
By: **Delegate Brown**

Introduced and read first time: January 27, 2000

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Maryland Uniform Commercial Code - Bulk Transfers - Repeal**

3 FOR the purpose of repealing Title 6 - Maryland Uniform Commercial Code - Bulk
4 Transfers; repealing certain provisions of law relating to bulk transfers under
5 Title 6; repealing a prohibition on boards of license commissioners and liquor
6 control boards from permitting the transfer of an alcoholic beverages license
7 until the transferor has complied with Title 6 of the Commercial Law Article;
8 providing for the application of this Act; providing for a delayed effective date for
9 certain provisions of this Act; and generally relating to bulk transfers.

10 BY repealing and reenacting, with amendments,
11 Article 2B - Alcoholic Beverages
12 Section 10-503(a)
13 Annotated Code of Maryland
14 (1998 Replacement Volume and 1999 Supplement)

15 BY repealing and reenacting, with amendments,
16 Article - Commercial Law
17 Section 1-105 and 2-403(4)
18 Annotated Code of Maryland
19 (1997 Replacement Volume and 1999 Supplement)

20 BY repealing
21 Article - Commercial Law
22 Section 6-101 through 6-111, inclusive, and the title "Title 6. Bulk Transfers";
23 and 9-111
24 Annotated Code of Maryland
25 (1997 Replacement Volume and 1999 Supplement)

26 BY repealing
27 Article - Commercial Law
28 Section 11-1304(d) and 19-102(c)
29 Annotated Code of Maryland

1 (1990 Replacement Volume and 1999 Supplement)

2 BY repealing and reenacting, with amendments,

3 Article - Commercial Law

4 Section 15-213 and 19-102(d)

5 Annotated Code of Maryland

6 (1990 Replacement Volume and 1999 Supplement)

7 BY repealing

8 Article - Tax - General

9 Section 11-505 and 13-802

10 Annotated Code of Maryland

11 (1997 Replacement Volume and 1999 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article - Commercial Law

14 Section 1-105

15 Annotated Code of Maryland

16 (1997 Replacement Volume and 1999 Supplement)

17 (As enacted by Chapter 282 of the Acts of the General Assembly of 1999)

18 BY repealing

19 Article - Commercial Law

20 Section 6-102

21 Annotated Code of Maryland

22 (1997 Replacement Volume and 1999 Supplement)

23 (As enacted by Chapter 282 of the Acts of the General Assembly of 1999)

24 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF

25 MARYLAND, That the Laws of Maryland read as follows:

26 **Article 2B - Alcoholic Beverages**

27 10-503.

28 (a) (1) In this section, "board" means the board of license commissioners or
29 liquor control board, as the case may be, of the county or Baltimore City.

30 (2) Any holder of a license under this article, including a receiver or
31 trustee for the benefit of creditors, may be permitted to transfer the holder's place of
32 business to some other location or sell or assign the license and transfer the holder's
33 stock in trade to another person, but only if:

34 (i) An application for the transfer or sale has been made;

1 (ii) All retail sales, amusement, admission, and withholding taxes
2 have been paid to the Comptroller of the Treasury of the State;

3 (iii) A bulk transfer permit is obtained if the stock of alcoholic
4 beverages is to be transferred whether by sale, gift, inheritance, assignment, or
5 otherwise, and irrespective of whether or not consideration is paid; and

6 (iv) The new location or assignee is approved as in the case of an
7 original application for such a license.

8 (3) A transfer or assignment, when made, shall be endorsed upon the
9 license by the license issuing authority upon payment of a fee of \$20 in addition to the
10 costs of publication and notice, which shall be paid to the local collecting agent at the
11 time of the filing of the application for the transfer or sale. This section permits the
12 transfer of location and the assignment of license in the same application.

13 [(4) A board may not permit the transfer of an alcoholic beverages license
14 until the transferor has complied with the Bulk Transfers Act, Commercial Law
15 Article, Title 6, and has certified such compliance, by affidavit, to the board.]

16 [(5)] (4) The provisions of this section apply in every county and in
17 Baltimore City, unless otherwise provided in this section.

18 **Article - Commercial Law**

19 1-105.

20 (1) Except as provided hereafter in this section, when a transaction bears a
21 reasonable relation to this State and also to another state or nation the parties may
22 agree that the law either of this State or of such other state or nation shall govern
23 their rights and duties. Failing such agreement Titles 1 through 10 of this article
24 apply to transactions bearing an appropriate relation to this State.

25 (2) Where one of the following provisions of Titles 1 through 10 of this article
26 specifies the applicable law, that provision governs and a contrary agreement is
27 effective only to the extent permitted by the law (including the conflict of laws rules)
28 so specified:

29 Rights of creditors against sold goods. § 2-402.

30 Applicability of the title on leases. §§ 2A-105 and 2A-106.

31 Applicability of the title on bank deposits and collections. § 4-102.

32 Governing law in the title on funds transfers. § 4A-507.

33 Letters of credit. § 5-116.

34 [Bulk transfers subject to the title on bulk transfers. § 6-102.]

