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Small Business and Commerce: Swartz, Chair; Rensink and Sturgeon.

Amended for 3029 1/30 (p. 209)

JAN 22 1985

SMALL BUSINESS AND COMMERCE

HOUSE FILE 70

BY SWARTZ and GRUHN (1/24/85)
RENSINK (1/29)

Passed House, Date 2-8-85 (p. 377) Passed Senate, Date 3-5-85 (p. 606)
Vote: Ayes 99 Nays 0 Vote: Ayes 47 Nays 0
Approved March 21, 1985

A BILL FOR

An Act relating to the conducting of going-out-of-business sales and providing for penalties.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

HF 70

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1 Section 1. Section 714.16, subsection 2, paragraph c, Code
2 1985, is amended to read as follows:

3 c. It ~~shall be~~ is an unlawful practice for any person to
4 advertise the sale of merchandise at reduced rates due to the
5 cessation of business operations and after the date of the
6 first such advertisement remain in business under the same~~7~~ or
7 substantially the same~~7~~ ownership, or under the same~~7~~ or
8 substantially the same trade name, or to continue to offer for
9 sale the same type of merchandise at the same location for
10 more than one hundred twenty days. As used in this paragraph
11 "person" includes a person who acquires an ownership interest
12 in the business after the initial advertisement of the sale.

13 Sec. 2. Section 714.16, subsection 2, Code 1985, is
14 amended by adding the following new lettered paragraph:

3057,3629 15 NEW LETTERED PARAGRAPH. g. It is an unlawful practice for
16 a person to acquire directly or indirectly an interest in a
17 business which has either gone out of business or is going out
18 of business and conduct or continue a going-out-of-business
19 sale where additional merchandise has been added to the
20 merchandise of the liquidating business for the purposes of
21 the sale, unless the person provides a clear and conspicuous
22 notice in all advertisements that merchandise has been added.
23 The advertisement shall also state the customary retail price
24 of the merchandise that has been added or brought in for the
25 sale. The person acquiring the interest shall obtain a permit
26 to hold the sale from the board of supervisors of the county
27 in which the sale is being held. The permit shall state the
28 percentage of merchandise for sale that was obtained from the
29 liquidating business and the percentage of merchandise for
30 sale that was added from other sources. The permit or an
31 accurate reproduction of the permit shall be clearly and
32 conspicuously posted at all entrances to the site of the sale
33 and at all locations where sales are consummated. A person
34 who violates this paragraph, including any misrepresentation
35 of the presence and the percentage of additional merchandise

1 that had been added to that of the liquidating company, is
2 liable for a civil penalty of not to exceed one thousand
3 dollars for each day of each violation. All civil penalties
4 collected shall be deposited in the state general fund. The
5 civil penalty is in addition to and not in lieu of any
6 criminal penalty.

7 EXPLANATION

8 This bill deals with the conducting of going-out-of-
9 business sales.

10 Section 1 provides that the current 120 day limit on going-
11 out-of-business sales applies from the date of the initial
12 advertisement of the sale even when the business is sold
13 during the 120 day period. A violation is an unlawful
14 practice and by virtue of section 701.8 is a simple
15 misdemeanor.

16 Section 2 provides that it is an unlawful practice for a
17 person to acquire interest in a business that is being
18 liquidated and to conduct or commence a going-out-of-business
19 sale where additional merchandise has been added unless the
20 person provides clear and conspicuous notice that additional
21 merchandise has been added. In addition, the person must
22 obtain a permit from the county board of supervisors. The
23 permit shall state the percentage of merchandise offered for
24 sale that was obtained from the liquidating business and the
25 percentage of additional merchandise brought in for the sale.
26 The permit shall be posted at the entrances and all locations
27 where sales are consummated. A civil penalty not to exceed
28 one thousand dollars per day per violation is imposed in
29 addition to the criminal penalty of an unlawful practice.

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HOUSE FILE 70

H-3057

1 Amend House File 70 as follows:

2 1. Page 1, by striking line 12 and inserting the
3 following: "in the business either within sixty days
4 before the initial advertisement of the sale or at any
5 time after the initial advertisement of the sale. In
6 addition, a person acquiring an ownership interest
7 shall comply with paragraph "g" if the person adds
8 additional merchandise to the sale."

