

HOUSE BILL REPORT

HB 1631

As Reported By House Committee On:
Commerce & Labor

Title: An act relating to going out of business sales.

Brief Description: Regulating going out of business sales.

Sponsors: Representatives Conway, Brumsickle, G. Cole, Horn, Wood, Appelwick and Thibaudeau.

Brief History:

Reported by House Committee on:
Commerce & Labor, February 17, 1993, DPS.

HOUSE COMMITTEE ON COMMERCE & LABOR

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 9 members: Representatives Heavey, Chair; G. Cole, Vice Chair; Lisk, Ranking Minority Member; Chandler, Assistant Ranking Minority Member; Conway; Horn; King; Springer; and Veloria.

Staff: Marc Greenough (786-5793) and Jim Kelley (786-7166).

Background: Washington law prohibits false, deceptive, or misleading advertising. In addition, the Consumer Protection Act prohibits unfair methods of competition or deceptive acts or practices in the conduct of any trade or commerce. The attorney general may bring an action to restrain acts prohibited by the Consumer Protection Act. A private citizen may bring an action to recover treble damages. The court may award attorney's fees to the attorney general or a private citizen prevailing in an action brought under the Consumer Protection Act.

Consumers as well as competitors have expressed concern that unfair or deceptive practices may be occurring in going out of business sales. Some businesses have brought in new merchandise or transferred merchandise from affiliated businesses in contemplation of a going out of business sale. By purchasing additional merchandise and bringing in other merchandise to sell on consignment, some businesses are able to prolong a going out of business sale to the detriment of legitimate competitors. Other businesses exist principally for the purpose of conducting going out of business sales.

However, federal bankruptcy courts have found that in the absence of legislation declaring such practices to be unfair or deceptive acts in trade or commerce affecting the public interest, these practices do not constitute violations of the Consumer Protection Act.

The Legislature has declared a number of violations of consumer protection statutes to be per se violations of the Consumer Protection Act. Examples include unlawful charitable solicitations, chain distribution schemes, promotional advertising of prizes, automotive repair, house-to-house sales by minors, and consumer leases.

Summary of Substitute Bill: A business is required to record a notice of a going out of business sale with the county auditor two weeks before the sale. A business may make either a complete list of inventory as of the date of recording the notice or a compilation of all purchase orders issued in the 30 days before recording the notice. A person conducting a sale must execute an affidavit that the inventory list or compilation is correct, attach the affidavit to the inventory list or compilation, and maintain the records for three years after the sale.

Sales conducted by persons acting in their capacity as public officials, moving sales, and sales at wholesale are exempted from the act. Emergency sales are exempted from the requirement that the notice be recorded two weeks before the sale, but must comply with the other provisions of the act.

Only a business with a valid Washington business identification number may conduct a going out of business sale. A business may not be established principally for the purpose of conducting a going out of business sale. A business is presumed to be established principally for this purpose if the owner has had a going out of business sale within one year or if the business was established within six months of recording the notice of the sale.

A business may not acquire merchandise solely for the purpose of conducting a going out of business sale. Orders for merchandise made within 30 days of recording the notice must be bona fide orders made in the usual course of business. Merchandise may not be transferred from an affiliated business or taken on consignment in contemplation of a going out of business sale.

A going out of business sale may not continue longer than 60 days. A going out of business sale may not be advertised more than two weeks before the sale. All advertising must include the dates on which the sale begins and ends. All

advertised price savings or discounts must be bona fide and substantiated.

After conducting a going out of business sale, a business or successor in any reformulation may not reopen within one year, unless the continuing business was in operation on the date the notice of the sale for the closing business was recorded.

The state preempts all local ordinances governing going out of business sales.

A business must notify the attorney general before conducting any going out of business sale ordered by a bankruptcy court. Any violation of the act is a per se violation of the Consumer Protection Act.

Substitute Bill Compared to Original Bill: The requirement that a business obtain a license before conducting a going out of business sale is removed. The preemption clause is added. Moving sales are exempted. The period before the sale restricting ordering of merchandise in contemplation of conducting a sale is changed from 90 days to 30 days. A person is not prevented from operating another similar business after conducting a going out of business sale if the other business was in operation before the date of recording the sale.

Fiscal Note: Available.

Effective Date of Substitute Bill: Ninety days after adjournment of session in which bill is passed.

Testimony For: Consumers should be fully informed about business practices. Legitimate businesses and consumers should have a level playing field free of deceptive practices. The reporting requirements in the substitute bill are neither onerous nor costly.

Testimony Against: None.

Witnesses: Representative Steve Conway, prime sponsor (in favor); Paula Selis, Assistant Attorney General (in favor); Jan Gee, Washington Retailers Association (in favor, preferred substitute bill); Jonathan Bridge, Ben Bridge Jeweler (in favor, preferred substitute bill); Lisa Thatcher, Washington Food Dealers (had concerns); Becky Bogard, Washington State Association of Broadcasters (had concerns).