

**CHAPTER 172**

**H.B. No. 385**

*An Act relating to the regulation of going out of business sales; providing a penalty.*

*Be it enacted by the Legislature of the State of Texas:*

**SECTION 1.** Chapter 17, Business & Commerce Code, is amended by adding Subchapter F to read as follows:

**SUBCHAPTER F. GOING OUT OF BUSINESS SALES**

*Sec. 17.81. DEFINITION.* In this chapter "going out of business sale" means an offer to sell to the public, or the sale to the public of, goods, wares, and merchandise on the implied or direct representation by written or oral advertising that the sale is in anticipation of the termination of all of the operations of a business at all of its locations in a county and in all of the counties immediately adjacent to that county.

*Sec. 17.82. PROHIBITED CONDUCT.* (a) A person may not conduct a sale advertised with the phrase "going out of business," "closing out," "shutting doors forever," or "bankruptcy sale"; the word "foreclosure" or "bankruptcy"; or a similar phrase or word indicating that an enterprise is ceasing business unless the business is closing all of its operations in a county and in all of the counties immediately adjacent to that county and follows the procedures required by this subchapter.

(b) A person may not fraudulently represent that the person is conducting a going out of business sale.

*Sec. 17.83. ORIGINAL INVENTORY.* (a) To conduct a going out of business sale, a person must file an original inventory with the county clerk of the county in which the person's principal place of business in the state is located. The original inventory must be accompanied by a filing fee of \$20.

(b) The original inventory must include:

- (1) the name and address of the owner of the goods, wares, or merchandise to be sold;
- (2) the name and address of the owner of the defunct business, the former stock in trade of which is to be offered for sale, and the full name of the defunct business;
- (3) a description of the place where the liquidation sale is to be held;
- (4) a statement of the beginning and ending dates of the sale;
- (5) a complete and detailed inventory of the goods, wares, and merchandise to be offered on the beginning date of the sale and the total cost of those items; and
- (6) a complete and detailed list of the goods, wares, and merchandise to be added to the inventory after the beginning date of the sale and the total cost of those items.

*Sec. 17.84. PERMIT.* (a) After receiving an original inventory, the county clerk shall issue to the applicant a permit for a going out of business sale. The permit is valid for 120 days after the day that it is issued and is not renewable.

(b) The permit holder must post the permit in a conspicuous place at the location of the going out of business sale.

(c) Before advertising a going out of business sale, the permit holder shall deliver a copy of the permit to the person publishing or broadcasting the advertisement.

*Sec. 17.85. DEADLINE FOR ORDERS.* A person may not sell an item at a going out of business sale if the person ordered the item after the beginning date of the sale.

*Sec. 17.86. SALE INVENTORY.* Before the end of each 30-day period during the going out of business sale the permit holder shall file with the county clerk a sale inventory containing a complete and detailed list of the goods, wares, and merchandise listed in the original inventory that have not been sold before the date that the sale inventory is filed. A sale inventory must list items offered on the beginning date of the sale separately from the items added to the sale inventory after that date.

*Sec. 17.87. FINAL INVENTORY.* Within 30 days after the day that the going out of business sale ends, the permit holder shall file with the county clerk a final inventory. The final inventory must include:

- (1) the name and address of the permit holder;
- (2) a statement of the disposition of the items listed in the original inventory that were not sold during the going out of business sale and the name and address of any person purchasing those items after the ending date of the sale; and
- (3) a description of the place where the sale was held.

*Sec. 17.88. DISPOSITION OF SALE ITEMS.* After a permit expires, the permit holder may not sell at retail an item offered at the sale covered by the permit.

*Sec. 17.89. LATER SALES.* A person may not conduct a going out of business sale beginning within two years after the ending date of the most recent going out of business sale conducted by the person.

*Sec. 17.90. FORM OF INVENTORY.* An inventory filed under this subchapter must be in the form of a sworn affidavit.

*Sec. 17.91. EXCEPTIONS.* This subchapter does not apply to:

- (1) a sale conducted by a public officer as part of the officer's official duties;
- (2) a sale for which an accounting must be made to a court of law;
- (3) a sale conducted pursuant to an order of a court; or
- (4) a foreclosure sale pursuant to a deed of trust or other lien.

*Sec. 17.92. PENALTY.* (a) A person commits an offense if the person:

- (1) conducts a sale in violation of Section 17.82 of this code;
- (2) conducts a going out of business sale without a valid permit issued under Section 17.84 of this code;
- (3) sells an item at a going out of business sale in violation of Section 17.85 of this code;
- (4) fails to file an inventory required by Section 17.86 or 17.87 of this code; or
- (5) sells an item at retail in violation of Section 17.88 of this code.

(b) An offense under this section is a Class A misdemeanor.

(c) Each day of violation constitutes a separate offense.

*Sec. 17.93. INJUNCTION.* The attorney general may bring an action to enjoin a violation of this subchapter.

**SECTION 2.** Chapter 434, Acts of the 60th Legislature, Regular Session, 1967 (Article 9011, Vernon's Texas Civil Statutes), is repealed.

**SECTION 3.** This Act applies only to a going out of business sale for which an original inventory is filed on or after the effective date of this Act. A going out of business sale for which an original inventory is filed before the effective date of this Act is governed by the law in effect on the day that the inventory is filed, and that law is continued in effect for that purpose.

**SECTION 4.** This Act takes effect September 1, 1985.

**SECTION 5.** The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on March 4, 1985, by a non-record vote; House concurred in Senate amendments to H.B. No. 385 on May 13, 1985, by a non-record vote; passed by the Senate, with amendments, on May 9, 1985, by the following vote: Yeas 31, Nays 0.

Approved: May 24, 1985

Effective: September 1, 1985