

GENERAL ASSEMBLY OF NORTH CAROLINA
1987 SESSION

CHAPTER 387
HOUSE BILL 1101

AN ACT TO REGULATE GOING OUT OF BUSINESS AND DISTRESS SALES.

The General Assembly of North Carolina enacts:

Section 1. G.S. 66-77 reads as rewritten:

"§ 66-77. License required; contents of applications; inventory required; fees; bond; extension of licenses; records; false statements.—(a) No person shall advertise or offer for sale a stock of goods, wares or merchandise under the description of closing-out sale, or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, or a distress sale unless he shall have obtained a license to conduct such sale from the clerk of the city or town in which he proposes to conduct such a sale or from the officer designated by the Board of County Commissioners if the sale is conducted in an unincorporated area. The applicant for such a license shall make to such clerk an application therefor, in writing and under oath at least seven days prior to the opening date of sale, showing all the facts relating to the reasons and character of such sale, including the opening and terminating dates of the proposed sale, the opening and terminating dates of any previous distress sale or closing-out sale held by the applicant within that county during the preceding 12 months, a complete inventory of the goods, wares or merchandise actually on hand in the place whereat such sale is to be conducted, and all details necessary to locate exactly and identify fully the goods, wares or merchandise to be sold. Provided, the seller in a distress sale need not file an inventory.

(b) If such clerk shall be satisfied from said application that the proposed sale is of the character which the applicant desires to advertise and conduct, the clerk shall issue a license, upon the payment of a fee of fifty dollars (\$50.00) therefor, together with a bond, payable to the city or town or county in the penal sum of five hundred dollars (\$500.00), conditioned upon compliance with this Article, to the applicant authorizing him to advertise and conduct a sale of the particular kind mentioned in the application; ~~provided, however, that, the~~ The license fee provided for herein shall be good for a period of 30 days from its date, and if the applicant shall not complete said sale within said 30-day period then the applicant shall make application to such clerk for a license for a new permit, which shall be good for an additional period of 30 days, and shall pay therefor the sum of fifty dollars (\$50.00); ~~and provided further, and~~ a second extension period of 30 days may be similarly applied for and granted by the clerk upon payment of an additional fee of fifty dollars (\$50.00) and upon the clerk being satisfied that the applicant is holding a bona fide sale of the kind contemplated by this Article and is acting in a bona fide manner; provided, however, that the clerk may not grant an

extension period as provided in this subsection if (i) the applicant conducted a distress sale immediately preceding the current sale for which the extension is applied for and (ii) the period of the extension applied for, when added to the period of the preceding sale and the period of the current sale, will exceed 120 days. No additional bond shall be required in the event of one or more extensions as herein provided for. Any merchant who shall have been conducting a business in the same location where the sale is to be held for a period of not less than one year, prior to the date of holding such sale, or any merchant who shall have been conducting a business in one location for such period but who shall, by reason of the building being untenable or by reason of the fact that said merchant shall have no existing lease or ownership of the building and shall be forced to hold such sale at another location, shall be exempted from the payment of the fees and the filing of the bond herein provided for.

(c) Every city or town or county to whom application is made shall endorse upon such application the date of its filing, and shall preserve the same as a record of his office, and shall make an abstract of the facts set forth in such application, and shall indicate whether the license was granted or refused.

(d) Any person making a false statement in the application provided for in this section shall, upon conviction, be deemed guilty of perjury."

Sec. 2. G.S. 66-80 reads as rewritten:

"§ 66-80. Continuation of sale or business beyond termination date.—No person shall conduct a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise or a distress sale beyond the termination date specified for such sale, except as otherwise provided for in subsection (b) of G.S. 66-77; nor shall any person, upon conclusion of such sale, continue that business which had been represented as closing out or going out of business under the same name, or under a different name, at the same location, or elsewhere in the same city or town where the inventory for such sale was filed for a period of 12 months; nor shall any person, upon conclusion of such sale, continue business contrary to the designation of such sale. As used in this section, the term 'person' includes individuals, partnerships, corporations, and other business entities. If a business entity that is prohibited from continuing a business under this section reformulates itself as a new entity or as an individual, whether by sale, merger, acquisition, bankruptcy, dissolution, or any other transaction, for the purpose of continuing the business, the successor entity or individual shall be considered the same person as the original entity for the purpose of this section. If an individual who is prohibited from continuing a business under this section forms a new business entity to continue the business, that entity shall be considered the same person as the individual for the purpose of this section."

Sec. 3. This act shall become effective July 1, 1987.

In the General Assembly read three times and ratified this the 16th day of June, 1987.