1 Applicability of the title on investment securities. § 8-110.

2 Perfection provisions of the title on secured transactions. § 9-103.

3 2-403.

4 (4) The rights of other purchasers of goods and of lien creditors are governed
5 by the title on secured transactions (Title 9)[, bulk transfers (Title 6)] and documents
6 of title (Title 7).

7 [Title 6. Bulk Transfers.]

8 [6-101.

9 This title shall be known and may be cited as Maryland Uniform Commercial
10 Code -- Bulk Transfers.]

11 [6-102.

12 (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of
13 the transferor's business of a major part of the materials, supplies, merchandise or
14 other inventory (§ 9-109) of an enterprise subject to this title.

15 (2) A transfer of a substantial part of the equipment (§ 9-109) of such an
16 enterprise is a bulk transfer if it is made in connection with a bulk transfer of
17 inventory, but not otherwise.

18 (3) The enterprises subject to this title are all those whose principal business
19 is the sale of merchandise from stock, including those who manufacture what they
20 sell, restaurants, and all vendors and sellers of alcoholic beverages, regardless of the
21 form in which such beverages are sold, and regardless of whether sold on a wholesale
22 or retail basis.

23 (4) Except as limited by the following section all bulk transfers of goods
24 located within this State are subject to this title.]

25 [6-103.

26 The following transfers are not subject to this title:

27 (1) Those made to give security for the performance of an obligation;

28 (2) General assignments for the benefit of all the creditors of the
29 transferor, and subsequent transfers by the assignee thereunder;

30 (3) Transfers in settlement or realization of a lien or other security
31 interest;

32 (4) Sale by executors, administrators, receivers, trustees in bankruptcy,
33 or any public officer under judicial process;

1 (5) Sales made in the course of judicial or administrative proceedings for
2 the dissolution or reorganization of a corporation and of which notice is sent to the
3 creditors of the corporation pursuant to order of the court or administrative agency;

4 (6) Transfers to a person maintaining a known place of business in this
5 State who becomes bound to pay the debts of the transferor in full and gives public
6 notice of that fact, and who is solvent after becoming so bound;

7 (7) A transfer to a new business enterprise organized to take over and
8 continue the business, if public notice of the transaction is given and the new
9 enterprise assumes the debts of the transferor and he receives nothing from the
10 transaction except an interest in the new enterprise junior to the claims of creditors;

11 (8) Transfers of property which is exempt from execution.

12 Public notice under subsection (6) or subsection (7) may be given by publishing
13 once a week for two consecutive weeks in a newspaper of general circulation where
14 the transferor had its principal place of business in this State an advertisement
15 including the names and addresses of the transferor and transferee and the effective
16 date of the transfer.]

17 [6-104.

18 (1) Except as provided with respect to auction sales (§ 6-108), a bulk transfer
19 subject to this title is ineffective against any creditor of the transferor unless:

20 (a) The transferee requires the transferor to furnish a list of his existing
21 creditors prepared as stated in this section; and

22 (b) The parties prepare a schedule of the property transferred sufficient
23 to identify it; and

24 (c) The transferee preserves the list and schedule for six months next
25 following the transfer and permits inspection of either or both and copying therefrom
26 at all reasonable hours by any creditor of the transferor, or files the list and schedule
27 in the office of the clerk of the circuit court in the county in which the property was
28 located at the time of transfer.

29 (2) The list of creditors must be signed and sworn to or affirmed by the
30 transferor or his agent. It must contain the names and business addresses of all
31 creditors of the transferor, with the amounts when known, and also the names of all
32 persons who are known to the transferor to assert claims against him even though
33 such claims are disputed. If the transferor is the obligor of an outstanding issue of
34 bonds, debentures or the like as to which there is an indenture trustee, the list of
35 creditors need include only the name and address of the indenture trustee and the
36 aggregate outstanding principal amount of the issue.

37 (3) Responsibility for the completeness and accuracy of the list of creditors
38 rests on the transferor, and the transfer is not rendered ineffective by errors or
39 omissions therein unless the transferee is shown to have had knowledge.]

1 [6-105.

2 In addition to the requirements of the preceding section any bulk transfer
3 subject to this title except one made by auction sale (§ 6-108) is ineffective against
4 any creditor of the transferor unless at least ten days before he takes possession of the
5 goods or pays for them, whichever happens first, the transferee gives notice of the
6 transfer in the manner and to the persons hereafter provided (§ 6-107).]

7 [6-106.

