

2 SHB 1631 - S COMM AMD
3 By Committee on Labor & Commerce

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5 Strike everything after the enacting clause and insert the
6 following:

7 NEW SECTION. **Sec. 1.** The legislature finds that the practices
8 covered by this chapter are matters vitally affecting the public
9 interest for the purpose of applying the Consumer Protection Act,
10 chapter 19.86 RCW. Violations of this chapter are not reasonable in
11 relation to the development and preservation of business. A violation
12 of this chapter is an unfair or deceptive act in trade or commerce and
13 an unfair method of competition for the purpose of applying the
14 Consumer Protection Act, chapter 19.86 RCW.

15 NEW SECTION. **Sec. 2.** Unless the context clearly requires
16 otherwise, the definitions in this section apply throughout this
17 chapter.

18 (1) "Affiliated business" means a business or business location
19 that is directly or indirectly controlled by or under common control
20 with the business location or locations listed in the notice of the
21 sale or that has a common ownership interest in the merchandise to be
22 sold with the business location or locations listed in the notice of
23 the sale.

24 (2) "Going out of business sale" means a sale or auction advertised
25 or held out to the public as the disposal of merchandise in
26 anticipation of cessation of business. This includes but is not
27 limited to a sale or auction advertised or held out to the public as a
28 "going out of business sale," a "closing out sale," a "quitting
29 business sale," a "loss of lease sale," a "must vacate sale," a
30 "liquidation sale," a "bankruptcy sale," a "sale to prevent
31 bankruptcy," or another description suggesting price reduction due to
32 the imminent closure of the business.

33 (3) "Merchandise" means goods, wares, or other property or services
34 capable of being the object of a sale regulated under this chapter.

1 (4) "Moving sale" means a sale or auction advertised or held out to
2 the public in anticipation of a relocation of the business to within a
3 thirty-mile radius of its existing location.

4 (5) "Person" means, where applicable, natural persons,
5 corporations, trusts, unincorporated associations, partnerships, or
6 other legal entities.

7 NEW SECTION. **Sec. 3.** (1) It is unlawful for a person to sell,
8 offer for sale, or advertise for sale merchandise at a going out of
9 business sale without first recording a notice of the going out of
10 business sale and executing an affidavit of inventory under this
11 chapter.

12 (2) The notice of the sale must be displayed in a prominent place
13 on the premises where a going out of business sale is being conducted.

14 (3) Where a going out of business sale is part of a bankruptcy,
15 receivership, or other court-ordered action, a person required by this
16 chapter to record a notice of the sale shall serve a copy of the
17 petition, motion, proposed order, or other pleading requesting court
18 approval of the sale on the attorney general no less than seven days
19 before the date on which an action may be taken related to the conduct
20 of the sale by a court.

21 NEW SECTION. **Sec. 4.** (1) This chapter shall apply only to persons
22 who engage in the retail sale of merchandise in their regular course of
23 business.

24 (2) This chapter does not apply to:

25 (a) Persons acting in accordance with their powers and duties as
26 public officers, such as county sheriffs;

27 (b) Bulk transfers as defined in RCW 62A.6-102; or

28 (c) Moving sales, except for section 12(5) of this act.

29 (3) Going out of business sales of perishable merchandise or
30 merchandise damaged by fire, smoke, or water are exempt from the
31 requirement that the notice of the sale be recorded at least fourteen
32 days before the beginning date of the sale.

33 NEW SECTION. **Sec. 5.** (1) A person conducting a going out of
34 business sale shall record a notice of the sale with the county auditor
35 at least fourteen days before the beginning date of the sale.

