

ACT 98

H.B. NO. 2909

A Bill for an Act Relating to Going Out of Business Sales.

Be It Enacted by the Legislature of the State of Hawaii:

SECTION 1. The Hawaii Revised Statutes, is amended by adding a new chapter to be appropriately designated and to read as follows:

**“CHAPTER
GOING OUT OF BUSINESS SALES**

§ **-1 Definitions.** As used in this chapter:

“Going out of business sale” means any sale, whether described by that name or any other name including but not limited to “closing out sale,” “lost our lease sale,” “forced to vacate sale,” and “inventory close out sale,” held in a manner as to induce a belief that upon disposal of the stock of goods on hand, the

business will cease and be discontinued at the premises where the sale is conducted, and that otherwise complies with all applicable laws and rules relating to sales and conduct of sales.

"Goods" includes all goods, wares, merchandise, and other personal property, excepting choses in action and money.

"Person" includes a person, firm, corporation, partnership, association, or two or more persons having a joint or common interest.

"Removal sale" means any sale held in such a manner as to induce a belief that upon disposal of the stock of goods on hand, the business will cease and be discontinued at the premises where the sale is conducted, and thereafter will be moved to occupy another location.

§ **-2 Insurance, salvage, removal, going out of business, creditor's, and other special sales; sale of damaged goods; notice required; exceptions.** No person shall directly or indirectly advertise or cause to be advertised, represent or cause to be represented, or hold out to the public in any manner that any sale of goods is an insurance, salvage, removal, going out of business, insolvent's, assignee's, or creditor's sale of goods, or that it is a sale of goods which have been damaged by fire, smoke, water, or otherwise, without first posting a notice as provided in this chapter, if that person:

- (1) Has inventory which includes one hundred or more items, each costing \$100 or more; and
- (2) Has placed advertising having a list or fair market value of \$10,000 or more.

This section shall not apply to any sales made under the direction of any court or trustee in bankruptcy, or to any person acting under the direction and supervision of state or federal courts in the course of their official duties. This section shall not apply to any sales by a person regularly engaged in insurance or salvage of goods, or sale of goods which have been damaged by fire, smoke, water, or otherwise, who acquired the goods for the account of others as a result of fire or other casualty.

§ **-3 Posting of notice.** A person required to post notice under this chapter shall post a notice which shall be not less than twenty-two inches by thirty-three inches in size and posted in a conspicuous place which is visible and readable outside the place of business where the sale is to be held. The notice shall be signed under penalty of perjury. Where the person is a corporation, the notice shall be signed by two officers. Where the person is a partnership, the notice shall be signed by two partners. The notice shall include the following:

- (1) The name and address of the owner of the goods being sold. If the person is a partnership, corporation, firm, or association, the full name and position of the individual filing the notice;
- (2) The type of sale and manner in which the sale is to be conducted and the address where the sale is to be conducted;
- (3) The dates and time during which the sale is to be conducted;
- (4) The name and street address of the person in charge of and responsible for the conduct of the sale;
- (5) An explanation regarding the condition or necessity for the sale, including a statement of the descriptive name of the sale and the reasons why the name is truthfully descriptive of the sale. The notice shall contain a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale. If the sale is with respect to a removal sale, it shall contain

a statement that the business will be discontinued at the premises where the sale is to be conducted upon termination of the sale, in addition to the location of the premises to which the business is to be moved. If the sale is with respect to the sale of goods damaged by fire, smoke, water, or otherwise, the notice shall contain a statement as to the time, location, and cause of the damage;

- (6) The notice shall state that an inventory report form, containing a detailed list and inventory of each item of inventory costing over \$100 to be sold, itemizing the goods to be sold, and containing sufficient information concerning each item, including make and brand name, shall be available for inspection on the store premises on request. The inventory report form shall list separately goods which were purchased during the sixty-day period immediately prior to the date of posting the notice showing the cost price of each item to the owner of the inventory together with the name and address of the seller of the item to the owner of the inventory, the date of purchase, the date of delivery to the owner of the inventory, and the total value of the inventory at cost;
- (7) A statement that no goods will be added to the inventory after posting the notice or during the sale, and that the inventory contains no goods received on consignment; and
- (8) A statement disclosing the date from which the person has maintained a place of business within the State prior to the posting of the notice.
- (9) This section shall not apply to any person who acquired a right, title, or interest in the goods:
 - (A) As an heir, devisee, legatee, or surviving joint tenant;
 - (B) As an executor, administrator, trustee, guardian or conservator; or
 - (C) Pursuant to an order or process of a court of competent jurisdiction.

§ -4 **Violation; penalties.** Any violations of this chapter shall constitute unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce as prescribed in section 480-2 and subject to the civil penalty prescribed in section 480-3.1."

SECTION 2. This Act shall take effect upon its approval; provided that this Act shall be repealed three years from the date of its approval.

(Approved June 8, 1994.)