IC 25-18

ARTICLE 18. REGULATION OF DISTRESS SALES

IC 25-18-1

Chapter 1. Licensing of Retail Distress Sales

IC 25-18-1-1

Definitions

Sec. 1. For the purpose of this chapter:

"Going out of business sale" is a sale held out, advertised or otherwise represented to the public in such a manner as to cause the public reasonably to believe that upon disposal of the stock of goods on hand the business will cease and be discontinued, including but not limited to the following sales: Insurance, salvage, closing out, going out of business, liquidation, bankrupt, receiver's, mortgage, insolvent, assignee's, executor's, administrator's, trustee's or creditor's sale of goods, wares or merchandise.

"Removal of business sale" is a sale held out, advertised or otherwise represented to the public in such a manner as to cause the public reasonably to believe that the person, firm, limited liability company, corporation, or association conducting the sale will cease and discontinue business at the place of sale upon disposal of the stock of goods on hand and will then move to and resume business at a new location.

"Fire or other altered goods sale" is a sale held out, advertised or otherwise represented to the public in such a manner as to cause the public reasonably to believe that the sale will offer goods damaged or altered by fire, smoke, water, vandalism or other similar means.

"Selling at retail" is the sale of tangible personal property to ultimate users or consumers.

"Distress sale" shall mean a going out of business sale, a removal of business sale or a fire or other altered goods sale or any combination of the same.

"Goods" shall mean goods, wares, merchandise or other tangible personal property.

(Formerly: Acts 1965, c.271, s.1.) As amended by Acts 1982, P.L.154, SEC.62; P.L.8-1993, SEC.386.

IC 25-18-1-2

Necessity of license; exceptions

Sec. 2. Unless a license for such sale has been issued and has become effective in accordance with this chapter, no person, firm, limited liability company, corporation, or association engaged in the business of selling goods at retail 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 a going out of business, removal of business, or fire or other altered goods sale, or that it is a sale of goods that have been obtained through, as a result of, or by reason of any of the situations and contingencies named in the definitions of going out of business

sale, removal of business sale and fire or other altered goods sale as set forth in section 1 of this chapter; however, this chapter 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.

(Formerly: Acts 1965, c.271, s.2.) As amended by Acts 1982, P.L.154, SEC.63; P.L.8-1993, SEC.387.

IC 25-18-1-3

Application for license

Sec. 3. (a) Any person, firm, limited liability company, corporation, or association required to obtain a license as provided in section 2 of this chapter shall make to the clerk of the circuit court for the county in which he proposes to conduct such going out of business sale, or removal of business sale or fire or other altered goods sale an application for such license in writing and under oath, at least ten (10) days prior to the opening date of such sale. Such application shall be submitted on paper sized eight and one-half (8½) inches by eleven (11) inches in accordance with the following general form setting out the following facts and information regarding such proposed sale:

APPLICATION FOR LICENSE FOR
DISTRESS SALE
DATE OF APPLICATION: _____
Applicant's Name: _____
Place of Proposed Sale: _____
Proposed Opening Date of Sale: _____
Date of Establishment of Business
at Present Location: _____
TYPE OF SALE (CHECK):
[] GOING OUT OF BUSINESS SALE
[] REMOVAL OF BUSINESS SALE
[] FIRE OR OTHER ALTERED GOODS SALE

1. Reason for sale:

(A full explanation with regard to the insurance, salvage, removal, closing out, going out of business, liquidation, bankruptcy, receivership, mortgage, insolvency, assignment, executor's, administrator's, trustee's, creditor's, or other necessity which is the occasion for such sale, or

If the sale is to be conducted as a sale of goods damaged or altered by fire, smoke, water, vandalism or otherwise, then a statement as to the time, location, and circumstances of such damage.)

2. Name of owner or owners of goods if other than the applicant:

3. Prior distress sales:

(A statement of the dates and locations of all going out of business sales, removal of business sales and fire or other altered goods sales conducted during the three (3) years preceding the proposed sale by the applicant or by any person, firm, limited liability company, corporation, or association related or affiliated

with the applicant.)

Oath. Such application shall bear the following oath which shall be subscribed and sworn to before a notary public: " _____ (name of affiant), being first duly sworn, upon his oath states that the matters and facts set forth in this application and in the inventory filed with this application are true and correct."

For the purpose of determining related or affiliated persons, firms, corporations, limited liability companies, or associations under this chapter, the following standards shall apply:

(1) A person shall be deemed related to his spouse and to all persons related within the third degree of consanguinity to him or to his spouse.

