
SUBSTITUTE HOUSE BILL 1013

State of Washington 53rd Legislature 1993 Regular Session

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

Read first time 02/02/93. Referred to Committee on .

1 AN ACT Relating to the Uniform Commercial Code--Bulk Sales;
2 amending RCW 62A.1-105, 62A.2-403, and 62A.9-111; adding a new chapter
3 to Title 62A RCW; and repealing RCW 62A.6-101, 62A.6-102, 62A.6-103,
4 62A.6-104, 62A.6-105, 62A.6-106, 62A.6-107, 62A.6-108, 62A.6-109,
5 62A.6-110, and 62A.6-111.

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

7 NEW SECTION. **Sec. 6-101.** SHORT TITLE. This Article shall be
8 known and may be cited as Uniform Commercial Code--Bulk Sales.

9 NEW SECTION. **Sec. 6-102.** DEFINITIONS AND INDEX OF DEFINITIONS.
10 (1) In this Article, unless the context otherwise requires:

11 (a) "Assets" means the inventory that is the subject of a bulk sale
12 and any tangible and intangible personal property used or held for use
13 primarily in, or arising from, the seller's business and sold in
14 connection with that inventory, but the term does not include:

15 (i) Fixtures (RCW 62A.9-313(1)(a)) other than readily removable
16 factory and office machines;

17 (ii) The lessee's interest in a lease of real property; or

1 (iii) Property to the extent it is generally exempt under
2 nonbankruptcy law.

3 (b) "Auctioneer" means a person whom the seller engages to direct,
4 conduct, control, or be responsible for a sale by auction.

5 (c) "Bulk sale" means:

6 (i) In the case of a sale by auction or a sale or series of sales
7 conducted by a liquidator on the seller's behalf, a sale or series of
8 sales not in the ordinary course of the seller's business of more than
9 half of the seller's inventory, as measured by value on the date of the
10 bulk sale agreement, if on that date the auctioneer or liquidator has
11 notice, or after reasonable inquiry would have had notice, that the
12 seller will not continue to operate the same or a similar kind of
13 business after the sale or series of sales; and

14 (ii) In all other cases, a sale not in the ordinary course of the
15 seller's business of more than half the seller's inventory, as measured
16 by value on the date of the bulk sale agreement, if on that date the
17 buyer has notice, or after reasonable inquiry would have had notice,
18 that the seller will not continue to operate the same or a similar kind
19 of business after the sale.

20 (d) "Claim" means a right to payment from the seller, whether or
21 not the right is reduced to judgment, liquidated, fixed, matured,
22 disputed, secured, legal, or equitable. The term includes costs of
23 collection and attorneys' fees only to the extent that the laws of this
24 state permit the holder of the claim to recover them in an action
25 against the obligor.

26 (e) "Claimant" means a person who holds a claim incurred in the
27 seller's business other than:

28 (i) An unsecured and unmatured claim for employment compensation
29 and benefits, including commissions and vacation, severance, and sick-
30 leave pay;

31 (ii) A claim for injury to an individual or to property, or for
32 breach of warranty, unless:

33 (A) A cause of action for the claim has accrued;

34 (B) The claim has been asserted against the seller; and

35 (C) The seller knows the identity of the person asserting the claim
36 and the basis upon which the person has asserted it; and

37 (iii) A claim for taxes owing to a governmental unit.

38 (f) "Creditor" means a person holding a claim and includes a
39 claimant.

1 (g) "Date of the bulk sale" means:

2 (i) If the sale is by auction or is conducted by a liquidator on
3 the seller's behalf, the date on which more than ten percent of the net
4 proceeds is paid to or for the benefit of the seller; and

5 (ii) In all other cases, the later of the date on which:

6 (A) More than ten percent of the net contract price is paid to or
7 for the benefit of the seller; or

8 (B) More than ten percent of the assets, as measured by value, are
9 transferred to the buyer. Delivery of a negotiable instrument (RCW
10 62A.3-104(1)) to or for the benefit of the seller in exchange for
11 assets constitutes payment of the contract price pro tanto. To the
12 extent that the contract price is deposited in an escrow, the contract
13 price is paid to or for the benefit of the seller when the seller
14 acquires the unconditional right to receive the deposit or when the
15 deposit is delivered to the seller or for the benefit of the seller,
16 whichever is earlier. An asset is transferred when a person holding an
17 unsecured claim can no longer obtain through judicial proceedings
18 rights to the asset that are superior to those of the buyer arising as
19 a result of the bulk sale. Notwithstanding other law to the contrary,
20 a person holding an unsecured claim can obtain such superior rights to
21 a tangible asset at least until the buyer has an unconditional right,
22 under the bulk sale agreement, to possession of the asset, and a person
23 holding an unsecured claim can obtain such superior rights to an
24 intangible asset at least until the buyer has the unconditional right,
25 under the bulk sale agreement, to use of the asset.

