

BY: Economic Matters Committee

AMENDMENTS TO HOUSE BILL NO. 266

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, strike beginning with "repealing" in line 4 down through "Article;" in line 7 and substitute "imposing certain requirements relating to bulk transfers of property of certain alcoholic beverages license holders;".

On page 2, in line 7, after "repealing" insert "and reenacting, with amendments,"; in line 9, strike "and 13-802"; and after line 11, insert:

"BY repealing and reenacting, without amendments,

Article - Tax - General

Section 13-802

Annotated Code of Maryland

(1997 Replacement Volume and 1999 Supplement)

BY adding to

Article 2B - Alcoholic Beverages

Section 22-101 through 22-111, inclusive, to be under the new title "Title 22. Bulk Transfers - Alcoholic Beverages"

Annotated Code of Maryland

(1998 Replacement Volume and 1999 Supplement)".

On page 3, in lines 13, 15, and 16, strike all the brackets; and strike beginning with the second "the" in line 14 down through "Title 6" in line 15 and substitute "TITLE 22 OF THIS ARTICLE".

AMENDMENT NO. 2

On page 3, after line 17, insert:

(Over)

“TITLE 22. BULK TRANSFERS - ALCOHOLIC BEVERAGES

22-101.

(A) IN THIS TITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) “AUCTIONEER” MEANS A PERSON, OTHER THAN THE TRANSFEROR, WHO DIRECTS, CONTROLS, OR IS RESPONSIBLE FOR AN AUCTION.

(C) (1) “BULK TRANSFER” MEANS ANY TRANSFER IN BULK AND NOT IN THE ORDINARY COURSE OF A TRANSFEROR’S BUSINESS OF A MAJOR PART OF THE INVENTORY OF A LICENSE HOLDER UNDER THIS ARTICLE.

(2) “BULK TRANSFER” INCLUDES THE TRANSFER OF A SUBSTANTIAL PART OF THE EQUIPMENT OF AN ENTERPRISE ONLY IF IT IS MADE IN CONNECTION WITH THE BULK TRANSFER OF INVENTORY.

22-102.

(A) THE SALE, TRANSFER, OR ASSIGNMENT, IN BULK, OF ANY STOCK OF MERCHANDISE OR OF FIXTURES, PERTAINING TO THE MERCHANDISE, INCLUDING ANY SALE, TRANSFER, OR ASSIGNMENT MADE IN CONSIDERATION OF ANY EXISTING INDEBTEDNESS, OTHERWISE THAN IN THE ORDINARY COURSE OF TRADE AND IN THE USUAL CONDUCT OF BUSINESS BY A TRANSFEROR IS SUBJECT TO THIS TITLE.

(B) EXCEPT AS LIMITED BY § 22-103 OF THIS TITLE, ALL BULK TRANSFERS OF GOODS LOCATED WITHIN THIS STATE ARE SUBJECT TO THIS TITLE.

22-103.

(A) THE FOLLOWING TRANSFERS ARE NOT SUBJECT TO THIS TITLE:

(1) THOSE MADE TO GIVE SECURITY FOR THE PERFORMANCE OF AN OBLIGATION;

(2) GENERAL ASSIGNMENTS FOR THE BENEFIT OF ALL THE CREDITORS OF THE TRANSFEROR, AND SUBSEQUENT TRANSFERS BY THE ASSIGNEE;

(3) TRANSFERS IN SETTLEMENT OR REALIZATION OF A LIEN OR OTHER SECURITY INTEREST;

(4) SALE BY EXECUTORS, ADMINISTRATORS, RECEIVERS, TRUSTEES IN BANKRUPTCY, OR ANY PUBLIC OFFICER UNDER JUDICIAL PROCESS;

(5) SALES MADE IN THE COURSE OF JUDICIAL OR ADMINISTRATIVE PROCEEDINGS FOR THE DISSOLUTION OR REORGANIZATION OF A TRANSFEROR AND OF WHICH NOTICE IS SENT TO THE CREDITORS OF THE TRANSFEROR PURSUANT TO ORDER OF THE COURT OR ADMINISTRATIVE AGENCY;

(6) TRANSFERS TO A PERSON MAINTAINING A KNOWN PLACE OF BUSINESS IN THE TRANSFEROR'S STATE WHO BECOMES BOUND TO PAY THE DEBTS OF THE TRANSFEROR IN FULL AND GIVES PUBLIC NOTICE OF THAT FACT, AND WHO IS SOLVENT AFTER BECOMING BOUND TO PAY THE DEBTS OF THE TRANSFEROR;

(7) A TRANSFER TO A NEW BUSINESS ENTERPRISE ORGANIZED TO TAKE OVER AND CONTINUE THE BUSINESS, IF PUBLIC NOTICE OF THE TRANSACTION IS GIVEN AND THE NEW ENTERPRISE ASSUMES THE DEBTS OF THE TRANSFEROR AND THE NEW ENTERPRISE RECEIVES NOTHING FROM THE TRANSACTION EXCEPT AN INTEREST IN THE NEW ENTERPRISE JUNIOR TO THE CLAIMS OF CREDITORS; AND

(8) TRANSFERS OF PROPERTY THAT IS EXEMPT FROM EXECUTION.

