-1297.)

(815 ILCS 350/9) (from Ch. 121 1/2, par. 157.9)

Sec. 9. 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; provided, however, that such copy need not show the purchase price of the goods. The duplicate copy of a license issued hereunder 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 the license and the date of its expiration.

(Source: Laws 1959, p. 2228.)

(815 ILCS 350/10) (from Ch. 121 1/2, par. 157.10)

Sec. 10. Substitution, addition and commingling of goods-License void-Certain purchases prohibited.

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 cease to apply to such sale. In the case of a sale of goods damaged by fire, smoke, water or otherwise, or in the case of an insurance sale or a salvage sale, 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 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 cease to apply to such sale.

No person in contemplation of conducting any going out of business, removal, assignee's or creditor's sale, or during the continuance of such a sale, shall order or purchase any goods for the purpose of selling them at such sale, and any unusual purchase, or additions to the stock of such goods within 60 days before the filing of such application for a license to conduct such a sale, shall be presumptive evidence

that such purchases or additions were made in contemplation of such sale and for the purpose of selling them at such sale.
(Source: Laws 1959, p. 2228.)

(815 ILCS 350/10.5)

Sec. 10.5. Injunction. The Attorney General may bring an action in a circuit court to enjoin a sale subject to this Act when the sale is being conducted without a license issued under this Act.

(Source: P.A. 88-29.)

(815 ILCS 350/11) (from Ch. 121 1/2, par. 157.11)

Sec. 11. Violation-Sentence.

Any person, including both the applicant and an individual filing on behalf of an applicant, who shall procure from such clerk a license to conduct a sale under the description of one of the names set out in Section 3 hereof, which name shall be a misrepresentation of the true description or character of such sale or of the kind or condition of goods to be sold under such license, or any such person violating any of the other provisions of this statute shall be guilty of a Class B misdemeanor. Each false statement of fact in an application or inventory required to be filed hereunder shall constitute a separate offense under this Act.

(Source: P.A. 77-2247.)

(815 ILCS 350/12) (from Ch. 121 1/2, par. 157.12)

Sec. 12. Partial invalidity.

If any section, subsection, sentence, clause or portion of this Act is held invalid or unconstitutional by any court of competent jurisdiction for any reason, such portion of this Act shall be deemed a separate, distinct and independent provision and such court action shall not affect the validity of the remaining portions hereof.

(Source: Laws 1959, p. 2228.)

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