26 (h) "Date of the bulk sale agreement" means:

27 (i) In the case of a sale by auction or conducted by a liquidator,
28 the date on which the seller engages the auctioneer or liquidator; and

29 (ii) In all other cases, the date on which an agreement for a bulk
30 sale becomes enforceable between the buyer and the seller.

31 (i) "Debt" means liability on a claim.

32 (j) "Liquidator" means a person who is regularly engaged in the
33 business of disposing of assets for businesses contemplating
34 liquidation or dissolution.

35 (k) "Net contract price" means the value of new consideration that
36 the buyer is obligated to pay for the assets less:

37 (i) The amount of any proceeds of an asset, to the extent the
38 proceeds are applied in partial or total satisfaction of a debt secured
39 by the asset; and

1 (ii) The amount of any debt to the extent it is secured by a
2 security interest or lien that is enforceable against the asset before
3 and after it has been sold to a buyer.

4 (l) "Net proceeds" means the value of new consideration received
5 for assets sold at a sale by auction or a sale conducted by a
6 liquidator on the seller's behalf less:

7 (i) The reasonable expenses of the auction or sale, including
8 commissions;

9 (ii) The amount of any proceeds of an asset, to the extent the
10 proceeds are applied in partial or total satisfaction of a debt secured
11 by the asset; and

12 (iii) The amount of any debt to the extent it is secured by a
13 security interest or lien that is enforceable against the asset before
14 and after it has been sold to a buyer.

15 (m) A sale is "in the ordinary course of the seller's business" if
16 the sale comports either with usual or customary practices in the kind
17 of business in which the seller is engaged or with the seller's own
18 usual or customary practices.

19 (n) "United States" means its states, territories, and possessions
20 including the Commonwealth of Puerto Rico and the District of Columbia.

21 (o) "Value" means fair market value.

22 (p) "Verified" means signed and sworn to or affirmed.

23 (2) The following definitions in other Articles apply to this
24 Article:

25 (a) "Buyer." RCW 62A.2-103(1)(a).

26 (b) "Equipment." RCW 62A.9-109(2).

27 (c) "Good faith." RCW 62A.1-201(19).

28 (d) "Inventory." RCW 62A.9-109(4).

29 (e) "Sale." RCW 62A.2-106(1).

30 (f) "Seller." RCW 62A.2-103(1)(d).

31 (3) In addition, Article 1 contains general definitions and
32 principles of construction and interpretation applicable throughout
33 this Article.

34 NEW SECTION. **Sec. 6-103.** APPLICABILITY OF THIS ARTICLE. (1)

35 Except as otherwise provided in subsection (2) of this section, this
36 Article applies to a bulk sale if:

37 (a) The seller's principal business is the sale of inventory from
38 stock; and

1 (b) On the date of the bulk sale agreement the seller is located in
2 this state or, if the seller is located in a jurisdiction that is not
3 a part of the United States, the seller's major executive office in the
4 United States is in this state. A seller is deemed located at his or
5 her place of business. If a seller has more than one place of
6 business, the seller is deemed located at his or her chief executive
7 office.

8 (2) This Article does not apply to:

9 (a) A transfer made to secure the payment or performance of an
10 obligation;

11 (b)(i) A transfer of collateral to a secured party pursuant to RCW
12 62A.9-503;

13 (ii) A sale of collateral pursuant to RCW 62A.9-504;

14 (iii) Retention of collateral pursuant to RCW 62A.9-505; or

15 (iv) A sale of an asset encumbered by a security interest or lien
16 if (A) all the proceeds of the sale are applied in partial or total
17 satisfaction of the debt secured by the security interest or lien or
18 (B) the security interest or lien is enforceable against the asset
19 after it has been sold to the buyer and the net contract price is zero;

20 (c) A general assignment for the benefit of creditors or to a
21 subsequent transfer by the assignee;

22 (d) A sale by an executor, administrator, receiver, trustee in
23 bankruptcy, or any public officer under judicial process;

24 (e) A sale made in the course of judicial or administrative
25 proceedings for the dissolution or reorganization of an organization;

26 (f) A sale to a buyer whose principal place of business is in the
27 United States and who:

28 (i) Not earlier than twenty-one days before the date of the bulk
29 sale, either (A) obtains from the seller a verified list of claimants
30 of which the seller has notice three days before the seller sends or
31 delivers the list to the buyer or (B) conducts a reasonable inquiry to
32 discover the claimants;

