

HOUSE BILL No. 4089

February 1, 2005, Introduced by Rep. Taub 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 THE**
5 **LIMITS OF ANY TOWNSHIP IN THIS STATE**, or within the limits of any
6 **CITY OR** village in ~~the~~ **THIS** state ~~of Michigan that has not by~~

1 ~~ordinance provided for the licensing of sales by auction, any new~~
 2 ~~merchandise~~ **THAT IS NOT A CITY OR VILLAGE DESCRIBED IN SECTION**
 3 **5(2)**, unless ~~such~~ **THE** person, ~~firm or corporation,~~ and the
 4 owners of ~~such~~ **THE** merchandise —, if it is not owned by ~~the~~
 5 ~~vendors,~~ shall have first secured **THAT PERSON, HAS OBTAINED** a
 6 license ~~as herein provided~~ **UNDER** and ~~shall have~~ complied with
 7 the regulations hereinafter set forth **THIS ACT.**

8 **SEC. 1A. THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE**
 9 **"PUBLIC AUCTION LICENSING ACT".**

10 ~~Sec. 2. Any person, firm or corporation desiring such license~~
 11 ~~shall, at~~ **AT** least 10 days ~~prior to such~~ **BEFORE A** proposed
 12 auction sale, ~~file~~ **A PERSON SEEKING A LICENSE UNDER THIS ACT**
 13 **SHALL FILE AN APPLICATION** with the ~~township~~ clerk of the
 14 ~~township wherein it is proposed to hold such~~ **CITY, VILLAGE, OR**
 15 **TOWNSHIP WHERE THE PERSON PROPOSES TO HOLD THE** auction sale. ~~an~~
 16 ~~application in writing duly verified by the person, firm or~~
 17 ~~corporation proposing to sell, dispose of or offer for sale any new~~
 18 ~~merchandise at public auction, which~~ **THE** application shall ~~state~~
 19 the following facts **INCLUDE ALL OF THE FOLLOWING INFORMATION:**

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

24 **(A) THE NAME AND STREET ADDRESS OF THE APPLICANT AND THE NAME**
 25 **AND STREET ADDRESS OF 1 OF THE FOLLOWING, IF APPLICABLE:**

26 **(i) IF THE APPLICANT IS A CORPORATION, ITS OFFICERS AND**
 27 **DIRECTORS.**

1 (ii) IF THE APPLICANT IS AN ASSOCIATION, ITS OFFICERS AND
2 DIRECTORS.

3 (iii) IF THE APPLICANT IS A PARTNERSHIP, ITS PARTNERS.

4 (iv) IF THE APPLICANT IS A LIMITED LIABILITY COMPANY, ITS
5 MANAGER OR MANAGERS.

6 (v) IF THE APPLICANT IS ANY OTHER LEGAL ENTITY, ITS MANAGER OR
7 OTHER PERSON DESIGNATED TO CONTROL THE OPERATION OF THAT LEGAL
8 ENTITY.

9 (B) ~~-(2)-~~ The name ~~-, residence and postoffice-~~ **AND STREET**
10 address of the auctioneer who will conduct ~~such-~~ **THE** auction sale.
11 ÷

12 (C) ~~-(3)-~~ A detailed inventory and description of all ~~such~~
13 ~~new-~~ merchandise to be offered for sale at ~~such-~~ **THE** auction and a
14 valuation ~~thereof;~~ **OF THE MERCHANDISE.**

15 (D) ~~-(4)-~~ A statement ~~as to~~ whether ~~or not the-~~ **A** sale at
16 **THE** public auction ~~shall be-~~ **IS** with or without reservation.

