FINAL BILL REPORT

SHB 1631

C 456 L 93
Synopsis as Enacted

Brief Description: Regulating going out of business sales.

By House Committee on Commerce & Labor (originally sponsored by Representatives Conway, Brumsickle, G. Cole, Horn, Wood, Appelwick and Thibaudeau).

House Committee on Commerce & Labor
Senate Committee on Labor & Commerce

Background: Washington's Consumer Protection Act prohibits false, deceptive, or misleading advertising. In addition, the 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 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 act.

Consumers as well as businesses 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 violations involving charitable solicitations, chain distribution schemes, promotional advertising of prizes, automotive repair, house-to-house sales by minors, and consumer leases.

Summary: 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.

These requirements apply only to persons who engage in the retail sale of merchandise in their regular course of business. 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 of a "going out of business" sale 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 and the address of the business that is going out of business, except that radio advertisements need not refer to the address of the business. 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.

Votes on Final Passage:

House	89	8	
Senate	42	4	(Senate amended)
House	94	2	(House concurred)

Effective: July 25, 1993