33 (ii) Assumes in full the debts owed to claimants of which the buyer
34 has knowledge on the date the buyer receives the list of claimants from
35 the seller or on the date the buyer completes the reasonable inquiry,
36 as the case may be;

37 (iii) Is not insolvent after the assumption; and

38 (iv) Gives written notice of the assumption not later than thirty
39 days after the date of the bulk sale by sending a notice to the

1 claimants identified in (f)(ii) of this subsection or by filing a
2 notice with the department of licensing. The notice must state: (A)
3 That a sale that may constitute a bulk sale has been or will be made;
4 (B) the date or prospective date of the bulk sale; (C) the individual,
5 partnership, or corporate names and the addresses of the seller and
6 buyer; (D) the address to which inquiries about the sale should be
7 made, if different from the seller's address; and (E) that the buyer
8 has assumed or will assume in full the debts owed to claimants of which
9 the buyer has knowledge on the date the buyer receives the list of
10 claimants from the seller or completes a reasonable inquiry to discover
11 the claimants;

12 (g) A sale to a buyer whose principal place of business is in the
13 United States and who:

14 (i) Assumes in full the debts that were incurred in the seller's
15 business before the date of the bulk sale;

16 (ii) Is not insolvent after the assumption; and

17 (iii) Gives written notice of the assumption not later than thirty
18 days after the date of the bulk sale by sending a notice to each
19 creditor whose debt is assumed or by filing a notice with the
20 department of licensing. The notice must state: (A) That a sale that
21 may constitute a bulk sale has been or will be made; (B) the date or
22 prospective date of the bulk sale; (C) the individual, partnership, or
23 corporate names and the addresses of the seller and buyer; (D) the
24 address to which inquiries about the sale may be made, if different
25 from the seller's address; and (E) that the buyer has assumed or will
26 assume the debts that were incurred in the seller's business before the
27 date of the bulk sale;

28 (h) A sale to a new organization that is organized to take over and
29 continue the business of the seller and that has its principal place of
30 business in the United States if:

31 (i) The buyer assumes in full the debts that were incurred in the
32 seller's business before the date of the bulk sale;

33 (ii) The seller receives nothing from the sale except an interest
34 in the new organization that is subordinate to the claims against the
35 organization arising from the assumption; and

36 (iii) The buyer gives written notice of the assumption not later
37 than thirty days after the date of the bulk sale by sending a notice to
38 each creditor whose debt is assumed or by filing a notice with the
39 department of licensing. The notice must state: (A) That a sale that

1 may constitute a bulk sale has been or will be made; (B) the date or
2 prospective date of the bulk sale; (C) the individual, partnership, or
3 corporate names and the addresses of the seller and buyer; (D) the
4 address to which inquiries about the sale may be made, if different
5 from the seller's address; and (E) that the buyer has assumed or will
6 assume in full the debts that were incurred in the seller's business
7 before the date of the bulk sale;

8 (i) A sale of assets having:

9 (i) A value, net of liens and security interests, of less than ten
10 thousand dollars; or

11 (ii) A value of more than twenty-five million dollars on the date
12 of the bulk sale agreement. For purposes of this paragraph, the value
13 of assets is presumed to be equal to the price that the buyer agrees to
14 pay for the assets; however, in a sale by auction or a sale conducted
15 by a liquidator on the seller's behalf, the value of assets is presumed
16 to be the amount that the auctioneer or liquidator reasonably estimates
17 that the assets will bring at auction or upon liquidation; or

18 (j) A sale required by, and made pursuant to, statute.

19 NEW SECTION. **Sec. 6-104.** OBLIGATIONS OF THE BUYER. (1) In a bulk
20 sale as defined in section 6-102(1)(c)(ii) of this act the buyer shall:

21 (a) Obtain from the seller a list of all business names and
22 addresses used by the seller within three years before the date the
23 list is sent or delivered to the buyer;

24 (b) Unless excused under subsection (2) of this section, obtain
25 from the seller a verified and dated list of claimants of which the
26 seller has notice three days before the seller sends or delivers the
27 list to the buyer and including, to the extent known by the seller, the
28 address of and the amount claimed by each claimant;

29 (c) Obtain from the seller or prepare a schedule of distribution
30 (section 6-106(1) of this act);

31 (d) Give notice of the bulk sale in accordance with section 6-105
32 of this act;

33 (e) Unless excused under section 6-106(4) of this act, distribute
34 the net contract price in accordance with the undertakings of the buyer
35 in the schedule of distribution; and

36 (f) Unless excused under subsection (2) of this section, make
37 available the list of claimants ((b) of this subsection) by:

1 (i) Promptly sending a copy of the list without charge to any
2 claimant whose written request is received by the buyer no later than
3 six months after the date of the bulk sale;

4 (ii) Permitting any claimant to inspect and copy the list at all
5 reasonable hours upon request received by the buyer no later than six
6 months after the date of the bulk sale; or

7 (iii) Filing a copy of the list with the department of licensing no
8 later than the time for filing a notice of the bulk sale (section 6-
9 105(5) of this act).

