

Article 17.

Closing-Out Sales.

§ 66-76. Definitions.

For the purposes of this Article, "closing-out sale" shall mean and include all sales advertised, represented or held forth under the designation of "going out of business," "discontinuance of business," "selling out," "liquidation," "lost our lease," "must vacate," "forced out," "removal," or any other designation of like meaning; "distress sale" shall mean and include all sales in which it is represented or implied that going out of business is possible or anticipated, in which closing out is referred to in any way, or in which it is implied that business conditions are so difficult that the seller is forced to conduct the sale; and "person" shall mean and include individuals, partnerships, voluntary associations and corporations. (1957, c. 1058, s. 1; 1981, c. 633, s. 1.)

§ 66-77. Repealed by Session Laws 2015, c. 103, s. 2

~~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. 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 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. (1957, c. 1058, s. 2; 1981, c. 633, ss. 2-4; 1987, c. 387, s. 1.)~~

§ 66-78. Additions to stock in contemplation of sale prohibited.

No person in contemplation of a closing-out sale shall order any goods, wares or merchandise for the purpose of selling and disposing of the same at such sale, and any unusual purchase and additions to the stock of such goods, wares or merchandise within 60 days prior to the filing of application for a license to conduct such sale shall be presumptive evidence that such purchases and additions to stock were made in contemplation of such sale. (1957, c. 1058, s. 3; 1981, c. 633, s. 5.)

§ 66-79. Replenishment of stock prohibited.

No person carrying on or conducting a closing-out sale or a sale of goods, wares or merchandise damaged by fire, smoke, water or otherwise, shall, during the continuance of such sale, add any goods, wares or merchandise to the damaged stock inventoried in his original application for such license, and no goods, wares or merchandise shall be sold as damaged merchandise at or during such sale, excepting the goods, wares or merchandise described and inventoried in such original application. (1957, c. 1058, s. 4; 1981, c. 633, s. 5.)

§ 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. (1957, c. 1058, s. 5; 1981, c. 633, s. 6; 1987, c. 387, s. 2.)

§ 66-81. Advertising or conducting sale contrary to Article; penalty.

Any person who shall advertise, hold, conduct or carry on any sale 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, contrary to the provisions of this Article, or who shall

violate any of the provisions of this Article shall be deemed guilty of a Class 1 misdemeanor. (1957, c. 1058, s. 6; 1981, c. 633, s. 7; 1993, c. 539, s. 519; 1994, Ex. Sess., c. 24, s. 14(c).)

§ 66-82. Sales excepted; liability for dissemination of false advertisement.

The provisions of this Article shall not apply to sheriffs, constables or other public or court officers, or to any other person or persons acting under the license, direction or authority of any court, State or federal, selling goods, wares or merchandise in the course of their official duties; provided, however, that no newspaper publisher, radio-broadcast licensee, television-broadcast licensee, or other agency or medium for the dissemination of advertising shall be liable under this Article by reason of the dissemination of any false advertisement prohibited by this Article, unless he has refused, on the written request of any law-enforcement officer or agency of this State, to furnish to such officer or agency the name and address of the person who caused the dissemination of such advertisement. (1957, c. 1058, s. 7.)

§ 66-83. Restraining or enjoining illegal act.

Upon complaint of any person the superior court shall have jurisdiction to restrain and enjoin any act forbidden or declared illegal by any provisions of this Article. (1957, c. 1058, s. 8.)

§ 66-84: Repealed by Session Laws 1981, c. 633, s. 8.

REPEAL LICENSING FOR GOING OUT OF BUSINESS/DISTRESS SALES

SECTION 2.(a) G.S. 66-77 is repealed. 2015-103 (HB 836)

SECTION 2.(b) 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; sale;~~ nor shall any person, upon conclusion of such sale, continue that business which had been Page 2 Session Law 2015-103 House Bill 836 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."

SECTION 2.(c) This section becomes effective July 1, 2015.