9 2. Page 1, by striking lines 26 and 27 and
10 inserting the following: "to hold the sale before
11 commencing the sale. If the sale is to be held in a
12 city which has an ordinance regulating going-out-of-
13 business sales, then the permit shall be obtained from
14 the city. If the sale is to be located outside of a
15 city or in a city which does not have an ordinance
16 regulating going-out-of-business sales, then the
17 permit shall be obtained from the county in which the
18 proposed sale is to be held. The county board of
19 supervisors shall prescribe the procedures necessary
20 to obtain the permit. The permit shall state the".

21 3. Page 2, by striking lines 3 and 4 and
22 inserting the following: "dollars for each day of
23 each violation. The civil penalties collected shall
24 be deposited in the general fund of the political
25 entity which prosecutes the violation. The"

26 4. Page 2, line 6, by inserting after the word
27 "penalty." the following: "A political entity
28 enforcing this paragraph may obtain a preliminary
29 injunction without posting a bond to enjoin a
30 violation of this Act pending a hearing.

31 This paragraph does not prohibit a city or county
32 from adopting an ordinance prohibiting the conducting
33 of a going-out-of-business sale in which additional
34 merchandise is added to the merchandise of the
35 liquidating business for the purposes of the sale."

BY CARPENTER of Polk
WOODS of Polk
SWARTZ of Marshall
GRUHN of Dickinson
RENSINK of Sioux

H-3057 FILED FEBRUARY 7, 1985

Adopted 2/8 (p. 277)

HOUSE FILE 70

H-3029

1 Amend House File 70 as follows:

2 1. Page 1, by striking line 12 and inserting the
3 following: "in the business either within sixty days
4 before the initial advertisement of the sale or at any
5 time after the initial advertisement of the sale. In
6 addition, a person acquiring an ownership interest
7 shall comply with paragraph "g" if the person adds
8 additional merchandise to the sale."

H-3029 FILED JANUARY 30, 1985

BY COMMITTEE ON SMALL
BUSINESS AND COMMERCE

SMALL BUSINESS & ECONOMIC DEVELOPMENT: Boswell, Chair;
Neighbour and Ritsema

HOUSE FILE 70

BY SWARTZ, GRUHN and RENSINK

(AS AMENDED AND PASSED BY THE HOUSE FEBRUARY 8, 1985)

Passed House, Date 2-8-85 (p. 434) Passed Senate, Date 3-5-85 (p. 606)

Vote: Ayes 99 Nays 0 Vote: Ayes 47 Nays 0

Approved March 21, 1985 (p. 981)

A BILL FOR

1 An Act relating to the conducting of going-out-of-business
2 sales and providing for penalties.

3 BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

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House Amendments _____

1 Section 1. Section 714.16, subsection 2, paragraph c, Code
2 1985, is amended to read as follows:

3 c. It ~~shall be~~ is an unlawful practice for any person to
4 advertise the sale of merchandise at reduced rates due to the
5 cessation of business operations and after the date of the
6 first such advertisement remain in business under the same, or
7 substantially the same, ownership, or under the same, or
8 substantially the same trade name, or to continue to offer for
9 sale the same type of merchandise at the same location for
10 more than one hundred twenty days. As used in this paragraph
11 "person" includes a person who acquires an ownership interest
12 in the business either within sixty days before the initial
13 advertisement of the sale or at any time after the initial
14 advertisement of the sale. In addition, a person acquiring an
15 ownership interest shall comply with paragraph "g" if the
16 person adds additional merchandise to the sale.

17 Sec. 2. Section 714.16, subsection 2, Code 1985, is
18 amended by adding the following new lettered paragraph:

19 NEW LETTERED PARAGRAPH. g. It is an unlawful practice for
20 a person to acquire directly or indirectly an interest in a
21 business which has either gone out of business or is going out
22 of business and conduct or continue a going-out-of-business
23 sale where additional merchandise has been added to the
24 merchandise of the liquidating business for the purposes of
25 the sale, unless the person provides a clear and conspicuous
26 notice in all advertisements that merchandise has been added.
27 The advertisement shall also state the customary retail price
28 of the merchandise that has been added or brought in for the
29 sale. The person acquiring the interest shall obtain a permit
30 to hold the sale before commencing the sale. If the sale is
31 to be held in a city which has an ordinance regulating going-
32 out-of-business sales, then the permit shall be obtained from
33 the city. If the sale is to be located outside of a city or
34 in a city which does not have an ordinance regulating going-
35 out-of-business sales, then the permit shall be obtained from