17 Sec. 3. (1) At the time of filing ~~said application, and as a~~
18 ~~part thereof-~~ **AN APPLICATION DESCRIBED IN SECTION 2**, the applicant
19 shall ~~file and deposit with the township clerk a bond, with~~
20 ~~sureties to be approved by the township board, in the penal sum of~~
21 **FURNISH A SURETY BOND TO THE CITY, VILLAGE, OR TOWNSHIP CLERK**
22 **ISSUED BY A SURETY APPROVED BY THE CLERK. THE AMOUNT OF THE SURETY**
23 **BOND MUST EQUAL OR EXCEED 2** times the value of the merchandise
24 proposed to be offered for sale at ~~such-~~ **THE** auction as shown by
25 the inventory filed. ~~-, running to-~~ **THE SURETY BOND SHALL RUN TO**
26 **THE PEOPLE OF** the state of Michigan and for the use and benefit of
27 any purchaser of any merchandise at ~~such-~~ **THE** auction who might

1 have a cause for action of any nature arising from or out of ~~such~~
2 **THE** auction sale against the auctioneer or applicant. ~~the~~ **THE**
3 bond ~~to be further conditioned on~~ **SHALL ALSO COVER** the payment by
4 the applicant of all taxes ~~that may be payable by, or due from,~~
5 ~~the applicant to the state of Michigan, or any department or~~
6 ~~subdivision thereof, the payment of any~~ **AND** fines that ~~may be~~
7 ~~assessed by~~ any court **MAY ASSESS** against the applicant or
8 auctioneer for violation of ~~the provisions of~~ this act. ~~and~~
9 ~~the satisfaction of all causes of action commenced within 1 year~~
10 ~~from date of such auction sale and arising therefrom: Provided,~~
11 ~~however, That the~~ **THE** aggregate liability of the surety for all
12 ~~said~~ taxes, fines, and causes of action shall ~~in no event~~ **NOT**
13 exceed the ~~sum of such~~ **AMOUNT OF THE** bond.

14 (2) In ~~such bond~~ **A SURETY BOND PROVIDED UNDER SUBSECTION**
15 **(1)**, the applicant and the surety shall appoint the **CITY, VILLAGE,**
16 **OR** township clerk ~~of the township in which such bond is filed, AS~~
17 the agent of the applicant and the surety for ~~the~~ service of
18 process. In the event of ~~such~~ service ~~, the agent on whom such~~
19 ~~service is made~~ **UNDER THIS SUBSECTION, THE CITY, VILLAGE, OR**
20 **TOWNSHIP CLERK WHO IS SERVED** shall, within 5 days after the
21 service, mail by ordinary mail a true copy of the process served
22 upon him **OR HER** to each party ~~for whom he is~~ **ON WHOSE BEHALF HE**
23 **OR SHE WAS** served, addressed to the last known address of ~~such~~
24 **THAT** party. Failure to ~~so~~ mail ~~said~~ **THE** copy ~~shall not,~~
25 ~~however,~~ **OF A PROCESS UNDER THIS SUBSECTION DOES NOT** affect ~~the~~
26 **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 cause
9 of action against ~~the~~ **AN** applicant arising out of the sale of
10 ~~such new~~ merchandise ~~,~~ may join the applicant and the surety on
11 ~~such bond~~ **A SURETY BOND PROVIDED UNDER SUBSECTION (1)** in the same
12 action. ~~, or may in such action sue either such applicant or the~~
13 ~~surety alone.~~

14 Sec. 4. At the time of filing ~~said~~ **AN** application and **SURETY**
15 bond **UNDER THIS ACT**, the applicant shall pay to the **CITY, VILLAGE,**
16 **OR** township clerk a license fee ~~in the sum of \$25.00~~ **OF \$100.00**
17 for each day ~~it is supposed to hold such~~ **THE APPLICANT PROPOSED**
18 **HOLDING THE** auction sale as shown by the application for ~~such~~ **THE**
19 license.

