

Department of Legislative Services
Maryland General Assembly

FISCAL NOTE

House Bill 151 (Delegate Frank)

Economic Matters

Maryland Uniform Commercial Code - Bulk Transfers - Repeal

This bill repeals Title 6 of the Maryland Uniform Commercial Code relating to bulk transfers. It also amends Article 2B to require boards of license commissioners to withhold approval of an alcoholic beverage transfer until the transferor has complied with the Maryland Uniform Fraudulent Conveyances Act, rather than the Bulk Transfers Act.

Fiscal Summary

State Effect: General fund revenues could decrease by \$799,000 in FY 1999, which reflects the bill's October 1, 1998 effective date, and \$1,065,000 on an annualized basis.

Local Effect: Potential minimal impact.

Small Business Effect: Potential meaningful impact.

Fiscal Analysis

State Effect: This bill impacts State general fund revenue collected by the Comptroller's Office associated with notices of bulk transfers filed by businesses without liquor licenses. Under current law, a purchaser involved in a bulk sale transaction is required to send a "notice to creditors" to the Comptroller. A bulk transfer is defined as any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the material, supplies, merchandise or other inventory of an enterprise.

The Comptroller's Office relies on the required notice of bulk sale transfers to ensure timely payment of sales and use taxes levied on the tangible personal property included in the bulk transfer. Removing the notice requirement does not remove the tax liability. However, under the bill the Comptroller often would not know of any tax liability and may not be able

to collect the taxes unless the purchaser of the bulk goods is audited. During calendar 1997, the Comptroller received and answered 340 bulk sale notices from businesses without liquor licenses. Under this bill, these 340 businesses would not be required to notify the Comptroller of a bulk sale. It is estimated that the Comptroller will not collect 50% of the 5% sales tax on tangible personal property resulting from bulk sale notices, which equates to \$802,800.

This bill also eliminates the “successor to vendor” provision. Under current law, when a notice to creditors is received, the Comptroller determines whether the seller of the bulk sale owes any back taxes. If the seller does owe back taxes, the Comptroller files a claim for the taxes due and advises the purchaser to hold the amount of taxes due in escrow until the seller pays the taxes. If the purchaser fails to notify the Comptroller of the bulk transfer or to place the taxes due in escrow, the purchaser is held personally liable for the seller’s taxes due with interest. The Comptroller collects approximately \$266,800 annually in back taxes as a result of bulk sale notices from non-liquor license businesses. Eliminating the successor to vendor provision under this bill could result in a loss by the Comptroller of 90% of the delinquent revenue it currently collects annually, which equates to \$240,200. Additionally, there is a loss of \$22,400 currently collected from audits of purchasers who failed to file the notice to creditors.

In total, the State will lose approximately \$1,065,000 annually in general fund revenue collected by the Comptroller as a result of this bill.

Local Effect: Under this bill, Local Boards of License Commissioners will be required to insure that any transfer of an alcoholic beverage license be certified by affidavit compliance with the Maryland Uniform Fraudulent Conveyances Act of the Uniform Commercial Code.

Small Business Effect: This bill could have a meaningful impact on small businesses. The bulk transfer law alerts creditors of bulk sales of inventories not in the ordinary course of business. The law gives creditors advance notice of a bulk transfer so that they may attach the proceeds from the sale if necessary. Further, it prohibits a debtor business from selling out its stock for less than fair market value to a friend, paying its creditors less than the amount due, and re-entering the business later. To the extent that small businesses are creditors, this bill could impair their ability to collect on debts owed to them. However, to the extent that small businesses are parties to the bulk transfer sale, this bill will have a positive impact. For example, the transferor will no longer have to notify the Comptroller of the sale and will not be held liable for back taxes of the transferee which were not placed in escrow.

Information Source(s): Comptroller of the Treasury (Alcohol and Tobacco Tax, Bureau of Revenue Estimates); Attorney General's Office (Consumer Protection Division); Washington County

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