

CERTIFICATION OF ENROLLMENT

SUBSTITUTE HOUSE BILL 1631

53rd Legislature
1993 Regular Session

Passed by the House April 20, 1993
Yeas 92 Nays 2

**Speaker of the
House of Representatives**

Passed by the Senate April 8, 1993
Yeas 42 Nays 4

President of the Senate

Approved

Governor of the State of Washington

CERTIFICATE

I, Alan Thompson, Chief Clerk of the House of Representatives of the State of Washington, do hereby certify that the attached is **SUBSTITUTE HOUSE BILL 1631** as passed by the House of Representatives and the Senate on the dates hereon set forth.

Chief Clerk

FILED

**Secretary of State
State of Washington**

SUBSTITUTE HOUSE BILL 1631

AS AMENDED BY THE SENATE

Passed Legislature - 1993 Regular Session

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 shall apply only to persons
35 who engage in the retail sale of merchandise in their regular course of
36 business.

37 (2) This chapter does not apply to:

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

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

4 (c) Moving sales, except for section 12(5) of this act.

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

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

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

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

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

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

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

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

31 (f) A statement that:

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

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

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

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

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

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

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

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

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

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

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

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

35 (3) If a person elects to make a purchase order compilation, the
36 compilation must be permanently attached to an affidavit executed by
37 the person recording the notice of the sale stating that the
38 compilation is a true and correct compilation of the purchase orders

1 issued by the business in the thirty days before recording the notice
2 of the sale.

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

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

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

16 (2) No person may conduct a going out of business sale if a person
17 who has an ownership interest in the business or in the merchandise to
18 be sold established or acquired an ownership interest in the business
19 solely or principally for the purpose of conducting a going out of
20 business sale. A person who has either conducted a going out of
21 business sale within one year or established or acquired an interest in
22 the business conducting the sale within six months of recording the
23 notice is presumed to have established or acquired an interest in the
24 business solely or principally for the purpose of conducting a going
25 out of business sale.

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

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

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

1 recording the notice of the sale may consist only of bona fide orders
2 made in the usual course of business and may contain no merchandise
3 taken on consignment or otherwise.

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

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

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

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

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

31 NEW SECTION. **Sec. 11.** No person may conduct a going out of
32 business sale if any means have been established for continuation of
33 the closing business location by the same owner, directly or
34 indirectly, by corporation, trust, unincorporated association,
35 partnership, or other legal entity under the same name or under a
36 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. Except
5 as provided in subsection (2) of this section, all advertising must be
6 confined to or refer to the address or addresses and place or places of
7 business specified in the notice as going out of business and may not
8 state that other locations or affiliated businesses are cooperating
9 with or participating in the sale unless the other locations or
10 affiliated businesses are included in the notice.

11 (2) Advertising broadcast on radio is not required to refer to the
12 address or addresses of the business specified in the notice as going
13 out of business, but must meet all other conditions of this section.

14 (3) No advertising may contain false, misleading, or deceptive
15 statements regarding the nature, duration, merchandise, or other terms
16 of a going out of business sale.

17 (4) Representations in advertising regarding price savings or
18 discounts on sale merchandise must be bona fide and substantiated.

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

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

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

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

29 NEW SECTION. **Sec. 16.** If any provision of this chapter or its
30 application to any person or circumstance is held invalid, the
31 remainder of the chapter or the application of the provision to other
32 persons or circumstances is not affected.

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

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