10 A list filed in accordance with this subsection must state the
11 individual, partnership, or corporate name and a mailing address of the
12 seller.

13 (2) A buyer who gives notice in accordance with section 6-105(2) of
14 this act is excused from complying with the requirements of subsection
15 (1) (b) and (f) of this section.

16 NEW SECTION. **Sec. 6-105.** NOTICE TO CLAIMANTS. (1) Except as
17 provided to the contrary in subsection (2) of this section, to comply
18 with section 6-104(1)(d) of this act the buyer shall send or deliver a
19 written notice of the bulk sale to each claimant on the list of
20 claimants (section 6-104(1)(b) of this act) and to any other claimant
21 of which the buyer has knowledge at the time the notice of the bulk
22 sale is sent or delivered.

23 (2) Notwithstanding subsection (1) of this section to the contrary,
24 a buyer may comply with section 6-104(1)(d) of this act by filing a
25 written notice of the bulk sale with the department of licensing if:

26 (a) On the date of the bulk sale agreement the seller has two
27 hundred claimants or more, exclusive of claimants holding secured or
28 matured claims for employment compensation and benefits, including
29 commissions and vacation, severance, and sick-leave pay; or

30 (b) The buyer has received a verified statement from the seller
31 stating that, as of the date of the bulk sale agreement, the number of
32 claimants, exclusive of claimants holding secured or matured claims for
33 employment compensation and benefits, including commissions and
34 vacation, severance, and sick-leave pay, is two hundred or more.

35 (3) The written notice of the bulk sale must include a copy of the
36 schedule of distribution (section 6-106(1) of this act) and state at
37 least:

1 (a) That the seller and buyer have entered into an agreement for a
2 sale that may constitute a bulk sale under the laws of the state of
3 Washington;

4 (b) The dates:

5 (i) Of the agreement;

6 (ii) On or after which more than ten percent of the assets were or
7 will be transferred; and

8 (iii) On or after which more than ten percent of the net contract
9 price was or will be paid, if the date is not set forth in the schedule
10 of distribution;

11 (c) The name and a mailing address of the seller;

12 (d) Any other business name and address listed by the seller
13 (section 6-104(1)(a) of this act);

14 (e) The name of the buyer and an address of the buyer from which
15 information concerning the sale can be obtained;

16 (f) A statement indicating the type of assets or describing the
17 assets item by item;

18 (g) The manner in which the buyer will make available the list of
19 claimants (section 6-104(1)(f) of this act), if applicable; and

20 (h) If the sale is in total or partial satisfaction of an
21 antecedent debt owed by the seller, the amount of the debt to be
22 satisfied and the name of the person to whom it is owed.

23 (4) For purposes of subsection (3) (c) and (e) of this section, the
24 name of a person is the person's individual, partnership, or corporate
25 name.

26 (5) The buyer shall give notice of the bulk sale not less than
27 forty-five days before the date of the bulk sale and, where the buyer
28 gives notice in accordance with subsection (1) of this section, not
29 more than thirty days after obtaining the list of claimants.

30 (6) A written notice substantially complying with the requirements
31 of subsection (3) of this section is effective even though it contains
32 minor errors that are not seriously misleading.

33 (7) A form substantially as follows is sufficient to comply with
34 subsection (3) of this section:

35 Notice of Sale

36 1., whose address is,
37 is described in this notice as the "seller."

38 2., whose address is,
39 is described in this notice as the "buyer."

1 3. The seller has disclosed to the buyer that within the past
2 three years the seller has used other business names, operated at other
3 addresses, or both, as follows:

4 4. The seller and the buyer have entered into an agreement dated
5, for a sale that may constitute a bulk sale under the laws
6 of the state of

7 5. The date on or after which more than ten percent of the assets
8 that are the subject of the sale were or will be transferred is
9, and (if not set forth in the schedule of distribution) the
10 date on or after which more than ten percent of the net contract price
11 was or will be paid is

12 6. The following assets are the subject of the sale:
13

14 7. [If applicable] The buyer will make available to claimants of
15 the seller a list of the seller's claimants in the following manner:
16

17 8. [If applicable] The sale is to satisfy \$ of an
18 antecedent debt owed by the seller to

19 9. A copy of the schedule of distribution of the net contract
20 price is attached.

