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HOUSE BILL 1113

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State of Washington

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By Representatives Appelwick, G. Cole, Johanson, Horn, Thibaudeau, Wood and Brumsickle

Read first time 01/15/93. Referred to Committee on Commerce & Labor.

1 AN ACT Relating to going out of business sales; adding a new  
2 section to chapter 35.21 RCW; adding a new section to chapter 36.32  
3 RCW; adding a new chapter to Title 19 RCW; creating a new section; and  
4 prescribing penalties.

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

6 NEW SECTION. **Sec. 1.** The legislature finds that the practice of  
7 conducting unfair or deceptive going out of business sales is a matter  
8 vitally affecting the public interest for the purpose of applying the  
9 consumer protection act, chapter 19.86 RCW. These acts of unfairness  
10 or deception are not reasonable in relation to the development and  
11 preservation of business and are injurious to the public interest.

12 The purpose of this chapter is to regulate the conduct of going out  
13 of business sales in order to prevent unfair and deceptive acts or  
14 practices in trade and commerce, and to prevent unfair methods of  
15 competition.

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

1 (1) "Affiliated business" means a business or business location  
2 that is directly or indirectly controlled by, or is under common  
3 control with the business location or business locations listed on the  
4 license application, or that has a common ownership interest with the  
5 business location or business locations listed on the license  
6 application in the goods to be sold.

7 (2) "Going out of business sale" means a sale or auction advertised  
8 or held out to the public as the disposal of stock of goods in  
9 anticipation of cessation of business. This includes but is not  
10 limited to a sale or auction advertised or held out to the public as a  
11 "going out of business sale," a "closing out sale," a "quitting  
12 business sale," a "loss of lease sale," a "must vacate sale," a  
13 "liquidation sale," an "inventory clearance sale," a "bankruptcy sale,"  
14 a sale "to prevent bankruptcy," or another description suggesting price  
15 reduction due to the imminent closure of the business.

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

18 (4) "Person" means, where applicable, natural persons,  
19 corporations, trusts, unincorporated associations, partnerships, or  
20 another legal entity.

21 NEW SECTION. **Sec. 3.** (1) It is unlawful for a person to sell,  
22 offer for sale, or advertise for sale merchandise at a going out of  
23 business sale without having first obtained a license in accordance  
24 with the provisions of this chapter.

25 (2) The license must be displayed in a prominent place on the  
26 premises where a going out of business sale is being conducted, and  
27 must clearly show the name of the applicant and the beginning and  
28 ending dates of the sale.

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

35 NEW SECTION. **Sec. 4.** (1) The provisions of this chapter shall not  
36 apply to persons acting in accordance with their powers and duties as  
37 public officers, such a county sheriffs.

1 (2) Going out of business sales or perishable merchandise or  
2 merchandise damaged by fire, smoke, or water are exempt from the  
3 requirement that application for a license be made at least fourteen  
4 days prior to the beginning of the proposed sale.

5 NEW SECTION. **Sec. 5.** (1) An applicant for a license under this  
6 chapter shall file an application in writing and under oath at least  
7 fourteen days prior to the beginning date of the proposed going out of  
8 business sale with the municipal or county official designated by the  
9 local legislative authority.

10 (2) The applicant shall set forth the following facts and  
11 information regarding the proposed sale:

12 (a) The name, address, telephone number, and Washington state  
13 business identification number of the applicant for the license, who  
14 must be the owner of the goods to be sold. If the applicant is a  
15 corporation, trust, unincorporated association, partnership, or other  
16 legal entity, the applicant must be an officer of the entity and must  
17 identify his or her 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 opening and  
21 closing dates of the proposed sale;

22 (d) A complete itemized list of current inventory, containing a  
23 description of each item to be offered for sale at the proposed sale;

24 (e) A separate list of all merchandise ordered or received by the  
25 applicant during the ninety days preceding the filing of the  
26 application; and

27 (f) A statement that:

28 (i) The merchandise ordered during the ninety days preceding the  
29 filing of the application consists only of bona fide orders made in the  
30 usual course of business and does not contain merchandise taken on  
31 consignment or otherwise;

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

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

37 (iv) Neither the applicant nor a person who has an ownership  
38 interest in the business or in the goods to be sold has established the

1 business or acquired an interest in the business or goods to be sold  
2 solely or principally for the purpose of conducting a going out of  
3 business sale;

4 (v) Neither the applicant nor a person who has an ownership  
5 interest in the business or the goods to be sold has conducted a going  
6 out of business sale within one year prior to the date of filing the  
7 application;

8 (vi) Neither the applicant nor a person who has an ownership  
9 interest in the business or the goods to be sold has had a license  
10 issued under this chapter revoked within five years of the filing of  
11 the present application or is subject to a court order resulting from  
12 a civil enforcement action under the consumer protection act for a  
13 violation of this chapter or the type of conduct prohibited by this  
14 chapter;

15 (vii) The business will be discontinued upon termination of the  
16 sale and no goods held out for sale will be subsequently offered for  
17 sale to the public by anyone who had an ownership interest in the  
18 business or in the goods offered for sale; and

19 (viii) Other information as requested by the municipal or local  
20 authority.

21 (3) If the county or municipal official responsible for the  
22 licensing is satisfied from the application that the proposed sale is  
23 of the character of a bona fide going out of business sale, the  
24 official will issue a license, upon the payment of a license fee by the  
25 applicant.

26 NEW SECTION. **Sec. 6.** (1) No license for a going out of business  
27 sale will be issued except to a merchant with a valid Washington state  
28 business identification number.

