



Commissioner of the Revenue



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Commissioner

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APPLICATION INSTRUCTIONS FOR GOING OUT OF BUSINESS SALE PERMIT

Virginia law makes it “unlawful for any person to advertise or conduct a sale for the purpose of discontinuing a retail business, or to modify the word “sale” in any advertisement with the words ‘going out of business’ or any other words which tend to insinuate that the retail business is to be discontinued and the merchandise liquidated, unless such person obtains a permit to conduct such sale.”

The Commissioner of the Revenue issues these permits and is also empowered to enforce the Price Comparison Advertising Act, Section 59.1-207.40 through 59.1-207.44 of the Code of Virginia (copy enclosed).

Application Procedure

The application should be completed in its entirety by an owner, an officer of the corporation or member of the limited liability company. The application, merchandise inventory report and \$65.00 fee should be submitted to the Commissioner of the Revenue. Make checks payable to the City of Virginia Beach.

The merchandise inventory report must include all merchandise on hand, merchandise currently stored in a warehouse and merchandise ordered awaiting delivery to be sold under this permit. Only items reported may be sold under this permit.

Each line item must show the total quantity of the item on hand as of the beginning of the sale. For sized items, such as clothing, it is not necessary to list each size separately. For example, all white shirts of a particular brand, style and type may be shown as a single line item entry. The exact method of inventory list will vary with the commodity and should be shown in the same manner and units of measure as those customarily used in the buying and selling of the goods to be sold. Merchandise inventories may be submitted on a separate document if the document contains all information requested and uses the same format as the merchandise inventory report.

The Commissioner of the Revenue’s office will review the application, conduct a site inspection and issue a permit if approved.

All applications must be submitted at least ten (10) business days prior to the sale date.

Penalty for Violations

Failure to abide by the provisions of the law applicable to “Going Out of Business Sales” is a violation of Section 18.2-223 through 18.2-224 of the Code of Virginia and Section 32-16 through 32-30 of the Virginia Beach City Code (copies enclosed), and is punishable by a fine of up to \$2,500.00 or twelve (12) months imprisonment, or both.

Any violation of the Price Comparison Advertising Act shall constitute a prohibited practice under the provisions of Section 59.1-200 of the Virginia Code and shall be subject to the enforcement provisions of the Consumer Protection Act.

Code of Virginia

§ 59.1-207.40. Definitions.

In addition to the definitions listed in § 59.1-198, as used in this chapter, the following terms shall have the following meanings:

"Former price" or "comparison price" means the direct or indirect comparison in any advertisement whether or not expressed wholly or in part in dollars, cents, fractions, or percentages, and whether or not such price is actually stated in the advertisement.

"Substantial sales" means a substantial aggregate volume of sales of identical or comparable goods or services at or above the advertised comparison price in the supplier's trade area.

(1992, c. 768.)

§ 59.1-207.41. Advertising former price of goods or services.

No supplier shall in any manner knowingly advertise a former price of any goods or services unless:

1. Such former price is the price at or above which substantial sales were made in the recent regular course of business; or
2. Such former price was the price at which such goods or services or goods or services of substantially the same kind, quality, or quantity and with substantially the same service were openly and actively offered for sale for a reasonably substantial period of time in the recent regular course of business honestly, in good faith and not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based; or
3. Such former price is based on a markup that does not exceed the supplier's cost plus the usual and customary markup used by the supplier in the actual sale of such goods or services or goods or services of substantially the same kind, quality, or quantity and with substantially the same service, in the recent regular course of business; or
4. The date on which substantial sales were made, or the goods or services were openly and actively offered for sale for a reasonably substantial period of time at the former price is advertised in a clear and conspicuous manner.

(1992, c. 768.)

§ 59.1-207.42. Advertising comparison price of goods or services.