(2) Persons shall be deemed related to firms, limited liability companies, corporations, and associations; and firms, limited liability companies, corporations, and associations shall be deemed related to persons, if such persons, or persons related to them, possess more than a ten per cent (10%) ownership interest in the firm, limited liability company, corporation, or association.

(3) Firms, limited liability companies, corporations, or associations shall be deemed related if they have in common a person, group of related persons, firm, limited liability company, corporation, or association possessing more than ten per cent (10%) ownership in each.

(4) The ownership interest for purposes of this chapter shall be determined as of the dates of any sales hereby required to be stated.

(b) A full detailed and complete inventory of the goods that are to be sold shall be filed with the application on the following form which shall be typewritten or printed legibly and submitted on paper sized eight and one-half (8 1/2) inches by eleven (11) inches:

INVENTORY FOR DISTRESS SALE

Name of Retailer: _____

Place of Sale _____ Quantity

Description Unit Price Per

Unit Total Amount

(Each type of goods shall be described on a separate line as it was described on the invoice of purchase by the applicant and the goods shall be valued at their sale prices.)

(c) All such invoices of purchase by the applicant shall be retained by the applicant during the sale and for sixty (60) days following the conclusion of the sale, shall be open to public examination and shall be admissible in evidence in any court proceeding under this chapter. It shall be a violation of this chapter to destroy or otherwise dispose of such invoices during the period of retention required by this chapter or to destroy or otherwise dispose of such invoices for purposes of evading the requirements of this chapter. If there was no invoice for any goods to be sold, or if the invoice has previously been destroyed, the applicant shall so state, and shall describe the goods with reasonable specificity according to

the customary description of the type of goods on the invoice of purchase by a retailer.
(Formerly: Acts 1965, c.271, s.3.) As amended by Acts 1982, P.L.154, SEC.64; P.L.8-1993, SEC.388; P.L.4-1994, SEC.9.

IC 25-18-1-4
Effective period for license

Sec. 4. (a) The clerk of the circuit court shall note on the license the effective date thereof, which shall be not less than ten (10) days nor more than fifteen (15) days from the date of the issuance of the license. At the time of the issuance of the license, the applicant shall be entitled to select the effective date within such five (5) day period.

(b) A license issued under this chapter, unless renewed as provided in section 9 of this chapter, shall expire and shall be null and void sixty (60) days after the effective date thereof, as noted on the license, Sundays and holidays excluded. No distress sale for which a license has been granted shall be continued as a distress sale after the expiration of the license.
(Formerly: Acts 1965, c.271, s.4.) As amended by Acts 1982, P.L.154, SEC.65.

IC 25-18-1-5
Copy of inventory form; filing

Sec. 5. A copy of the completed inventory form shall be filed with the clerk of the circuit court and shall be open to public inspection. Such inventory forms shall be kept on file by the clerk for one (1) year and thereafter may be destroyed.
(Formerly: Acts 1965, c.271, s.5.) As amended by P.L.4-1994, SEC.10.

IC 25-18-1-6
Issuance of license; license fee; contents of license

Sec. 6. (a) The clerk of the circuit court, upon receiving an application for a license, shall examine the application to determine if it is in due form. If the clerk shall be satisfied that the application is in due form and that the proposed sale is of the character which the applicant desires to advertise and conduct, he shall issue a license to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application upon the payment of a fee as provided in IC 33-17-14-3.

(b) Such license may be issued by the clerk in typewritten letter form or in printed form addressed to the applicant, one (1) copy being retained by the clerk, and shall set forth the following information and statements:

DISTRESS SALE LICENSE

In accordance with and subject to IC 25-18-1, (name of applicant) is hereby licensed to conduct a distress sale for the following purpose:

Going out of business sale []
Removal of business sale []

Fire or altered goods sale []

This license shall apply only to the sale of goods reported in the inventory filed with the application for this license, which goods are to be sold by the licensee at (place of sale _____), in _____, Indiana. The effective date of this license shall be _____, _____, and this license shall expire sixty (60) days from said date, Sundays and holidays excluded.

Dated this ____ day of _____, _____.

_____ CLERK.

(Formerly: Acts 1965, c.271, s.6.) As amended by Acts 1982, P.L.154, SEC.66; P.L.171-1984, SEC.8.

IC 25-18-1-7

Record of license

Sec. 7. The clerk of the circuit court shall endorse upon each such application the date of its filing and shall preserve 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, the date of issuance of the license and the effective date thereof.

(Formerly: Acts 1965, c.271, s.7.)