21 NEW SECTION. **Sec. 6-106.** SCHEDULE OF DISTRIBUTION. (1) The
22 seller and buyer shall agree on how the net contract price is to be
23 distributed and set forth their agreement in a written schedule of
24 distribution.

25 (2) The schedule of distribution may provide for distribution to
26 any person at any time, including distribution of the entire net
27 contract price to the seller.

28 (3) The buyer's undertakings in the schedule of distribution run
29 only to the seller. A buyer who fails to distribute the net contract
30 price in accordance with the buyer's undertakings in the schedule of
31 distribution is liable to a creditor only as provided in section 6-
32 107(1) of this act.

33 (4) If the buyer undertakes in the schedule of distribution to
34 distribute any part of the net contract price to a person other than
35 the seller, and, after the buyer has given notice in accordance with
36 section 6-105 of this act, some or all of the anticipated net contract
37 price is or becomes unavailable for distribution as a consequence of
38 the buyer's or seller's having complied with an order of court, legal

1 process, statute, or rule of law, the buyer is excused from any
2 obligation arising under this Article or under any contract with the
3 seller to distribute the net contract price in accordance with the
4 buyer's undertakings in the schedule if the buyer:

5 (a) Distributes the net contract price remaining available in
6 accordance with any priorities for payment set forth in the schedule of
7 distribution and, to the extent that the price is insufficient to pay
8 all the debts having a given priority, distributes the price pro rata
9 among those debts set forth in the schedule as having the same
10 priority;

11 (b) Distributes the net contract price remaining available in
12 accordance with an order of court;

13 (c) Commences a proceeding for interpleader in a court of competent
14 jurisdiction and is discharged from the proceeding; or

15 (d) Reaches a new agreement with the seller for the distribution of
16 the net contract price remaining available, sets forth the new
17 agreement in an amended schedule of distribution, gives notice of the
18 amended schedule, and distributes the net contract price remaining
19 available in accordance with the buyer's undertakings in the amended
20 schedule. The notice of the amended schedule must identify the buyer
21 and the seller, state the filing number, if any, of the original
22 notice, set forth the amended schedule, and be given in accordance with
23 section 6-105 (1) or (2) of this act, whichever is applicable, at least
24 fourteen days before the buyer distributes any part of the net contract
25 price remaining available.

26 (5) If the seller undertakes in the schedule of distribution to
27 distribute any part of the net contract price, and, after the buyer has
28 given notice in accordance with section 6-105 of this act, some or all
29 of the anticipated net contract price is or becomes unavailable for
30 distribution as a consequence of the buyer's or seller's having
31 complied with an order of court, legal process, statute, or rule of
32 law, the seller and any person in control of the seller are excused
33 from any obligation arising under this Article or under any contract
34 with the buyer to distribute the net contract price in accordance with
35 the seller's undertakings in the schedule if the seller:

36 (a) Distributes the net contract price remaining available in
37 accordance with any priorities for payment set forth in the schedule of
38 distribution and, to the extent that the price is insufficient to pay
39 all the debts having a given priority, distributes the price pro rata

1 among those debts set forth in the schedule as having the same
2 priority;

3 (b) Distributes the net contract price remaining available in
4 accordance with an order of court;

5 (c) Commences a proceeding for interpleader in a court of competent
6 jurisdiction and is discharged from the proceeding; or

7 (d) Prepares a written amended schedule of distribution of the net
8 contract price remaining available for distribution, gives notice of
9 the amended schedule, and distributes the net contract price remaining
10 available in accordance with the amended schedule. The notice of the
11 amended schedule must identify the buyer and the seller, state the
12 filing number, if any, of the original notice, set forth the amended
13 schedule, and be given in accordance with section 6-105 (1) or (2) of
14 this act, whichever is applicable, at least fourteen days before the
15 seller distributes any part of the net contract price remaining
16 available.

17 NEW SECTION. **Sec. 6-107.** LIABILITY FOR NONCOMPLIANCE. (1) Except
18 as provided in subsection (3) of this section, and subject to the
19 limitation in subsection (4) of this section:

20 (a) A buyer who fails to comply with the requirements of section 6-
21 104(1)(e) of this act with respect to any creditor is liable to that
22 creditor for damages in the amount of the claim, reduced by any amount
23 that the creditor would not have realized if the buyer had complied;
24 and

25 (b) A buyer who fails to comply with the requirements of any other
26 subsection of section 6-104 of this act with respect to any claimant is
27 liable to that claimant for damages in the amount of the claim, reduced
28 by any amount that the claimant would not have realized if the buyer
29 had complied.

30 (2) In an action under subsection (1) of this section, the creditor
31 has the burden of establishing the validity and amount of the claim,
32 but the buyer has the burden of establishing the amount that the
33 creditor would not have realized if the buyer had complied.

