



**House
Legislative
Analysis
Section**

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REVISE AUCTIONS, SALES ACTS

**House Bill 4067 (Substitute H-3)
House Bill 4068 (Substitute H-2)
First Analysis (5-16-96)**

**Sponsor: Rep. John Jamian
Committee: Commerce**

THE APPARENT PROBLEM:

Sales at public auctions and going-out-of-business sales are regulated under two separate acts--Public Act 224 of 1955 and Public Act 39 of 1961, respectively--and, generally speaking, these acts require anyone conducting such sales within a township to obtain a license from the township clerk before proceeding. The fee for a public auction license currently is \$25 per day, and for a going-out-of-business sale license, which is good for 30 days, the fee is \$50. Both acts establish guidelines for conducting these events and impose various requirements on licensees, and Public Act 39 imposes fines, jail terms, or both on persons who advertise or conduct a going-out-of-business sale without a license or otherwise in violation of the act. Reportedly, however, companies from out-of-state often come to Michigan to conduct "itinerant auctions" knowing that Michigan's law does not require a person to obtain a license, or to meet other requirements of the act, if the auction is held in a municipality other than a township. These "fly-by-night" outfits will set up in a warehouse and ship in anywhere from several thousand to half a million dollars worth of merchandise, and then advertise the auction itself and the types of goods for sale in a local newspaper in a way that is misleading and often fraudulent. The types of goods sold usually will be close replicas of very expensive things--for instance, famous brands of gold watches--at a lower price than a person might normally pay, but sales are often final and are not warranted against defects or other problems. Moreover, such nefarious auctions draw Michigan consumers away from reputable, tax-paying retailers and other valid Michigan businesses and, before authorities can be notified, are able to leave the state with huge amounts of money without having paid any sales taxes on the earnings. Some people feel both acts should be strengthened by expanding licensure requirements to apply to municipalities other than just townships (i.e., villages and cities) and by increasing license fees, and that penalties imposed on violators under the going-out-of-business sales act should include a potentially substantive fine.

THE CONTENT OF THE BILLS:

Public Act 224 of 1955 and Public Act 39 of 1961 regulate sales at public auction and various forms of going-out-of-business sales, respectively.

House Bill 4067 would amend Public Act 224 of 1955 (MCL 446.52 et al.) to raise the license fee for holding an auction from \$25 for each day an auction is held to \$100 per day. The act's licensing requirements currently apply only to persons who hold auctions in townships. The bill also would require persons who conduct auctions in a city or village to be licensed under the act. At present, a license cannot be transferred, is only valid in the township where it is issued, and is specifically not valid in any village where an ordinance exists providing for the licensing of auctions. Under the bill, a license could not be transferred, would only be valid in the city, village, or township where it was issued, and would not be valid in any village or city with an ordinance regulating auctions at least as stringently as the act. In addition, the bill specifies the act would not apply to a motor vehicle auction that was part of regularly scheduled sales of motor vehicles at a permanent location and was conducted by an auctioneer who had complied with certain provisions contained in the Revised Statutes of 1846 regulating auctioneers, pawnbrokers, and vendors.

House Bill 4068 would amend Public Act 39 of 1961 (MCL 442.216 et al.) to increase the license fee for conducting a going-out-of-business sale under the act from \$50 to \$100. Currently, advertising or conducting a going-out-of-business sale without a license or otherwise in violation of the act is a misdemeanor, punishable by a fine of at least \$100 (up to \$500), imprisonment for at least 10 days (up to 6 months), or both. The bill would replace these penalty provisions with the following penalties: someone who advertised such a sale without having first obtained licensure under the act would be guilty of a misdemeanor and could be fined up to \$1,000; and someone who conducted a sale in violation of the act would be guilty of a misdemeanor and could be fined up to \$5,000.

House Bills 4067 and 4068 (5-16-96)

FISCAL IMPLICATIONS:

Fiscal information on the bills is not available.

ARGUMENTS:

For:

The bills would strengthen Michigan's laws governing going-out-of-business sales and sales at public auctions by specifying that licensing requirements would apply to persons who conduct these events in cities and villages, in addition to townships, and by increasing the licensing fees persons would have to pay to legally conduct them. In addition, House Bill 4068 would increase the penalty for violating the provisions of the going-out-of-business sale act by subjecting a violator to a fine of up to \$5,000 for operating in a manner that was contrary to the act's guidelines regarding such things as advertising or the payment of taxes, and a fine of up to \$1,000 for operating without a license. At present, businesses from out-of-state and even some from within will conduct these kinds of sales illegally, generating hundreds of thousands of dollars in sales in the process. But before authorities discover them, they've either left the state or otherwise avoided being discovered, and all of this without having ever paid any state sales taxes. This puts legitimate businesses that operate near these sham outfits at a serious competitive disadvantage--not only because they lose sales they otherwise could have made to Michigan customers, but also because they obey the law by paying taxes while unlicensed auctioneers or going-out-of-business dealers do not.

POSITIONS:

The following testified before the House Commerce Committee on May 1, 1996, in support of the bills as originally introduced:

- * The Michigan Municipal League
- * The Michigan Retailers Association
- * Hagopian World of Rugs, a retail seller of oriental rugs located in Birmingham

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.