
By: **Delegate Frank**

Introduced and read first time: January 19, 1998

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 prohibiting boards of license commissioners and liquor control boards from
9 permitting the transfer of an alcoholic beverages license until the transferor has
10 complied with the Maryland Uniform Fraudulent Conveyances Act; making this
11 Act prospective; providing for the application of this Act; and generally relating
12 to bulk transfers.

13 BY repealing and reenacting, with amendments,
14 Article 2B - Alcoholic Beverages
15 Section 10-503(a)
16 Annotated Code of Maryland
17 (1996 Replacement Volume and 1997 Supplement)

18 BY repealing and reenacting, with amendments,
19 Article - Commercial Law
20 Section 1-105 and 2-403(4)
21 Annotated Code of Maryland
22 (1997 Replacement Volume and 1997 Supplement)

23 BY repealing and reenacting, with amendments,
24 Article - Commercial Law
25 Section 15-213 and 19-102(d)
26 Annotated Code of Maryland
27 (1990 Replacement Volume and 1997 Supplement)

28 BY repealing and reenacting, without amendments,
29 Article - Commercial Law

1 Section 1-201(9), 2A-103(1)(a) and (o), and 9-301
2 Annotated Code of Maryland
3 (1997 Replacement Volume and 1997 Supplement)

4 BY repealing
5 Article - Commercial Law
6 Section 6-101 through 6-111 and the title "Title 6. Bulk Transfers" and 9-111
7 Annotated Code of Maryland
8 (1997 Replacement Volume and 1997 Supplement)

9 BY repealing
10 Article - Commercial Law
11 Section 11-1304(d) and 19-102(c)
12 Annotated Code of Maryland
13 (1990 Replacement Volume and 1997 Supplement)

14 BY repealing
15 Article - Tax - General
16 Section 11-505 and 13-802
17 Annotated Code of Maryland
18 (1997 Replacement Volume)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

21 **Article 2B - Alcoholic Beverages**

22 10-503.

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

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

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

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

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

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

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

8 (4) A board may not permit the transfer of an alcoholic beverages license
9 until the transferor has complied with the [Bulk Transfers Act, Commercial Law
10 Article, Title 6] MARYLAND UNIFORM FRAUDULENT CONVEYANCES ACT, §§ 15-201
11 THROUGH 15-214 OF THE COMMERCIAL LAW ARTICLE, and has certified such
12 compliance, by affidavit, to the board.

13 (5) The provisions of this section apply in every county and in Baltimore
14 City, unless otherwise provided in this section.

15 **Article - Commercial Law**

16 1-105.

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

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

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

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

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

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

30 Letters of credit. § 5-116.

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

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

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

1 1-201.

2 Subject to additional definitions contained in the subsequent titles of this article
3 which are applicable to specific titles or subtitles thereof, and unless the context
4 otherwise requires, in Titles 1 through 10 of this article:

5 (9) "Buyer in ordinary course of business" means a person who in good faith
6 and without knowledge that the sale to him is in violation of the ownership rights or
7 security interest of a third party in the goods buys in ordinary course from a person in
8 the business of selling goods of that kind but does not include a pawnbroker. All
9 persons who sell minerals or the like (including oil and gas) at wellhead or minehead
10 shall be deemed to be persons in the business of selling goods of that kind. "Buying"
11 may be for cash or by exchange of other property or on secured or unsecured credit
12 and includes receiving goods or documents of title under a preexisting contract for
13 sale but does not include a transfer in bulk or as security for or in total or partial
14 satisfaction of a money debt.

15 2-403.

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

19 2A-103.

20 (1) In this title unless the context otherwise requires:

21 (a) "Buyer in ordinary course of business" means a person who in good
22 faith and without knowledge that the sale to him (or her) is in violation of the
23 ownership rights or security interest or leasehold interest of a third party in the goods
24 buys in ordinary course from a person in the business of selling goods of that kind but
25 does not include a pawnbroker. "Buying" may be for cash or by exchange of other
26 property or on secured or unsecured credit and includes receiving goods or documents
27 of title under a preexisting contract for sale but does not include a transfer in bulk or
28 as security for or in total or partial satisfaction of a money debt.