IC 25-18-1-8

Display of license

Sec. 8. A copy of the application, including the inventory, and license as herein described, shall be posted at a location conspicuous to the public in the place where such goods are to be sold so that the public may be informed of the facts in relation to the goods before purchasing same.

(Formerly: Acts 1965, c.271, s.8.)

IC 25-18-1-9

Renewal

Sec. 9. A license may be renewed for an additional thirty (30) days, Sundays and holidays excluded, if an application for renewal is filed with the clerk prior to the expiration of such license but not sooner than ten (10) days in advance of such expiration date; Provided, however, That a license may be renewed only if more than two hundred thousand dollars ($200,000) worth of goods were stated on the inventory originally filed. Upon proper applications the clerk may issue successive renewal licenses, one such renewal license for each two hundred thousand dollars ($200,000) worth of goods as stated on the inventory originally filed. A license shall be renewable only if in respect to each renewal the clerk finds that facts exist justifying the license renewal, that the licensee has filed an application for renewal, that the licensee has submitted with the application for renewal a revised inventory showing the items listed on the original inventory remaining unsold and not listing any goods not included in the original inventory, and that the licensee has paid an additional fee for

the renewal according to the schedule in section 4 based on the revised inventory filed with the renewal application. The renewal license shall be of the form prescribed in section 6, except that it shall expire thirty (30) days from its effective date, Sundays and holidays excluded, which shall be the expiration date of the prior license. The application for a renewal license shall be under oath and shall be of the same form as the application form prescribed in section 3, except that it shall at the bottom set forth the facts justifying the renewal.
(Formerly: Acts 1965, c.271, s.9.)

IC 25-18-1-10
Addition to stock

Sec. 10. No person, firm, limited liability company, corporation, or association, in contemplation of conducting any sale regulated by this chapter, shall order any goods for the purpose of selling and disposing of the goods at such sale. However, the prohibition of this section shall not apply to the purchase of goods damaged or altered by fire, smoke, water, vandalism or other similar means, or goods purchased from a seller who has discontinued his business. In the event of any unusual purchase or addition to the stock of goods within sixty (60) days prior to the filing of the application for license to conduct such sale, the burden in all civil or criminal litigation shall fall upon the purchaser to show that such purchases and additions to the stock were not made in contemplation of such sale or for the purpose of selling the goods at such sale.
(Formerly: Acts 1965, c.271, s.10.) As amended by Acts 1982, P.L.154, SEC.67; P.L.8-1993, SEC.389.

IC 25-18-1-11
Identification of goods

Sec. 11. The license provided for herein shall be granted, and valid only for the sale of inventoried goods which are the property of the licensee. Commingling of additional or other goods with that shown in the inventory in such a manner as to cause the merchandise inventoried to lose its identity shall void any such license and be a violation of this chapter. If the inventoried goods shall be put on sale with other stock of goods of an established merchant, then the same shall be considered and deemed to be commingled, unless it is clearly and sufficiently segregated, marked or identified, and advertised so that its identity may be readily distinguished from such other stock of goods and its identity readily ascertained.
(Formerly: Acts 1965, c.271, s.11.) As amended by Acts 1982, P.L.154, SEC.68.

IC 25-18-1-12
Misstatement or omission in license

Sec. 12. Any license issued on the basis of an application or containing any material misstatement or omission, or an inventory not in compliance with this chapter shall be void and of no effect.

(Formerly: Acts 1965, c.271, s.12.) As amended by Acts 1982, P.L.154, SEC.69.

IC 25-18-1-13
Violation of certain act; voiding license

Sec. 13. Any violation of IC 35-43 by a seller in connection with a sale governed by this chapter also constitutes a violation of this chapter and automatically voids any license authorizing such a sale.
(Formerly: Acts 1965, c.271, s.13.) As amended by Acts 1978, P.L.2, SEC.2535.

IC 25-18-1-14
Establishment of business to hold distress sale

Sec. 14. No license for a going out of business sale or a removal of business, as provided in this chapter, shall be issued to any person, firm, limited liability company, corporation, or association if such business was established or relocated for the ultimate purpose of holding such sale. For the purpose of this section, it shall be presumed by the clerk that any business which has been maintained at the sale location less than six (6) months was established for such ultimate purpose. The applicant may in his application rebut such presumption by establishing to the satisfaction of the clerk facts showing that such business was not established for the ultimate purpose of holding such distress sale.
(Formerly: Acts 1965, c.271, s.14.) As amended by Acts 1982, P.L.154, SEC.70; P.L.8-1993, SEC.390.