8 In addition to the requirements of the two preceding sections:

9 (1) Upon every bulk transfer subject to this title for which new consideration
10 becomes payable except those made by sale at auction it is the duty of the transferee
11 to assure that such consideration is applied so far as necessary to pay those debts of
12 the transferor which are either shown on the list furnished by the transferor (§ 6-104)
13 or filed in writing in the place stated in the notice (§ 6-107) within thirty days after
14 the mailing of such notice. This duty of the transferee runs to all the holders of such
15 debts, and may be enforced by any of them for the benefit of all.

16 (2) If any of said debts are in dispute the necessary sum may be withheld from
17 distribution until the dispute is settled or adjudicated.

18 (3) If the consideration payable is not enough to pay all of the said debts in
19 full, distribution shall be made pro rata.

20 (4) The transferee may within ten days after he takes possession of the goods
21 file a petition in the circuit court for the county in which the place of business of the
22 transferor is situated and pay the consideration into such court asking that a receiver
23 or receivers be appointed by said court to take charge of the distribution of the agreed
24 purchase price and the transferee may discharge his duty under this section by giving
25 notice by registered or certified mail to all the persons to whom the duty runs that the
26 consideration has been paid into that court and that they should file their claims
27 there. If said receivership is granted then said receiver or receivers, upon
28 qualification by filing an approved bond in the amount fixed by the court, shall be
29 entitled to the custody and distribution of the agreed purchase price under orders of
30 the court as in other receiverships.]

31 [6-107.

32 (1) The notice to creditors (§ 6-105) shall state:

33 (a) That a bulk transfer is about to be made; and

34 (b) The names and business addresses of the transferor and transferee,
35 and all other business names and addresses used by the transferor within three years
36 last past so far as known to the transferee; and

1 (c) Whether or not all the debts of the transferor are to be paid in full as
2 they fall due as a result of the transaction, and if so, the address to which creditors
3 should send their bills.

4 (2) If the debts of the transferor are not to be paid in full as they fall due or if
5 the transferee is in doubt on that point then the notice shall state further:

6 (a) The location and general description of the property to be transferred
7 and the estimated total of the transferor's debts;

8 (b) The address where the schedule of property and list of creditors (§
9 6-104) may be inspected;

10 (c) Whether the transfer is to pay existing debts and if so the amount of
11 such debts and to whom owing;

12 (d) Whether the transfer is for new consideration and if so the amount of
13 such consideration and the time and place of payment; and

14 (e) If for new consideration the time and place where creditors of the
15 transferor are to file their claims.

16 (3) The notice in any case shall be delivered personally or sent by registered or
17 certified mail to:

18 (a) The Comptroller;

19 (b) All the persons shown on the list of creditors furnished by the
20 transferor (§ 6-104); and

21 (c) All other persons who are known to the transferee to hold or assert
22 claims against the transferor.]

23 [6-108.

24 (1) A bulk transfer is subject to this title even though it is by sale at auction,
25 but only in the manner and with the results stated in this section.

26 (2) The transferor shall furnish a list of his creditors and assist in the
27 preparation of a schedule of the property to be sold, both prepared as before stated (§
28 6-104).

29 (3) The person or persons other than the transferor who direct, control or are
30 responsible for the auction are collectively called the "auctioneer." The auctioneer
31 shall:

32 (a) Receive and retain the list of creditors and prepare and retain the
33 schedule of property for the period stated in this title (§ 6-104);

34 (b) Give notice of the auction personally or by registered or certified mail
35 at least ten days before it occurs to:

- 1 (i) The Comptroller;
- 2 (ii) All persons shown on the list of creditors; and
- 3 (iii) All other persons who are known to the auctioneer to hold or
4 assert claims against the transferor; and
- 5 (c) Assure that the net proceeds of the auction are applied as provided in
6 this title (§ 6-106).

7 (4) Failure of the auctioneer to perform any of these duties does not affect the
8 validity of the sale or the title of the purchasers, but if the auctioneer knows that the
9 auction constitutes a bulk transfer such failure renders the auctioneer liable to the
10 creditors of the transferor as a class for the sums owing to them from the transferor
11 up to but not exceeding the net proceeds of the auction. If the auctioneer consists of
12 several persons their liability is joint and several.]

13 [6-109.

14 The creditors of the transferor mentioned in this title are those holding claims
15 based on transactions or events occurring before the bulk transfer, but creditors who
16 become such after notice to creditors is given (§§ 6-105 and 6-107) are not entitled to
17 notice.]

18 [6-110.

19 When the title of a transferee to property is subject to a defect by reason of his
20 noncompliance with the requirements of this title, then:

21 (1) A purchaser of any of such property from such transferee who pays no
22 value or who takes with notice of such noncompliance takes subject to such defect, but

23 (2) A purchaser for value in good faith and without such notice takes free
24 of such defect.]