1 (2) The notice must be signed under oath and acknowledged and must
2 require, and the person signing the notice shall set forth, the
3 following facts and information regarding the sale:

4 (a) The name, address, telephone number, and Washington state
5 business identification number of the owner of the merchandise to be
6 sold. If the owner is a corporation, trust, unincorporated
7 association, partnership, or other legal entity, the person signing the
8 notice must be an officer of the entity and must identify his or her
9 title;

10 (b) The name, address, and telephone number of the person who will
11 be in charge and responsible for the conduct of the sale;

12 (c) The descriptive name, location or locations, and beginning and
13 ending dates of the sale;

14 (d) Whether a person who has an ownership interest in the business
15 or in the merchandise to be sold has conducted a going out of business
16 sale within one year of recording the notice;

17 (e) Whether a person who has an ownership interest in the business
18 or in the merchandise to be sold established or acquired an ownership
19 interest in the business within six months of recording the notice; and

20 (f) A statement that:

21 (i) The merchandise ordered during the thirty days before recording
22 the notice consists only of bona fide orders made in the usual course
23 of business and does not contain merchandise taken on consignment or
24 otherwise;

25 (ii) No merchandise transferred from an affiliated business was
26 transferred in contemplation of conducting the sale;

27 (iii) No merchandise will be ordered, taken on consignment, or
28 transferred from an affiliated business after the notice is recorded or
29 during the sale;

30 (iv) No person who has an ownership interest in the business or in
31 the merchandise to be sold established or acquired an interest in the
32 business or in the merchandise to be sold solely or principally for the
33 purpose of conducting a going out of business sale;

34 (v) The business will be discontinued after the ending date of the
35 sale and no merchandise held out for sale will be subsequently offered
36 for sale to the public by anyone who had an ownership interest in the
37 business or in the merchandise offered for sale; and

38 (vi) No person who has an ownership interest in the business or in
39 the merchandise to be sold is subject to a court order resulting from

1 a civil enforcement action under the Consumer Protection Act for a
2 violation of this chapter or the type of conduct prohibited by this
3 chapter.

4 NEW SECTION. **Sec. 6.** (1) A person conducting a going out of
5 business sale shall, before recording the notice, make either an
6 inventory list of the merchandise to be sold or a compilation of
7 purchase orders issued by the business in the thirty days before
8 recording the notice of the sale.

9 (2) If a person elects to make an inventory list:

10 (a) The inventory list must identify the merchandise and include
11 the quantity of each item and the price at which each item was offered
12 for sale within one week of recording the notice;

13 (b) The inventory list must identify items ordered within thirty
14 days of recording the notice but not yet received by the business;

15 (c) The inventory list must be permanently attached to an affidavit
16 executed by the person recording the notice of the sale stating that
17 the inventory list is a true and correct inventory of merchandise owned
18 by the business conducting the sale as of the date the affidavit is
19 executed; and

20 (d) No item may be offered for sale at a going out of business sale
21 unless the item is included in the inventory list for the sale.

22 (3) If a person elects to make a purchase order compilation, the
23 compilation must be permanently attached to an affidavit executed by
24 the person recording the notice of the sale stating that the
25 compilation is a true and correct compilation of the purchase orders
26 issued by the business in the thirty days before recording the notice
27 of the sale.

28 (4) The affidavit must be signed under oath and acknowledged before
29 a notary public. Each page of the inventory list or purchase order
30 compilation must be marked in some form by a notary public to verify
31 its identity as part of the inventory list or purchase order
32 compilation for the going out of business sale.

33 (5) A person conducting a going out of business sale shall maintain
34 possession of the affidavit and attached inventory list or purchase
35 order compilation for three years after the ending date of the sale.
36 The inventory list or purchase order compilation is admissible evidence
37 of compliance or noncompliance with this chapter.

1 NEW SECTION. **Sec. 7.** (1) No person may conduct a going out of
2 business sale except a person with a valid Washington state business
3 identification number.

4 (2) No person may conduct a going out of business sale if a person
5 who has an ownership interest in the business or in the merchandise to
6 be sold established or acquired an ownership interest in the business
7 solely or principally for the purpose of conducting a going out of
8 business sale. A person who has either conducted a going out of
9 business sale within one year or established or acquired an interest in
10 the business conducting the sale within six months of recording the
11 notice is presumed to have established or acquired an interest in the
12 business solely or principally for the purpose of conducting a going
13 out of business sale.

14 (3) No person may conduct a going out of business sale if a person
15 who has an ownership interest in the business or in the merchandise to
16 be sold is subject to a court order resulting from a civil enforcement
17 action under the Consumer Protection Act for a violation of this
18 chapter or the type of conduct prohibited by this chapter.

19 NEW SECTION. **Sec. 8.** No person may conduct a going out of
20 business sale for more than sixty days from the beginning date of the
21 sale.