IC 25-18-1-15
Goods previously inventoried for distress sale

Sec. 15. Nothing in this chapter contained shall be construed as authorization for the issuance of a license to a person, firm, limited liability company, corporation, or association if the goods to be sold or any part of them were goods inventoried in an application for a license under this chapter, which license was issued within the preceding year.
(Formerly: Acts 1965, c.271, s.15.) As amended by Acts 1982, P.L.154, SEC.71; P.L.8-1993, SEC.391.

IC 25-18-1-16
Limitations on issuance of license; three-year period

Sec. 16. (a) No license for a going out of business or a removal of business sale shall be issued in respect to a proposed sale to be held by the applicant if the applicant or any person, firm, limited liability company, corporation, or association related to the applicant has conducted a going out of business sale or removal of business sale at the proposed sale location within the last preceding three (3) years.

(b) No license for a going out of business or a removal of business sale shall be issued to any applicant if such applicant or any related person, firm, limited liability company, corporation, or association has conducted a going out of business or removal of business sale

within the last preceding three (3) years unless the business for which such license is sought has been conducted for more than one (1) year by the applicant or a related person, firm, limited liability company, corporation, or association at the location of the proposed sale.

(c) Any license obtained in violation of this section shall be void and of no force and effect.

(Formerly: Acts 1965, c.271, s.16.) As amended by P.L.8-1993, SEC.392.

IC 25-18-1-17

Maintenance of records during sale

Sec. 17. Any licensee under this chapter shall keep suitable sales records and books during the sale, at the location at which such sale is conducted. Such records and books shall be open for inspection by the clerk of the circuit court or the prosecutor for the county in which the sale is conducted or the duly authorized representative of either of them.

(Formerly: Acts 1965, c.271, s.17.) As amended by Acts 1982, P.L.154, SEC.72.

IC 25-18-1-18

Compliance with chapter; duties of clerk of court

Sec. 18. It shall be the duty of the clerk of the circuit court to see that the provisions of this chapter are strictly complied with and to report for prosecution all cases of violation of, or refusal or neglect to comply with, such provisions. It shall be unlawful for any person, firm, limited liability company, corporation, or association to whom a license has been granted under this chapter to refuse to furnish said clerk on demand or to any person designated by him for that purpose, all the facts connected with the sale for which such license was granted or any other information which he may require in the enforcement of this chapter.

(Formerly: Acts 1965, c.271, s.18.) As amended by Acts 1982, P.L.154, SEC.73; P.L.8-1993, SEC.393.

IC 25-18-1-19

Misrepresentation

Sec. 19. A person who, in procuring from the clerk a license to conduct a sale under this act, knowingly misrepresents the true description or character of the sale, or the kind or condition of goods to be sold, or who otherwise knowingly violates this chapter, commits a Class A misdemeanor.

(Formerly: Acts 1965, c.271, s.19.) As amended by Acts 1978, P.L.2, SEC.2536.

IC 25-18-1-20 Repealed

(*Repealed by Acts 1978, P.L.2, SEC.2570.)*

IC 25-18-1-21

Right to injunction or treble damages

Sec. 21. Any person injured by any violation of this chapter may sue for such injury in the courts of any county in which the defendant sells at retail, and obtain either injunctive relief against any sale conducted in violation of this chapter or recover threefold the damages sustained, or both, and such damages shall include a reasonable attorney's fee. The fact of injury to the plaintiff but not the amount thereof shall be conclusively presumed if it is established that a violation has taken place and that the plaintiff and defendant each were engaged in selling at retail within the same county at the time of the claimed violation, and that the violation of this chapter related to a sale conducted by the defendant in such county.

(Formerly: Acts 1965, c.271, s.21.) As amended by Acts 1982, P.L.154, SEC.74.

IC 25-18-1-22

Duties of prosecuting attorney

Sec. 22. It shall be the duty of the prosecuting attorney of any county to prosecute any violation of this chapter. The prosecuting attorney of any county may in the alternative seek injunctive relief against any sale being carried on in violation of this chapter in a civil action in any circuit or superior court of the county in which the defendant is conducting such sale. The prosecuting attorney may request and the court may, in its discretion, after a hearing, issue a preliminary injunction, pending the determination of such civil action, against continued representations to the public by the seller, that the sale is a going out of business sale, removal of business sale, or fire or other altered goods sale.

(Formerly: Acts 1965, c.271, s.22.) As amended by Acts 1982, P.L.154, SEC.75.