25 [6-111.

26 No action under this title shall be brought nor levy made more than six months
27 after the date on which the transferee took possession of the goods unless the transfer
28 has been concealed. If the transfer has been concealed actions may be brought or
29 levies made within six months after its discovery.]

30 [9-111.

31 The creation of a security interest is not a bulk transfer under Title 6 (see §
32 6-103).]

33 11-1304.

34 [(d) Repurchase of inventory under this section is not subject to the bulk
35 transfers provisions of Title 6 of this article.]

1 15-213.

2 This subtitle does not repeal the law relating to:

3 (1) Fraudulent conveyances from one spouse to the other, as provided in
4 §§ 4-205, 4-206, and 4-301 of the Family Law Article; OR

5 (2) Priorities and preferences in insolvency, as provided in Subtitle 1 of
6 this title; or

7 (3) Bulk transfers, as defined in Title 6 of this article].

8 19-102.

9 [(c) Repurchase of inventory under this title is not subject to the bulk transfers
10 provisions of Title 6 of this article.]

11 [(d)] (C) This title does not apply to a written or oral contract or agreement
12 between a dealer and a supplier if, under the contract or agreement, the supplier does
13 not require the dealer to order and maintain an inventory in excess of \$25,000 at
14 current net price from the supplier.

15 **Article - Tax - General**

16 [11-505.

17 (a) A transferee or auctioneer in a bulk transfer, as defined in § 6-102 of the
18 Commercial Law Article, shall mail to the Comptroller the notice to creditors, as
19 required in §§ 6-107 and 6-108 of the Commercial Law Article, whether or not:

20 (1) the transferor lists the Comptroller as a creditor; or

21 (2) the transferee or auctioneer knows that the transferor owes any sales
22 and use tax.

23 (b) If the Comptroller finds that the transferor owes sales and use tax, the
24 Comptroller shall file a claim for sales and use tax due from the transferor at the
25 address required in the notice to creditors.

26 (c) If the Comptroller files a claim under subsection (b) of this section, the
27 transferee or auctioneer shall withhold the amount stated in the claim from
28 distribution to the transferor.]

29 [13-802.

30 If the transferee or auctioneer in a bulk transfer fails to file the notice required
31 in § 11-505 of this article or to retain consideration in an amount equal to the claim
32 of the Comptroller for unpaid sales and use tax:

33 (1) any consideration in the bulk transfer is subject to a first priority
34 right and lien for any sales and use tax that the transferor owes to the State; and

1 (2) the transferee or auctioneer is personally liable for the sales and use
2 tax, interest and penalties that the transferor owes to the State.]

3 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
4 read as follows:

5 **Article - Commercial Law**

6 1-105.

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

12 (2) Where one of the following provisions of Titles 1 through 10 of this article
13 specifies the applicable law, that provision governs and a contrary agreement is
14 effective only to the extent permitted by the law (including the conflict of laws rules)
15 so specified:

16 Rights of creditors against sold goods. § 2-402.

17 Applicability of the title on leases. §§ 2A-105 and 2A-106.

18 Applicability of the title on bank deposits and collections. § 4-102.

19 Governing law in the title on funds transfers. § 4A-507.

20 Letters of credit. § 5-116.

21 [Bulk transfers subject to the title on bulk transfers. § 6-103.]

22 Applicability of the title on investment securities. § 8-110.

23 Law governing perfection, the effect of perfection or nonperfection, and the
24 priority of security interests. §§ 9-301 through 9-307.

25 [6-102.

26 (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of
27 the transferor's business of a major part of the materials, supplies, merchandise or
28 other inventory (§ 9-102) of an enterprise subject to this title.

29 (2) A transfer of a substantial part of the equipment (§ 9-102) of such an
30 enterprise is a bulk transfer if it is made in connection with a bulk transfer of
31 inventory, but not otherwise.

32 (3) The enterprises subject to this title are all those whose principal business
33 is the sale of merchandise from stock, including those who manufacture what they
34 sell, restaurants, and all vendors and sellers of alcoholic beverages, regardless of the

1 form in which such beverages are sold, and regardless of whether sold on a wholesale
2 or retail basis.

3 (4) Except as limited by the following section all bulk transfers of goods
4 located within this State are subject to this title.]

5 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall apply to
6 bulk transfers made on or after October 1, 2000. Bulk transfers made before October
7 1, 2000 shall remain subject to the provisions of law repealed or amended by this Act
8 as though they had not been repealed or amended.

9 SECTION 4. AND BE IT FURTHER ENACTED, That Section 2 of this Act shall
10 take effect July 1, 2001.

11 SECTION 5. AND BE IT FURTHER ENACTED, That, except as provided in
12 Section 4 of this Act, this Act shall take effect October 1, 2000.