34 (3) A buyer who:

35 (a) Makes a good faith effort to comply with the requirements of
36 section 6-104(1) of this act or to exclude the sale from the
37 application of this Article (section 6-103(2) of this act); or

1 (b) On the date of the bulk sale holds a good faith belief that
2 this Article does not apply to the particular sale is not liable for
3 his or her failure to comply. The buyer has the burden of establishing
4 that he or she made a good faith effort or held a good faith belief.

5 (4) In any one bulk sale the cumulative liability of the buyer for
6 failure to comply with the requirements of section 6-104(1) of this act
7 may not exceed an amount equal to:

8 (a) If the assets consist only of inventory and equipment, twice
9 the net contract price, less the amount of any part of the net contract
10 price paid to or applied for the benefit of the seller or a creditor;
11 or

12 (b) If the assets include property other than inventory and
13 equipment, twice the net value of the inventory and equipment less the
14 amount of the portion of any part of the net contract price paid to or
15 applied for the benefit of the seller or a creditor which is allocable
16 to the inventory and equipment. The "net value" of an asset is the
17 value of the asset less (i) the amount of any proceeds of an asset, to
18 the extent the proceeds are applied in partial or total satisfaction of
19 a debt secured by the asset, and (ii) the amount of any debt to the
20 extent it is secured by a security interest or lien that is enforceable
21 against the asset before and after it has been sold to a buyer. The
22 portion of a part of the net contract price paid to or applied for the
23 benefit of the seller or a creditor that is "allocable to the inventory
24 and equipment" is the portion that bears the same ratio to that part of
25 the net contract price as the net value of the inventory and equipment
26 bears to the net value of all the assets. A payment made by the buyer
27 to a person to whom the buyer is, or believes he or she is, liable
28 under subsection (1) of this section reduces the buyer's cumulative
29 liability under this subsection pro tanto.

30 (5) No action may be brought under subsection (1)(b) of this
31 section by or on behalf of a claimant whose claim is unliquidated or
32 contingent.

33 (6) A buyer's failure to comply with the requirements of section 6-
34 104(1) of this act does not (i) impair the buyer's rights in or title
35 to the assets subject to the bulk sale, (ii) render the sale
36 ineffective, void, or voidable, (iii) entitle a creditor to more than
37 a single satisfaction of his or her claim, or (iv) create liability
38 other than as provided in this Article.

1 (7) Payment of the buyer's liability under subsection (1) of this
2 section discharges the seller's debt to the creditor pro tanto.

3 (8) Unless otherwise agreed a buyer has an immediate right of
4 reimbursement from the seller for any amount paid to a creditor in
5 partial or total satisfaction of the buyer's liability under subsection
6 (1) of this section.

7 (9) If the seller is an organization, any person who is in direct
8 or indirect control of the seller, and who knowingly, intentionally,
9 and without legal justification fails, or causes the seller to fail, to
10 distribute the net contract price in accordance with the schedule of
11 distribution is liable to any creditor to whom the seller was to make
12 payment under the schedule for damages caused by the failure.

13 NEW SECTION. **Sec. 6-108.** BULK SALES BY AUCTION; BULK SALES
14 CONDUCTED BY A LIQUIDATOR. (1) Sections 6-104, 6-105, 6-106, and 6-107
15 of this act apply to a bulk sale by auction and a bulk sale conducted
16 by a liquidator on the seller's behalf with the following
17 modifications:

18 (a) "Buyer" refers to an auctioneer or liquidator, as the case may
19 be;

20 (b) "Net contract price" refers to net proceeds of the auction or
21 net proceeds of the sale, as the case may be;

22 (c) The written notice (section 6-105(3) of this act) must include
23 a copy of the schedule of distribution (section 6-106(1) of this act)
24 and state at least:

25 (i) That the seller and the auctioneer or liquidator have entered
26 into an agreement for auction or liquidation services that may
27 constitute an agreement to make a bulk sale under the laws of the state
28 of Washington;

29 (ii) The dates:

30 (A) Of the agreement;

31 (B) On or after which the auction began or will begin, or on or
32 after which the liquidator began or will begin, to sell assets on the
33 seller's behalf; and

34 (C) On or after which more than ten percent of the net proceeds of
35 the auction or sale were or will be paid, if the date is not set forth
36 in the schedule of distribution;

37 (iii) The name and a mailing address of the seller;

1 (iv) Any other business name and address listed by the seller
2 (section 6-104(1)(a) of this act);

3 (v) The name of the auctioneer or liquidator and an address of the
4 auctioneer or liquidator from which information concerning the sale can
5 be obtained;

6 (vi) A statement indicating the type of assets or describing the
7 assets item by item;