No supplier shall in any manner knowingly advertise a comparison price which is based on another supplier's price unless:

1. The supplier can substantiate that the comparison price is the price offered for sale by another supplier in the regular course of business for goods or services of substantially the same kind and quality, and with substantially the same service in the defined trade area;
2. The trade area to which the advertisement refers is clearly defined and disclosed; and

3. A clear and conspicuous disclosure is made in the advertisement that the price used as a basis of comparison is another supplier's price, and not the supplier's own price.

(1992, c. 768.)

§ 59.1-207.43. Use of certain terms in advertising former or comparison prices.

A. No supplier shall advertise a former or comparison price in terms of "market value," "valued at" or words of similar import unless such price is the price at which the goods or services, or goods or services of substantially the same kind, quality or quantity, are offered for sale by a reasonable number of suppliers in the supplier's trade area.

B. A supplier may advertise a former or comparison price in terms of "manufacturer's suggested price," "suggested retail price," "list price," or words of similar import provided that, with regard to such advertising, the use of the former or comparison price complies with 15 U.S.C. § 45 (a) (1) and the regulations of the Federal Trade Commission adopted thereunder.

(1992, c. 768.)

§ 59.1-207.44. Enforcement; penalties.

Any violation of this chapter shall constitute a prohibited practice under the provisions of § 59.1-200 and shall be subject to the enforcement provisions of Chapter 17 (§ 59.1-196 et seq.) of this title. It shall be the responsibility of any supplier who uses a comparison price to be able to substantiate the basis for any price comparisons made by the supplier. Upon the request of the Attorney General, any attorney for the Commonwealth, the attorney of any county, city, or town, or the Commissioner of the Virginia Department of Agriculture and Consumer Services, a supplier shall provide documentation to substantiate the basis for any comparison price utilized by the supplier in any advertisement governed by this chapter. No provision of this chapter shall be construed to apply to any supplier whose advertising practices are governed by § 46.2-1581.

(1992, c. 768.)

Code of Virginia

§ 18.2-223. "Going out of business" sales; permit required.

It shall be unlawful for any person to advertise, or conduct, a sale for the purpose of discontinuing a retail business, or to modify the word "sale" in any advertisement with the words "going out of business" or any other words which tend to insinuate that the retail business is to be discontinued and the merchandise liquidated, unless such person obtains a permit to conduct such sale from the city, town or county, or from each city, town or county, wherein such sale is to be conducted.

A violation of the provisions of this section shall be punishable as a Class 1 misdemeanor.

(Code 1950, § 59.1-53.1; 1972, c. 399; 1975, cc. 14, 15.)

§ 18.2-224. "Going out of business" sales; counties, cities and towns to issue permits; inspections; application for permit; inventory required; commingling of other goods prohibited; duration; additional permits; inclusion of permit number and dates in advertisements; fee.

Every county, town and city shall issue permits to retail merchants for special sales as required by § 18.2-223 upon the application of such merchant and shall inspect the advertisement and conducting of such sale to insure that it is being advertised and conducted in conformity with the required permit.

All applications for special sale permits shall be accompanied by an inventory, including the kind and quantity of all goods which are to be offered for sale during the sale and only the goods specified in the inventory list may be advertised or sold during the sale period. Goods not included on the inventory of special sale goods shall not be commingled with or added to the special sale goods. Each county, city or town shall have the right to revoke a special sale permit upon proof that goods not appearing on the original inventory of special sale goods have been commingled with or added to the special sale goods.

Each special sale permit shall be valid for a period of no longer than sixty days, and any extension of that time shall constitute a new special sale and shall require an additional permit and inventory. A maximum of one permit beyond the initial sixty-day permit may be granted solely for the purpose of liquidating only those goods contained in the initial inventory list which remain unsold.

Any person who advertises such sale shall conspicuously include in the advertisement the permit number assigned for the sale by the city, town or county wherein the sale is to be conducted and the effective dates of the sale as authorized in the permit.

Each county, town and city is authorized to charge a fee for the issuance of special sale permits. Such fee shall not exceed sixty-five dollars for each permit.

(Code 1950, § 59.1-53.2; 1972, c. 399; 1975, cc. 14, 15; 1983, c. 445; 1988, c. 779; 1992, c. 562.)