20 Sec. 5. (1) ~~Upon the filing of such application and after the~~
21 ~~applicant has~~ **SUBJECT TO SUBSECTION (2), IF AN APPLICANT HAS FILED**
22 **AN APPLICATION UNDER THIS ACT AND** fully complied with ~~all the~~
23 ~~provisions of~~ this act, the ~~township board, by the~~ **CITY,**
24 **VILLAGE, OR** township clerk ~~,~~ **WITH WHOM THE APPLICATION WAS FILED**
25 shall issue to the applicant a license authorizing the holding of
26 ~~such~~ **THE** auction sale as proposed in ~~said~~ **THE** application. ~~Such~~
27 **THE** license ~~shall not be~~ **IS NOT** transferable ~~,~~ and ~~shall be~~

1 IS valid only in the CITY, VILLAGE, OR township where issued. —
 2 and shall not be valid in any village which has enacted an
 3 ordinance providing for the licensing of sales by auction.

4 (2) IF A CITY OR VILLAGE HAS ENACTED AN ORDINANCE PROVIDING
 5 FOR THE LICENSING OF SALES BY AUCTION AND THE ORDINANCE PROVIDES
 6 THE SAME OR MORE RESTRICTIVE REQUIREMENTS FOR THE REGULATION OF
 7 PUBLIC AUCTIONS THAN THIS ACT, A LICENSE ISSUED UNDER THIS ACT IS
 8 NOT VALID IN THAT CITY OR VILLAGE.

9 SEC. 5A. (1) THE APPLICANT SHALL POST A COPY OF THE
 10 APPLICATION FOR A LICENSE TO CONDUCT A SALE UNDER THIS ACT,
 11 INCLUDING THE INVENTORY FILED WITH THE APPLICATION, IN A
 12 CONSPICUOUS PLACE IN THE SALES ROOM OR PLACE WHERE THE SALE IS
 13 CONDUCTED, BUT THE COPY DOES NOT NEED TO SHOW THE PURCHASE PRICE OF
 14 THE GOODS. THE APPLICANT SHALL ATTACH A DUPLICATE COPY OF THE
 15 LICENSE TO THE FRONT DOOR OF THE PREMISES WHERE THE SALE IS
 16 CONDUCTED IN SUCH A MANNER THAT IT IS CLEARLY VISIBLE FROM THE
 17 STREET.

18 (2) ANY ADVERTISEMENT OR ANNOUNCEMENT PUBLISHED IN CONNECTION
 19 WITH A SALE SHALL CONSPICUOUSLY SHOW ON ITS FACE THE LICENSE NUMBER
 20 AND THE DATE OF ITS EXPIRATION, THE NAME AND BUSINESS ADDRESS OF
 21 THE APPLICANT, AND THE APPLICANT'S STATE SALES TAX NUMBER.

22 Sec. 6. Within 10 days after the last day of ~~said~~ AN auction
 23 SUBJECT TO THIS ACT, the applicant shall file in duplicate with the
 24 CITY, VILLAGE, OR township ~~board~~ CLERK a ~~listing~~ LIST of all
 25 merchandise sold at ~~such~~ THE auction and the prices received
 26 therefor, ~~together with~~ AND a detailed ~~inventory~~ LIST of all
 27 merchandise unsold at the close of ~~such~~ THE auction. ~~sale.~~ The

1 **CITY, VILLAGE, OR** township clerk shall ~~—, immediately after~~
 2 ~~receiving such listing of sales,~~ forward a copy ~~thereof~~ **OF THE**
 3 **LISTS** to the department of ~~—revenue—~~ **TREASURY.**

4 Sec. 7. ~~—"New merchandise" as used in this act shall mean all~~
 5 ~~merchandise not previously sold at retail. "Auction sale" as~~ **AS**
 6 used in this act, ~~shall mean the~~ **"AUCTION SALE" MEANS** offering
 7 for sale or selling ~~—of—~~ personal property to the highest bidder,
 8 or offering for sale or selling ~~—of—~~ personal property at a high
 9 price and then offering ~~the same~~ **THAT PROPERTY** at successive
 10 lower prices until a buyer is secured.

