

SENATE BILL REPORT

SHB 1631

AS REPORTED BY COMMITTEE ON LABOR & COMMERCE, MARCH 30, 1993

Brief Description: Regulating going out of business sales.

SPONSORS: 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

Majority Report: Do pass as amended.

Signed by Senators Moore, Chairman; Prentice, Vice Chairman; Amondson, Barr, Cantu, Fraser, McAuliffe, Newhouse, Pelz, Prince, Sutherland, Vognild, and Wojahn.

Staff: Jonathan Seib (786-7427)

Hearing Dates: March 24, 1993; March 30, 1993

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 trade or commerce.

Some have expressed concern that unfair or deceptive practices may be occurring in 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.

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.

Sales conducted by persons acting in their capacity as public officials, moving sales, and sales at wholesale are exempt from the act. Emergency sales are exempt 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.

SUMMARY OF PROPOSED SENATE AMENDMENT:

Language is added which explicitly limits the application of the bill to persons who engage in the retail sale of merchandise in their regular course of business, and language which exempts radio advertisements from the requirement to list the addresses of the businesses going out of business.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

The bill is needed to address a growing problem with unfair and deceptive going out of business sales. Both consumers and legitimate businesses are hurt by these sales. The bill is a product of considerable negotiations between the interested parties. It reflects the best ideas from similar laws in approximately 30 other states.

TESTIMONY AGAINST: None

TESTIFIED: Representative Conway; Jan Gee, Washington Retail Association; Becky Bogard, Washington State Association of Broadcasters; Paula Selis, Office of the Attorney General; Ed Gonzaga, Seattle Department of Licenses and Consumer Affairs