22 NEW SECTION. **Sec. 9.** (1) No person may sell consigned merchandise
23 or other merchandise not owned by the person signing the notice at a
24 going out of business sale. Merchandise ordered within thirty days of
25 recording the notice of the sale may consist only of bona fide orders
26 made in the usual course of business and may contain no merchandise
27 taken on consignment or otherwise.

28 (2) No person in contemplation of conducting a going out of
29 business sale may transfer merchandise from an affiliated business or
30 business location to the location or locations of the sale.

31 (3) No person, after recording the notice of a going out of
32 business sale, may buy or order merchandise, take merchandise on
33 consignment, or receive a transfer of merchandise from an affiliated
34 business or business location for the purpose of selling it at the sale
35 or sell the merchandise in a going out of business sale.

1 NEW SECTION. **Sec. 10.** (1) No person may continue to conduct a
2 going out of business sale beyond the ending date listed in the notice
3 of the sale.

4 (2) No person after conducting a going out of business sale may
5 remain in business under any of the same ownership, or under the same
6 or substantially the same trade name, or continue to offer for sale the
7 same type of merchandise for a period of one year after the ending date
8 of the sale unless the continuing business location was in operation
9 before recording the notice for the closing business location.

10 (3) For the purposes of this section, if a business entity that is
11 prohibited from continuing a business under this section reformulates
12 itself as a new entity or as an individual, whether by sale, merger,
13 acquisition, bankruptcy, dissolution, or other transaction, for the
14 purpose of continuing the business or profiting from the business, the
15 successor entity or individual is considered the same person as the
16 original entity. If an individual who is prohibited from continuing a
17 business under this section forms a new business entity to continue the
18 business, participate in the business, or profit from the business,
19 that entity is considered the same person as the individual.

20 NEW SECTION. **Sec. 11.** No person may conduct a going out of
21 business sale if any means have been established for continuation of
22 the closing business location by the same owner, directly or
23 indirectly, by corporation, trust, unincorporated association,
24 partnership, or other legal entity under the same name or under a
25 different name.

26 NEW SECTION. **Sec. 12.** (1) No person may advertise a going out of
27 business sale more than fourteen days before the beginning date of the
28 sale. All advertising of the sale must state the beginning date and
29 must clearly and prominently state the ending date of the sale. Except
30 as provided in subsection (2) of this section, all advertising must be
31 confined to or refer to the address or addresses and place or places of
32 business specified in the notice as going out of business and may not
33 state that other locations or affiliated businesses are cooperating
34 with or participating in the sale unless the other locations or
35 affiliated businesses are included in the notice.

1 (2) Advertising broadcast on radio is not required to refer to the
2 address or addresses of the business specified in the notice as going
3 out of business, but must meet all other conditions of this section.

4 (3) No advertising may contain false, misleading, or deceptive
5 statements regarding the nature, duration, merchandise, or other terms
6 of a going out of business sale.

7 (4) Representations in advertising regarding price savings or
8 discounts on sale merchandise must be bona fide and substantiated.

9 (5) A moving sale may not be advertised for more than ninety days
10 and may not occur more than once within a twenty-four month period.

11 NEW SECTION. **Sec. 13.** A person who knowingly violates this
12 chapter or who knowingly gives false or incorrect information in a
13 notice required by this chapter is guilty of a gross misdemeanor
14 punishable under chapter 9A.20 RCW.

15 NEW SECTION. **Sec. 14.** The attorney general or the proper
16 prosecuting attorney may institute proceedings under this chapter.

17 NEW SECTION. **Sec. 15.** The state of Washington fully occupies and
18 preempts the entire field of regulating going out of business sales.

19 NEW SECTION. **Sec. 16.** If any provision of this chapter or its
20 application to any person or circumstance is held invalid, the
21 remainder of the chapter or the application of the provision to other
22 persons or circumstances is not affected.

23 NEW SECTION. **Sec. 17.** Sections 1 through 16 of this act shall
24 constitute a new chapter in Title 19 RCW."

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28 On page 1, line 1 of the title, after "sales;" strike the remainder
29 of the title and insert "adding a new chapter to Title 19 RCW; and
30 prescribing penalties."

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