

---

HOUSE BILL 1013

---

State of Washington

53rd Legislature

1993 Regular Session

By Representatives Appelwick and Riley

Prefiled 1/8/93. Read first time 01/11/93. Referred to Committee on  
Judiciary.

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

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

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

8 NEW SECTION. **Sec. 6-102.** DEFINITIONS AND INDEX OF DEFINITIONS.

9 (1) In this Article, unless the context otherwise requires:

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

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

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

17 (iii) Property to the extent it is generally exempt under  
18 nonbankruptcy law.

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

3 (c) "Bulk sale" means:

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

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

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

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

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

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

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

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

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

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

36 (f) "Creditor" means a person holding a claim and includes a  
37 claimant.

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

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

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

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

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

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

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

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

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

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

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

36 (i) The amount of any proceeds of an asset, to the extent the  
37 proceeds are applied in partial or total satisfaction of a debt secured  
38 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 in the office of the secretary of state. The notice must state:  
3 (A) That a sale that may constitute a bulk sale has been or will be  
4 made; (B) the date or prospective date of the bulk sale; (C) the  
5 individual, partnership, or corporate names and the addresses of the  
6 seller and buyer; (D) the address to which inquiries about the sale  
7 should be made, if different from the seller's address; and (E) that  
8 the buyer has assumed or will assume in full the debts owed to  
9 claimants of which the buyer has knowledge on the date the buyer  
10 receives the list of claimants from the seller or completes a  
11 reasonable inquiry to discover 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 in the office of  
20 the secretary of state. 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 in the office  
39 of the secretary of state. The notice must state: (A) That a sale

1 that may constitute a bulk sale has been or will be made; (B) the date  
2 or prospective date of the bulk sale; (C) the individual, partnership,  
3 or 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 in the office of the secretary of  
8 state no later than the time for filing a notice of the bulk sale  
9 (section 6-105(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 in the office of the secretary of state  
26 if:

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

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

36 (3) The written notice of the bulk sale must include a copy of the  
37 schedule of distribution (section 6-106(1) of this act) and state at  
38 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) The fee for filing and indexing and for stamping a copy  
38 furnished by the person filing to show the date and place of filing is



1 \$ . . . . . for the first page and \$ . . . . . for each additional  
2 page. The fee for each name more than two required to be indexed is \$  
3 . . . . .

4 (5) Upon request of any person, the filing officer shall issue a  
5 certificate showing whether any notice or list with respect to a  
6 particular seller or buyer is on file on the date and hour stated in  
7 the certificate. If a notice or list is on file, the certificate must  
8 give the date and hour of filing of each notice or list and the name  
9 and address of each seller, buyer, auctioneer, or liquidator. The fee  
10 for the certificate is \$ . . . . . if the request for the certificate  
11 is in the standard form prescribed by the secretary of state and  
12 otherwise is \$ . . . . . Upon request, the filing officer shall  
13 furnish a copy of any filed notice or list for a fee of \$ . . . . .

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

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

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

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

- 32 (1) RCW 62A.6-101 and 1965 ex.s. c 157 s 6-101;
- 33 (2) RCW 62A.6-102 and 1967 c 114 s 2 & 1965 ex.s. c 157 s 6-102;
- 34 (3) RCW 62A.6-103 and 1965 ex.s. c 157 s 6-103;
- 35 (4) RCW 62A.6-104 and 1975 1st ex.s. c 278 s 33 & 1965 ex.s. c 156  
36 s 6-104;
- 37 (5) RCW 62A.6-105 and 1971 c 23 s 1 & 1965 ex.s. c 157 s 6-105;

- 1 (6) RCW 62A.6-106 and 1965 ex.s. c 157 s 6-106;  
2 (7) RCW 62A.6-107 and 1975 1st ex.s. c 278 s 34 & 1965 ex.s. c 157  
3 s 6-107;  
4 (8) RCW 62A.6-108 and 1965 ex.s. c 157 s 6-108;  
5 (9) RCW 62A.6-109 and 1967 c 114 s 3 & 1965 ex.s. c 157 s 6-109;  
6 (10) RCW 62A.6-110 and 1965 ex.s. c 157 s 6-110; and  
7 (11) RCW 62A.6-111 and 1965 ex.s. c 157 s 6-111.

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

--- END ---