1 the county in which the proposed sale is to be held. The
2 county board of supervisors shall prescribe the procedures
3 necessary to obtain the permit. The permit shall state the
4 percentage of merchandise for sale that was obtained from the
5 liquidating business and the percentage of merchandise for
6 sale that was added from other sources. The permit or an
7 accurate reproduction of the permit shall be clearly and
8 conspicuously posted at all entrances to the site of the sale
9 and at all locations where sales are consummated. A person
10 who violates this paragraph, including any misrepresentation
11 of the presence and the percentage of additional merchandise
12 that had been added to that of the liquidating company, is
13 liable for a civil penalty of not to exceed one thousand
14 dollars for each day of each violation. The civil penalties
15 collected shall be deposited in the general fund of the
16 political entity which prosecutes the violation. The civil
17 penalty is in addition to and not in lieu of any criminal
18 penalty. A political entity enforcing this paragraph may
19 obtain a preliminary injunction without posting a bond to
20 enjoin a violation of this Act pending a hearing.

21 This paragraph does not prohibit a city or county from
22 adopting an ordinance prohibiting the conducting of a going-
23 out-of-business sale in which additional merchandise is added
24 to the merchandise of the liquidating business for the
25 purposes of the sale.

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HOUSE FILE 70

AN ACT

RELATING TO THE CONDUCTING OF GOING-OUT-OF-BUSINESS SALES
AND PROVIDING FOR PENALTIES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF IOWA:

Section 1. Section 714.16, subsection 2, paragraph c, Code 1985, is amended to read as follows:

c. It ~~shall be~~ is an unlawful practice for any person to advertise the sale of merchandise at reduced rates due to the cessation of business operations and after the date of the first such advertisement remain in business under the same, or substantially the same, ownership, or under the same, or substantially the same trade name, or to continue to offer for sale the same type of merchandise at the same location for more than one hundred twenty days. As used in this paragraph "person" includes a person who acquires an ownership interest in the business either within sixty days before the initial advertisement of the sale or at any time after the initial advertisement of the sale. In addition, a person acquiring an ownership interest shall comply with paragraph "g" if the person adds additional merchandise to the sale.

Sec. 2. Section 714.16, subsection 2, Code 1985, is amended by adding the following new lettered paragraph:

NEW LETTERED PARAGRAPH. g. It is an unlawful practice for a person to acquire directly or indirectly an interest in a business which has either gone out of business or is going out of business and conduct or continue a going-out-of-business sale where additional merchandise has been added to the merchandise of the liquidating business for the purposes of the sale, unless the person provides a clear and conspicuous notice in all advertisements that merchandise has been added. The advertisement shall also state the customary retail price of the merchandise that has been added or brought in for the sale. The person acquiring the interest shall obtain a permit to hold the sale before commencing the sale. If the sale is to be held in a city which has an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the city. If the sale is to be located outside of a city or in a city which does not have an ordinance regulating going-out-of-business sales, then the permit shall be obtained from the county in which the proposed sale is to be held. The county board of supervisors shall prescribe the procedures necessary to obtain the permit. The permit shall state the percentage of merchandise for sale that was obtained from the liquidating business and the percentage of merchandise for sale that was added from other sources. The permit or an accurate reproduction of the permit shall be clearly and conspicuously posted at all entrances to the site of the sale and at all locations where sales are consummated. A person who violates this paragraph, including any misrepresentation of the presence and the percentage of additional merchandise that had been added to that of the liquidating company, is liable for a civil penalty of not to exceed one thousand dollars for each day of each violation. The civil penalties collected shall be deposited in the general fund of the political entity which prosecutes the violation. The civil penalty is in addition to and not in lieu of any criminal penalty. A political entity enforcing this paragraph may

obtain a preliminary injunction without posting a bond to enjoin a violation of this Act pending a hearing.

This paragraph does not prohibit a city or county from adopting an ordinance prohibiting the conducting of a going-out-of-business sale in which additional merchandise is added to the merchandise of the liquidating business for the purposes of the sale.

DONALD D. AVENSON
Speaker of the House

ROBERT T. ANDERSON
President of the Senate

I hereby certify that this bill originated in the House and is known as House File 70, Seventy-first General Assembly.

JOSEPH O'HERN
Chief Clerk of the House

Approved March 21, 1985

TERRY E. BRANSTAD
Governor