Virginia Beach City Code

ARTICLE II. GOING-OUT-OF-BUSINESS SALES

DIVISION 1. GENERALLY

Sec. 32-16. Violations of article.

Any person who shall violate any of the provisions of this article shall be guilty of a Class 1 misdemeanor, and each day's business in violation of the provisions of this article shall constitute a separate offense.
(Code 1965, § 23-24.6; Ord. No. 1003, 11-5-79)

Sec. 32-17. Advertisement or sale of uninventoried goods.

(a) It shall be unlawful for any person connected with a sale authorized by a permit issued under this article to advertise or to sell, during the period covered by such permit, any goods which are not specified in the inventor filed pursuant to section 32-27.

(b) In addition to any other penalties prescribed by law, the commissioner of the revenue shall revoke any special sale permit upon proof that goods not appearing on the original inventory of special sale goods filed pursuant to section 32-27 have been commingled with or added to the special sale goods.

(Code 1965, § 23-24.2; Ord. No. 1815, 10-31-88; Ord. No. 2166, 8-4-92; Ord. No. 3142, 6-22-10)

State law references: Similar provisions, Code of Virginia, § 18.2-224.

Sec. 32-18. Inspections.

The commissioner of the revenue shall inspect the advertisement and conduct of a sale authorized by a permit issued under this article to insure that it is advertised and conducted in conformity with such permit.

(Code 1965, § 23-24.3; Ord. No. 3142, 6-22-10)

State law references: Similar provisions, Code of Virginia, § 18.2-224.

Secs. 32-19--32-25. Reserved.

DIVISION 2. PERMIT

Sec. 32-26. Required.

It shall be unlawful for any person to advertise or conduct a sale for the purpose of discontinuing a retail business, or to modify the word "sale" in any advertisement with the words "going out of business" or any other words which tend to insinuate that the retail business is to be discontinued and the merchandise liquidate, unless such person has a valid permit to conduct such sale issued by the commissioner of the revenue of the city.

(Code 1965, § 23-24.1; Ord. No. 1003, 11-5-79; Ord. No. 3142, 6-22-10)

State law references: Similar provisions, Code of Virginia, § 18.2-223.

Sec. 32-27. Application.

(a) Application for a permit required by this division shall be filed, on forms provided for the purpose, with the commissioner of the revenue. Such application shall be accompanied by an inventory, including the kind and quantity of all goods which are to be offered for sale during the sale for which the permit is sought.

(b) It shall be unlawful for any person to make any false statement in any application filed pursuant to this section.

(Code 1965, §§ 23-24.2, 23-24.6; Ord. No. 1392, 9-6-83; Ord. No. 3142, 6-22-10)

State law references: Inventory of goods required, Code of Virginia, § 18.2-224.

Sec. 32-28. Fee.

The fee for a permit required by this division shall be sixty-five dollars (\$65.00).

(Code 1965, § 23-24.4; Ord. No. 1392, 9-6-83)

State law references: Authority to charge above fee, Code of Virginia, § 18.2-224.

Sec. 32-29. Issuance.

The commissioner of the revenue shall issue permits required by this division to retail merchants upon the filing of a proper application and payment of the prescribed fee.

(Code 1965, § 23-24.3; Ord. No. 3142, 6-22-10)

State law references: Similar provisions, Code of Virginia, § 18.2-224.

Sec. 32-30. Term.

Each permit issued under this division shall be valid for a period of no longer than sixty (60) days and any extension of that time shall constitute a new sale and shall require an additional permit and inventory. A maximum of one (1) permit beyond the initial sixty-day permit may be granted solely for the purpose of liquidating only those goods contained in the initial inventory list and which remain unsold.

(Code 1965, § 23-24.5; Ord. No. 1392, 9-6-83; Ord. No. 1815, 10-31-88; Ord. No. 2166, 8-4-92)

State law references: Similar provisions, Code of Virginia, § 18.2-224.