29 (o) "Lessee in ordinary course of business" means a person who in good
30 faith and without knowledge that the lease to him (or her) is in violation of the
31 ownership rights or security interest or leasehold interest of a third party in the goods
32 leases in ordinary course from a person in the business of selling or leasing goods of
33 that kind but does not include a pawnbroker. "Leasing" may be for cash or by
34 exchange of other property or on secured or unsecured credit and includes receiving
35 goods or documents of title under a preexisting lease contract but does not include a
36 transfer in bulk or as security for or in total or partial satisfaction of a money debt.

[Title 6. Bulk Transfers.]

2 [6-101.

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

5 [6-102.

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

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

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

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

19 [6-103.

20 The following transfers are not subject to this title:

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

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

24 (3) Transfers in settlement or realization of a lien or other security
25 interest;

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

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

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

34 (7) A transfer to a new business enterprise organized to take over and
35 continue the business, if public notice of the transaction is given and the new

1 enterprise assumes the debts of the transferor and he receives nothing from the
2 transaction except an interest in the new enterprise junior to the claims of creditors;

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

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

9 [6-104.

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

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

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

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

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

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

32 [6-105.

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

1 [6-106.

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

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

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

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

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

25 [6-107.

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

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

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

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

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

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

1 (b) The address where the schedule of property and list of creditors (§
2 6-104) may be inspected;

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

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

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

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

11 (a) The Comptroller;

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

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

16 [6-108.

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

19 (2) The transferor shall furnish a list of his creditors and assist in the
20 preparation of a schedule of the property to be sold, both prepared as before stated (§
21 6-104).

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

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

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

29 (i) The Comptroller;

30 (ii) All persons shown on the list of creditors; and

31 (iii) All other persons who are known to the auctioneer to hold or
32 assert claims against the transferor; and

33 (c) Assure that the net proceeds of the auction are applied as provided in
34 this title (§ 6-106).

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

7 [6-109.

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

12 [6-110.

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

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

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

19 [6-111.

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

24 [9-111.

25 The creation of a security interest is not a bulk transfer under Title 6 (see §
26 6-103).]

27 9-301.

28 (1) Except as otherwise provided in subsection (2) an unperfected security
29 interest is subordinate to the rights of

30 (a) Persons entitled to priority under § 9-312;

31 (b) A person who becomes a lien creditor before the security interest is
32 perfected;

33 (c) In the case of goods, instruments, documents, and chattel paper, a
34 person who is not a secured party and who is a transferee in bulk or other buyer not
35 in ordinary course of business, or is a buyer of farm products in ordinary course of

1 business, to the extent that he gives value and receives delivery of the collateral
2 without knowledge of the security interest and before it is perfected;

3 (d) In the case of accounts, general intangibles, and investment property,
4 a person who is not a secured party and who is a transferee to the extent that he gives
5 value without knowledge of the security interest and before it is perfected.

6 (2) If the secured party files with respect to a purchase-money security
7 interest before or within 20 days after the debtor receives possession of the collateral,
8 he takes priority over the rights of a transferee in bulk or of a lien creditor which arise
9 between the time the security interest attaches and the time of filing.

10 (2A) If the secured party files with respect to a non-purchase-money security
11 interest before or within ten days after the security interest attaches, he takes
12 priority over the rights of a transferee in bulk or of a lien creditor which arise between
13 the time the security interest attaches and the time of filing.

14 (3) A "lien creditor" means a creditor who has acquired a lien on the property
15 involved by attachment, levy or the like and includes an assignee for benefit of
16 creditors from the time of assignment, and a trustee in bankruptcy from the date of
17 the filing of the petition or a receiver in equity from the time of appointment.

18 11-1304.

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

21 15-213.

22 This subtitle does not repeal the law relating to:

23 (1) Fraudulent conveyances from one spouse to the other, as provided in
24 §§ 4-205, 4-206, and 4-301 of the Family Law Article; OR

25 (2) Priorities and preferences in insolvency, as provided in Subtitle 1 of
26 this title[; or

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

28 19-102.

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

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

1

Article - Tax - General

2 [11-505.

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

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

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

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

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

15 [13-802.

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

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

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

23 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall apply to
24 bulk transfers made on or after the effective date of this Act. Bulk transfers made
25 before the effective date of this Act shall remain subject to the provisions of law
26 repealed or amended by this Act as though they had not been repealed or amended.

27 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
28 October 1, 1998.