

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 legislature finds that preventing fraudulent going out of business sales is in the interest of protecting Hawaii's consumers from buying low quality goods under the pretext that a company is going out of business or otherwise must sell their goods immediately due to fire damage and other such instances. Act 98, Session Laws of Hawaii (SLH) 1994, was enacted to ensure that fraudulent sales are prevented. The legislature finds that Act 98 has been effective in halting the onslaught of going out of business and like sales in Hawaii.

The purpose of this Act is to repeal the sunset clause on Act 98, to provide time limits on such sales, and to require a business person to post notice of a regulated sale when either (rather than both) of the following conditions are met:

- (1) There are one hundred or more items in the inventory, each costing \$100 or more; or
- (2) Advertising having a list or fair market value of \$10,000 or more has been placed.

SECTION 2. Act 98, Session Laws of Hawaii 1994, section 1, is amended:

1. By adding a new section to the new chapter to read:

"§ -4 Time limit. No person shall advertise merchandise for sale as a going out of business sale for a period in excess of sixty days nor advertise more than one going out of business sale in three-hundred-sixty days. The three-hundred-sixty-day period shall commence on the first day of the sale."

2. By amending section -2 of the new chapter to read:

"§ -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] or
- (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. By renumbering and amending section -4 of the new chapter to read:

"[§ -4] § -5 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] Any person who violates or attempts to violate any provision of this chapter shall be deemed to have engaged in an unfair

or deceptive act or practice in the conduct of trade or commerce within the meaning of section 480-2.”

SECTION 3. Act 98, Session Laws of Hawaii 1994, is amended by amending section 2 to read as follows:

“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].”

SECTION 4. Statutory material to be repealed is bracketed. New statutory material is underscored.

SECTION 5. This Act shall take effect upon its approval.

(Approved June 18, 1996.)