8 (vii) The manner in which the auctioneer or liquidator will make
9 available the list of claimants (section 6-104(1)(f) of this act), if
10 applicable; and

11 (viii) If the sale is in total or partial satisfaction of an
12 antecedent debt owed by the seller, the amount of the debt to be
13 satisfied and the name of the person to whom it is owed; and

14 (d) In any one bulk sale the cumulative liability of the auctioneer
15 or liquidator for failure to comply with the requirements of this
16 section may not exceed the amount of the net proceeds of the auction or
17 sale allocable to inventory or equipment sold less the amount of the
18 portion of any part of the net proceeds paid to or applied for the
19 benefit of a creditor which is allocable to the inventory and
20 equipment. A payment made by the auctioneer or liquidator to a person
21 to whom the auctioneer or liquidator is, or believes he or she is,
22 liable under this section reduces the auctioneer's or liquidator's
23 cumulative liability under this subsection pro tanto.

24 (2) A form substantially as follows is sufficient to comply with
25 subsection (1)(c) of this subsection:

26 Notice of Sale

27 1., whose address is,
28 is described in this notice as the "seller."

29 2., whose address is,
30 is described in this notice as the "auctioneer" or "liquidator."

31 3. The seller has disclosed to the auctioneer or liquidator that
32 within the past three years the seller has used other business names,
33 operated at other addresses, or both, as follows:
34

35 4. The seller and the auctioneer or liquidator have entered into
36 an agreement dated for auction or liquidation services that
37 may constitute an agreement to make a bulk sale under the laws of the
38 state of Washington.

1 5. The date on or after which the auction began or will begin or
2 the date on or after which the liquidator began or will begin to sell
3 assets on the seller's behalf is, and (if not set forth in
4 the schedule of distribution) the date on or after which more than ten
5 percent of the net proceeds of the auction or sale were or will be paid
6 is

7 6. The following assets are the subject of the sale:
8

9 7. [If applicable] The auctioneer or liquidator will make
10 available to claimants of the seller a list of the seller's claimants
11 in the following manner:

12 8. [If applicable] The sale is to satisfy \$ of an
13 antecedent debt owed by the seller to

14 9. A copy of the schedule of distribution of the net proceeds is
15 attached.

16 (3) A person who buys at a bulk sale by auction or conducted by a
17 liquidator need not comply with the requirements of section 6-104(1) of
18 this act and is not liable for the failure of an auctioneer or
19 liquidator to comply with the requirements of this section.

20 NEW SECTION. **Sec. 6-109.** WHAT CONSTITUTES FILING; DUTIES OF
21 FILING OFFICER; INFORMATION FROM FILING OFFICER. (1) Presentation of
22 a notice or list of claimants for filing and tender of the filing fee
23 or acceptance of the notice or list by the filing officer constitutes
24 filing under this Article.

25 (2) The filing officer shall:

26 (a) Mark each notice or list with a file number and with the date
27 and hour of filing;

28 (b) Hold the notice or list or a copy for public inspection;

29 (c) Index the notice or list according to each name given for the
30 seller and for the buyer; and

31 (d) Note in the index the file number and the addresses of the
32 seller and buyer given in the notice or list.

33 (3) If the person filing a notice or list furnishes the filing
34 officer with a copy, the filing officer upon request shall note upon
35 the copy the file number and date and hour of the filing of the
36 original and deliver or send the copy to the person.

37 (4) Upon request of any person, the filing officer shall issue a
38 certificate showing whether any notice or list with respect to a

1 particular seller or buyer is on file on the date and hour stated in
2 the certificate. If a notice or list is on file, the certificate must
3 give the date and hour of filing of each notice or list and the name
4 and address of each seller, buyer, auctioneer, or liquidator.

5 (5) The filing officer shall keep each notice or list for two years
6 after it is filed.

7 (6) The department of licensing may by rule prescribe standard
8 filing forms, fees, and uniform procedures for filing with, and
9 obtaining information from, filing officers.

10 NEW SECTION. **Sec. 6-110.** LIMITATION OF ACTIONS. (1) An action
11 under this Article against a buyer, auctioneer, or liquidator must be
12 commenced within one year after the date of the bulk sale. If the
13 buyer, auctioneer, or liquidator conceals the fact that the sale has
14 occurred, the limitation is tolled and an action under this Article may
15 be commenced within the earlier of (i) one year after the person
16 bringing the action discovers that the sale has occurred or (ii) one
17 year after the person bringing the action should have discovered that
18 the sale has occurred, but in no event may an action be commenced more
19 than two years after the date of the bulk sale. Complete noncompliance
20 with the requirements of this Article does not of itself constitute
21 concealment.

