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**SUBSTITUTE HOUSE BILL 1631**

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**State of Washington**

**53rd Legislature**

**1993 Regular Session**

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

Read first time 02/24/93.

1 AN ACT Relating to going out of business sales; adding a new  
2 chapter to Title 19 RCW; and prescribing penalties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

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

12 NEW SECTION. **Sec. 2.** Unless the context clearly requires  
13 otherwise, the definitions in this section apply throughout this  
14 chapter.

15 (1) "Affiliated business" means a business or business location  
16 that is directly or indirectly controlled by or under common control  
17 with the business location or locations listed in the notice of the  
18 sale or that has a common ownership interest in the merchandise to be

1 sold with the business location or locations listed in the notice of  
2 the sale.

3 (2) "Going out of business sale" means a sale or auction advertised  
4 or held out to the public as the disposal of merchandise in  
5 anticipation of cessation of business. This includes but is not  
6 limited to a sale or auction advertised or held out to the public as a  
7 "going out of business sale," a "closing out sale," a "quitting  
8 business sale," a "loss of lease sale," a "must vacate sale," a  
9 "liquidation sale," a "bankruptcy sale," a "sale to prevent  
10 bankruptcy," or another description suggesting price reduction due to  
11 the imminent closure of the business.

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

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

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

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

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

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

34 NEW SECTION. **Sec. 4.** (1) This chapter does not apply to:

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

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

1 (c) Moving sales, except for section 12(4) of this act.

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

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

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

12 (a) The name, address, telephone number, and Washington state  
13 business identification number of the owner of the merchandise to be  
14 sold. If the owner is a corporation, trust, unincorporated  
15 association, partnership, or other legal entity, the person signing the  
16 notice must be an officer of the entity and must identify his or her  
17 title;

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

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

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

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

28 (f) A statement that:

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

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

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

1 (iv) No person who has an ownership interest in the business or in  
2 the merchandise to be sold established or acquired an interest in the  
3 business or in the merchandise to be sold solely or principally for the  
4 purpose of conducting a going out of business sale;

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

9 (vi) No person who has an ownership interest in the business or in  
10 the merchandise to be sold is subject to a court order resulting from  
11 a civil enforcement action under the Consumer Protection Act for a  
12 violation of this chapter or the type of conduct prohibited by this  
13 chapter.

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

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

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

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

25 (c) The inventory list must be permanently attached to an affidavit  
26 executed by the person recording the notice of the sale stating that  
27 the inventory list is a true and correct inventory of merchandise owned  
28 by the business conducting the sale as of the date the affidavit is  
29 executed; and

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

32 (3) If a person elects to make a purchase order compilation, the  
33 compilation must be permanently attached to an affidavit executed by  
34 the person recording the notice of the sale stating that the  
35 compilation is a true and correct compilation of the purchase orders  
36 issued by the business in the thirty days before recording the notice  
37 of the sale.

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

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

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

14 (2) 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 established or acquired an ownership interest in the business  
17 solely or principally for the purpose of conducting a going out of  
18 business sale. A person who has either conducted a going out of  
19 business sale within one year or established or acquired an interest in  
20 the business conducting the sale within six months of recording the  
21 notice is presumed to have established or acquired an interest in the  
22 business solely or principally for the purpose of conducting a going  
23 out of business sale.

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

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

32 NEW SECTION. **Sec. 9.** (1) No person may sell consigned merchandise  
33 or other merchandise not owned by the person signing the notice at a  
34 going out of business sale. Merchandise ordered within thirty days of  
35 recording the notice of the sale may consist only of bona fide orders

1 made in the usual course of business and may contain no merchandise  
2 taken on consignment or otherwise.

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

6 (3) No person, after recording the notice of a going out of  
7 business sale, may buy or order merchandise, take merchandise on  
8 consignment, or receive a transfer of merchandise from an affiliated  
9 business or business location for the purpose of selling it at the sale  
10 or sell the merchandise in a going out of business sale.

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

14 (2) No person after conducting a going out of business sale may  
15 remain in business under any of the same ownership, or under the same  
16 or substantially the same trade name, or continue to offer for sale the  
17 same type of merchandise for a period of one year after the ending date  
18 of the sale unless the continuing business location was in operation  
19 before recording the notice for the closing business location.

20 (3) For the purposes of this section, if a business entity that is  
21 prohibited from continuing a business under this section reformulates  
22 itself as a new entity or as an individual, whether by sale, merger,  
23 acquisition, bankruptcy, dissolution, or other transaction, for the  
24 purpose of continuing the business or profiting from the business, the  
25 successor entity or individual is considered the same person as the  
26 original entity. If an individual who is prohibited from continuing a  
27 business under this section forms a new business entity to continue the  
28 business, participate in the business, or profit from the business,  
29 that entity is considered the same person as the individual.

30 NEW SECTION. **Sec. 11.** No person may conduct a going out of  
31 business sale if any means have been established for continuation of  
32 the closing business location by the same owner, directly or  
33 indirectly, by corporation, trust, unincorporated association,  
34 partnership, or other legal entity under the same name or under a  
35 different name.

1        NEW SECTION.    **Sec. 12.**    (1) No person may advertise a going out of  
2 business sale more than fourteen days before the beginning date of the  
3 sale. All advertising of the sale must state the beginning date and  
4 must clearly and prominently state the ending date of the sale. All  
5 advertising must be confined to or refer to the address or addresses  
6 and place or places of business specified in the notice as going out of  
7 business and may not state that other locations or affiliated  
8 businesses are cooperating with or participating in the sale unless the  
9 other locations or affiliated businesses are included in the notice.

10        (2) No advertising may contain false, misleading, or deceptive  
11 statements regarding the nature, duration, merchandise, or other terms  
12 of a going out of business sale.

13        (3) Representations in advertising regarding price savings or  
14 discounts on sale merchandise must be bona fide and substantiated.

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

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

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

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

25        NEW SECTION.    **Sec. 16.**    If any provision of this chapter or its  
26 application to any person or circumstance is held invalid, the  
27 remainder of the chapter or the application of the provision to other  
28 persons or circumstances is not affected.

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

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