11 Sec. 9. ~~The provisions of this act shall not extend to the~~
 12 **THIS ACT DOES NOT APPLY TO ANY OF THE FOLLOWING:**

13 (A) A sale at public auction of livestock, farm machinery, ~~—or~~
 14 farm produce, **OR** used homestead goods or other items commonly sold
 15 at farm or homestead sales. ~~—, or to auction sales by individuals~~
 16 ~~of new~~

17 (B) **AN AUCTION SALE BY AN INDIVIDUAL OF** merchandise ~~—, which~~
 18 ~~was assessed~~ **FOR PAYMENT OF** personal property ~~tax in the~~ **TAXES**
 19 **OF THIS** state ~~of Michigan~~ or ~~is~~ **OF** replacement stock of
 20 merchandise inventory ~~which was assessed~~ **FOR PAYMENT OF** personal
 21 property ~~tax~~ **TAXES** in the county ~~in which~~ **WHERE** the sale is ~~to~~
 22 ~~be had, and to auction sales under a mortgage foreclosure or under~~
 23 ~~the direction of a court or court officers of such sales as may be~~
 24 ~~required by law~~ **PROPOSED.** The owner of ~~the~~ personal property
 25 ~~specified in this section~~ **DESCRIBED IN THIS SUBDIVISION** may
 26 furnish the person ~~—or persons—~~ conducting the public auction with
 27 a statement that the **PROCEEDS OF THE SALE OF THE** property ~~—set~~

1 ~~forth~~ LISTED in the statement ~~has been assessed as~~ ARE FOR
2 PAYMENT OF personal property ~~in the~~ TAXES OF THIS state, ~~of~~
3 Michigan ~~or that it has been purchased as replacement for property~~
4 that has been assessed, ~~and the possession of such a~~ THAT
5 statement ~~shall absolve~~ RELIEVES the person ~~or persons to whom~~
6 it is given CONDUCTING THE AUCTION from ~~all~~ ANY liability under
7 the provisions of this act.

8 (C) AN AUCTION SALE IN A MORTGAGE FORECLOSURE OR A SALE MADE
9 PURSUANT TO COURT ORDER IN A FORECLOSURE PROCEEDING.

10 (D) A REGULARLY SCHEDULED AUCTION SALE OF MOTOR VEHICLES HELD
11 AT A PERMANENT LOCATION AND CONDUCTED BY AN AUCTIONEER WHO HAS
12 COMPLIED WITH SECTIONS 26 TO 35 OF 1846 RS 21, MCL 446.26 TO
13 446.35.

14 Sec. 10. (1) ~~Any person, firm or corporation found to be in~~
15 ~~violation of~~ A PERSON WHO VIOLATES this act ~~shall be~~ IS guilty
16 of a misdemeanor ~~and may be punished by a fine not to exceed~~
17 \$100.00, ~~or~~ PUNISHABLE by imprisonment ~~in the county jail not to~~
18 ~~exceed 90 days, or by both fine and imprisonment~~ FOR NOT MORE THAN
19 93 DAYS OR A FINE OF NOT MORE THAN \$10,000.00, OR BOTH.

20 (2) WHETHER THE PERSON SEEKS DAMAGES OR HAS AN ADEQUATE REMEDY
21 AT LAW, OR WHETHER THE ATTORNEY GENERAL OR A PROSECUTING ATTORNEY
22 TAKES ACTION UNDER SUBSECTION (1), A PERSON MAY BRING AN ACTION TO
23 DO ANY OF THE FOLLOWING:

24 (A) OBTAIN A DECLARATORY JUDGMENT THAT A PRACTICE IS IN
25 VIOLATION OF THIS ACT.

26 (B) ENJOIN BY TEMPORARY OR PERMANENT INJUNCTION A PERSON WHO
27 IS ENGAGING OR IS ABOUT TO ENGAGE IN A PRACTICE IN VIOLATION OF

1 THIS ACT.

2 (3) A PERSON WHO SUFFERS LOSS AS A RESULT OF A VIOLATION OF
3 THIS ACT MAY BRING AN INDIVIDUAL OR A CLASS ACTION TO RECOVER
4 ACTUAL DAMAGES OR \$250.00, WHICHEVER IS GREATER, FOR EACH DAY THE
5 VIOLATION OCCURS, AND REASONABLE ATTORNEY FEES.