29 (2) No license will be granted to an applicant if it is found that:

30 (a) The applicant or a person with whom the applicant is or has  
31 been associated in the business has established the business or  
32 acquired an interest in the business or in the goods to be sold solely  
33 or principally for the purpose of conducting a going out of business  
34 sale. An applicant or a person with whom the applicant is or has been  
35 associated in the business who has conducted a going out of business  
36 sale within one year of application for a license under this chapter,  
37 and a business that has been established or an interest that has been

1 acquired for less than six months are presumed to have been established  
2 or acquired for the purpose of going out of business; and

3 (b) The applicant or a person with whom the applicant is or has  
4 been associated in the business has had a license issued pursuant to  
5 this chapter revoked within five years of the filing of the present  
6 application is subject to a court order resulting from a violation of  
7 a local ordinance regulating going out of business sales, or is subject  
8 to a court order resulting from a civil enforcement action under the  
9 consumer protection act for a violation of this chapter or the type of  
10 conduct prohibited by this chapter.

11 NEW SECTION. **Sec. 7.** (1) A license issued under this chapter is  
12 valid for the going out of business sale described in the application  
13 for a period of sixty days from the beginning date of the sale.

14 (2) A license issued under this chapter may be revoked upon the  
15 determination by the official issuing the license that the licensee  
16 made false statements on the application or that the sale is being  
17 conducted in violation of a provision of this chapter.

18 NEW SECTION. **Sec. 8.** (1) No person shall sell consigned  
19 merchandise or other merchandise not owned by the person going out of  
20 business at a going out of business sale. Merchandise ordered within  
21 the ninety days preceding the application for the proposed sale shall  
22 consist only of bona fide orders made in the usual course of business  
23 and shall contain no merchandise taken on consignment or otherwise.

24 (2) No person in contemplation of a going out of business sale  
25 shall transfer merchandise from an affiliated business or business  
26 location to the location or locations of the proposed sale.

27 (3) No person, after an application for a going out of business  
28 sale license has been filed, shall buy or order merchandise, take  
29 merchandise on consignment, or receive a transfer of merchandise from  
30 an affiliated business or business location for the purpose of selling  
31 the same at the sale or sell the merchandise in a going out of business  
32 sale.

33 NEW SECTION. **Sec. 9.** (1) No person shall continue to conduct a  
34 going out of business sale beyond the termination date listed on the  
35 license. An auction, as defined in RCW 18.11.050(2), in which the same  
36 inventory listed on the licensee's application is auctioned to the

1 consumer public, is part of the going out of business sale for purposes  
2 of this section and must be conducted before the termination date  
3 listed on the license. A bulk transfer, as defined in RCW 62A.6-102,  
4 is not part of the going out of business sale for purposes of this  
5 section.

6 (2) No person conducting a going out of business sale licensed  
7 under the provisions of this chapter shall, upon conclusion of the  
8 sale, continue to remain in business under any of the same ownership,  
9 or under the same or substantially the same trade name, or continue to  
10 offer for sale the same type of merchandise for a period of one year.

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

21 NEW SECTION. **Sec. 10.** No person shall apply for a license or  
22 conduct a going out of business sale if any means have been established  
23 by the owner for continuation of the business, or sale to the public of  
24 the same goods that were held out for sale in the going out of business  
25 sale, by the same owner directly or indirectly, by corporation, trust,  
26 unincorporated association, partnership, other legal entity, or  
27 otherwise under the same name or under a different name, at the same  
28 location or elsewhere within the state.

29 NEW SECTION. **Sec. 11.** (1) No person shall advertise a going out  
30 of business sale earlier than fourteen days prior to the date on which  
31 the sale is licensed to begin. All advertising of the sales shall  
32 state the number of the license issued under this chapter, the date  
33 when the sale is to begin, and shall clearly and prominently state the  
34 termination date of the sale. All advertising shall be confined to or  
35 refer to the address or addresses and place or places of business  
36 specified on the application as going out of business and may not state  
37 that other locations or affiliated businesses are cooperating with or

1 participating in the sale unless the other locations or affiliated  
2 businesses are included on the license application.

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

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

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

16 NEW SECTION. **Sec. 13.** A person who knowingly violates a section  
17 of this chapter or who knowingly gives false or incorrect information  
18 on a license application required by this chapter is guilty of a gross  
19 misdemeanor and shall incur the penalties set forth under chapter 9A.20  
20 RCW.

21 NEW SECTION. **Sec. 14.** An official designated by a local  
22 legislative authority to issue going out of business sale licenses may  
23 refer available evidence concerning violations of this chapter to the  
24 attorney general or to the proper prosecuting attorney who may in their  
25 discretion, with or without reference to the available evidence,  
26 institute proceedings under this chapter.

27 NEW SECTION. **Sec. 15.** Nothing in this chapter is deemed to  
28 prohibit a local governing authority of a county or municipality from  
29 enacting, amending, repealing, or enforcing local ordinances regulating  
30 going out of business sales that do not conflict with the requirements  
31 of sections 2 through 14 of this act.

32 NEW SECTION. **Sec. 16.** If any provision of this act or its  
33 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other  
2 persons or circumstances is not affected.

3 NEW SECTION. **Sec. 17.** Sections 2 through 15 of this act shall  
4 constitute a new chapter in Title 19 RCW.

5 NEW SECTION. **Sec. 18.** A new section is added to chapter 35.21 RCW  
6 to read as follows:

7 The municipal legislative authority shall direct the appropriate  
8 municipal official to consider applications and issue licenses for  
9 going out of business sales designated in this chapter for a sum as may  
10 be fixed under the authority of RCW 35.21.710.

11 NEW SECTION. **Sec. 19.** A new section is added to chapter 36.32 RCW  
12 to read as follows:

13 The county legislative authority shall direct the appropriate  
14 county official to consider applications and issue licenses for going  
15 out of business sales designated in this chapter for a sum as may be  
16 fixed under the authority of RCW 36.32.120(3).

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