22 (2) An action under section 6-107(9) of this act must be commenced
23 within one year after the alleged violation occurs.

24 NEW SECTION. **Sec. 6-111.** The following acts or parts of acts are
25 repealed:

26 (1) RCW 62A.6-101 and 1965 ex.s. c 157 s 6-101;

27 (2) RCW 62A.6-102 and 1967 c 114 s 2 & 1965 ex.s. c 157 s 6-102;

28 (3) RCW 62A.6-103 and 1965 ex.s. c 157 s 6-103;

29 (4) RCW 62A.6-104 and 1975 1st ex.s. c 278 s 33 & 1965 ex.s. c 156
30 s 6-104;

31 (5) RCW 62A.6-105 and 1971 c 23 s 1 & 1965 ex.s. c 157 s 6-105;

32 (6) RCW 62A.6-106 and 1965 ex.s. c 157 s 6-106;

33 (7) RCW 62A.6-107 and 1975 1st ex.s. c 278 s 34 & 1965 ex.s. c 157
34 s 6-107;

35 (8) RCW 62A.6-108 and 1965 ex.s. c 157 s 6-108;

36 (9) RCW 62A.6-109 and 1967 c 114 s 3 & 1965 ex.s. c 157 s 6-109;

37 (10) RCW 62A.6-110 and 1965 ex.s. c 157 s 6-110; and

1 (11) RCW 62A.6-111 and 1965 ex.s. c 157 s 6-111.

2 NEW SECTION. **Sec. 6-112.** Sections 6-101 through 6-110 of this act
3 shall constitute a new chapter in Title 62A RCW.

4 **Sec. 6-113.** RCW 62A.1-105 and 1981 c 41 s 1 are each amended to
5 read as follows:

6 (1) Except as provided hereafter in this section, when a
7 transaction bears a reasonable relation to this state and also to
8 another state or nation the parties may agree that the law either of
9 this state or of such other state or nation shall govern their rights
10 and duties. Failing such agreement this Title applies to transactions
11 bearing an appropriate relation to this state.

12 (2) Where one of the following provisions of this Title specifies
13 the applicable law, that provision governs and a contrary agreement is
14 effective only to the extent permitted by the law (including the
15 conflict of laws rules) so specified:

16 Rights of creditors against sold goods. RCW 62A.2-402.

17 Applicability of the Article on Bank Deposits and Collections. RCW
18 62A.4-102.

19 Bulk (~~((transfers))~~) sales subject to the Article on Bulk
20 (~~((Transfers))~~) Sales. (~~((RCW 62A.6-102))~~) (section 6-103(1) of this act).

21 Applicability of the Article on Investment Securities. RCW 62A.8-
22 106.

23 Perfection provisions of the Article on Secured Transactions. RCW
24 62A.9-103.

25 **Sec. 6-114.** RCW 62A.2-403 and 1967 c 114 s 8 are each amended to
26 read as follows:

27 (1) A purchaser of goods acquires all title which his or her
28 transferor had or had power to transfer except that a purchaser of a
29 limited interest acquires rights only to the extent of the interest
30 purchased. A person with voidable title has power to transfer a good
31 title to a good faith purchaser for value. When goods have been
32 delivered under a transaction of purchase the purchaser has such power
33 even though

34 (a) the transferor was deceived as to the identity of the
35 purchaser, or

1 (b) the delivery was in exchange for a check which is later
2 dishonored, or

3 (c) it was agreed that the transaction was to be a "cash sale".

4 (2) Any entrusting of possession of goods to a merchant who deals
5 in goods of that kind gives him or her power to transfer all rights of
6 the entruster to a buyer in ordinary course of business.

7 (3) "Entrusting" includes any delivery and any acquiescence in
8 retention of possession regardless of any condition expressed between
9 the parties to the delivery or acquiescence and regardless of whether
10 the procurement of the entrusting or the possessor's disposition of the
11 goods have been such as to be larcenous under the criminal law.

12 (4) The rights of other purchasers of goods and of lien creditors
13 are governed by the Articles on Secured Transactions (Article 9), Bulk
14 (~~Transfers (Article 6)~~) Sales (chapter 62A.-- RCW (sections 6-101
15 through 6-110 of this act)), and Documents of Title (Article 7).

16 **Sec. 6-115.** RCW 62A.9-111 and 1965 ex.s. c 157 s 9-111 are each
17 amended to read as follows:

18 The creation of a security interest is not a bulk (~~transfer~~) sale
19 under (~~Article 6 (RCW 62A.6-103)~~) Article . . . (chapter 62A.--
20 (sections 6-101 through 6-110 of this act) (RCW 62A.--.--- (section 6-
21 103(2)) of this act)).

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