

SENATE BILL REPORT

SHB 1013

AS REPORTED BY COMMITTEE ON LAW & JUSTICE, MARCH 29, 1993

Brief Description: Adopting the revised uniform commercial code on bulk sales.

SPONSORS: House Committee on Judiciary (originally sponsored by Representatives Appelwick and Riley)

HOUSE COMMITTEE ON JUDICIARY

HOUSE COMMITTEE ON APPROPRIATIONS

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators A. Smith, Chairman; Quigley, Vice Chairman; Hargrove, Nelson, Niemi, Rinehart, and Spanel.

Staff: Tom Fender (786-7414)

Hearing Dates: March 25, 1993; March 29, 1993

BACKGROUND:

The Bulk Sale Act of 1901 was enacted in response to concern that a merchant would acquire stock in trade on credit, then sell the entire inventory and abscond with the proceeds. The creditors had a right to sue the merchant, but that right was often of little practical value. The creditors had no recourse against the buyer. The salient component of these laws is to impose duties upon the buyer to notify the seller's creditors of the sale and to assure a distribution of the sale to the creditors. The buyer's failure to comply would enable a creditor to set aside the sale and take the inventory.

Washington law on bulk transfers applies to any transfer in bulk, not in the ordinary course of the transferor's business, of a major part of the transferor's materials, supplies, merchandise, or other inventory.

The article applies to vendors engaged in buying, selling, and dealing in goods, wares, or merchandise, or in the business of operating a restaurant, cafe, beer parlor, tavern, hotel, club, or gasoline service station. A number of transfers are excepted from the article, such as those made to give security for the performance of an obligation, general assignments for the benefit of creditors, transfers in settlement of a lien or other security interests, sales by executors or trustees, sales made in judicial or administrative proceedings to dissolve or reorganize the company, transfers to a person who is bound to pay the debtor's debts, transfers to a new business which is buying the debtor's business and the new

business gives notice to creditors and assumes the debts, transfers of property exempt from execution, and any sale subject to a public auction on a lien foreclosure.

A bulk transfer is ineffective against any creditor of the transferor unless the transferee requires the transferor to provide a list of existing creditors, the parties prepare a schedule of the property transferred sufficient to identify it, the transferee keeps the list and schedule for six months after the transfer, and permits creditors to inspect them. Additional filing requirements are also imposed.

Specific notice requirements exist. The transferee is obligated to assure that new consideration paid for the goods is applied to pay the transferor's creditors. If any debts are in dispute, the necessary sum may be withheld from distribution until the dispute is resolved. If the amount paid is insufficient to satisfy all claims, the distribution is pro rata.

A subsequent good faith purchaser who purchases the goods from the original transferee without notice of a defect in the bulk sale takes the property free of the original transferee's liabilities.

The National Conference of Commissioners on Uniform State Laws and the American Law Institute believe that bulk sales laws impede normal business transactions and that changes in the business and legal contexts in which bulk sales are conducted have made regulation of bulk sales unnecessary.

SUMMARY:

The current article known as the Uniform Commercial Code--Bulk Transfers is repealed. A revised article on bulk sales, recommended by the National Conference of Commissioners on Uniform State Laws and the American Institute, is adopted. The new article applies only to sales and not to other transfers.

New definitions are adopted. Two kinds of "bulk sales" are defined. One kind is conducted by an auctioneer or liquidator, and the other is a direct sale by the seller to a buyer. The article only applies to sales by businesses whose principle business is the sale of inventory from stock. Restaurants, cafes, beer parlors, taverns, hotels, clubs, and gasoline service stations are excluded.

Specific requirements for issuing the notices of sale are set forth. A statutory form is provided. The buyer and seller must agree on how the net contract price is to be distributed and must set forth their agreement in a written schedule of distribution.

A buyer who fails to comply with the buyer's undertakings in the schedule of distribution may be liable to the creditor for damages in the amount of the claim, reduced by any amount the creditor would not have realized if the buyer had complied.

Most requirements imposed on buyers and sellers apply to sales by auctioneers or liquidators on the seller's behalf. The auctioneer is considered the "buyer."

Requirements are established for filing the required notices and lists with the Department of Licensing. The Department of Licensing may by rule establish fees for filing notices, lists, and certificates. An action against a buyer, auctioneer, or liquidator must be commenced within one year after the date of the bulk sale.

SUMMARY OF PROPOSED SENATE AMENDMENT:

The striking amendment repeals the Washington law on bulk sales transfer consistent with the primary recommendation of the Uniform Law Commission.

Appropriation: none

Revenue: none

Fiscal Note: available

TESTIMONY FOR:

The Washington law is cumbersome and an impediment to commerce. Changes in credit reporting and the secured transaction article have supplanted this code.

TESTIMONY AGAINST:

The original law is better than the proposal contained in HB 1013.

TESTIFIED: Representative Appelwick (pro); Mark Patterson, Washington State Bar Association (pro); Edgar Rombauer, Attorney at Law (con)