(B) PUBLIC NOTICE UNDER SUBSECTION (A)(6) OR (7) OF THIS SECTION MAY BE GIVEN BY PUBLISHING ONCE A WEEK FOR TWO CONSECUTIVE WEEKS IN A NEWSPAPER OF GENERAL CIRCULATION WHERE THE TRANSFEROR HAD ITS

PRINCIPAL PLACE OF BUSINESS IN THIS STATE AN ADVERTISEMENT INCLUDING THE NAMES AND ADDRESSES OF THE TRANSFEROR AND TRANSFEREE AND THE EFFECTIVE DATE OF THE TRANSFER.

22-104.

(A) EXCEPT AS PROVIDED IN § 22-108 OF THIS TITLE WITH RESPECT TO AN AUCTION SALE, A BULK TRANSFER SUBJECT TO THIS TITLE IS INEFFECTIVE AGAINST ANY CREDITOR OF THE TRANSFEROR UNLESS:

(1) THE TRANSFEREE REQUIRES THE TRANSFEROR TO FURNISH A LIST OF TRANSFEROR'S EXISTING CREDITORS PREPARED AS STATED IN THIS SECTION;

(2) THE PARTIES PREPARE A SCHEDULE OF THE PROPERTY TRANSFERRED SUFFICIENT TO IDENTIFY IT; AND

(3) (I) THE TRANSFEREE PRESERVES THE LIST AND SCHEDULE FOR 6 MONTHS FOLLOWING THE TRANSFER AND PERMITS INSPECTION AND COPYING OF EITHER OR BOTH AT ALL REASONABLE HOURS BY ANY CREDITOR OF THE TRANSFEROR; OR

(II) THE TRANSFEREE FILES THE LIST AND SCHEDULE IN THE OFFICE OF THE CLERK OF THE CIRCUIT COURT IN THE COUNTY IN WHICH THE PROPERTY WAS LOCATED AT THE TIME OF TRANSFER.

(B) THE LIST OF CREDITORS MUST BE SIGNED AND SWORN TO OR AFFIRMED BY THE TRANSFEROR OR THE TRANSFEROR'S AGENT AND CONTAIN:

(1) THE NAMES AND BUSINESS ADDRESSES OF ALL CREDITORS OF THE TRANSFEROR;

(2) THE AMOUNT OF THE DEBT, WHEN KNOWN; AND

(3) THE NAMES OF ALL PERSONS WHO ARE KNOWN TO THE

TRANSFEROR TO ASSERT CLAIMS AGAINST THE TRANSFEROR EVEN IF THE CLAIMS ARE DISPUTED.

(C) IF THE TRANSFEROR IS THE OBLIGOR OF AN OUTSTANDING ISSUE OF BONDS OR DEBENTURES FOR WHICH THERE IS AN INDENTURE TRUSTEE, THE LIST OF CREDITORS NEED INCLUDE ONLY THE NAME AND ADDRESS OF THE INDENTURE TRUSTEE AND THE AGGREGATE OUTSTANDING PRINCIPAL AMOUNT OF THE ISSUE.

(D) RESPONSIBILITY FOR THE COMPLETENESS AND ACCURACY OF THE LIST OF CREDITORS RESTS ON THE TRANSFEROR, AND THE TRANSFER IS NOT RENDERED INEFFECTIVE BY ERRORS OR OMISSIONS UNLESS THE TRANSFEREE IS SHOWN TO HAVE HAD KNOWLEDGE OF THE ERRORS OR OMISSIONS.

22-105.

IN ADDITION TO THE REQUIREMENTS OF § 22-104 OF THIS TITLE, ANY BULK TRANSFER SUBJECT TO THIS TITLE, EXCEPT ONE MADE BY AUCTION SALE UNDER § 22-108 OF THIS ARTICLE, IS INEFFECTIVE AGAINST ANY CREDITOR OF THE TRANSFEROR UNLESS AT LEAST 10 DAYS BEFORE THE TRANSFEREE TAKES POSSESSION OF THE GOODS OR PAYS FOR THE GOODS, WHICHEVER OCCURS FIRST, THE TRANSFEREE GIVES NOTICE OF THE TRANSFER IN THE MANNER AND TO THE PERSONS AS PROVIDED IN THIS TITLE.

22-106.

IN ADDITION TO THE REQUIREMENTS OF §§ 22-104 AND 22-105 OF THIS TITLE:

(1) EXCEPT FOR A BULK TRANSFER MADE BY SALE AT AUCTION UNDER § 22-108 OF THIS TITLE, EVERY BULK TRANSFER SUBJECT TO THIS TITLE FOR WHICH NEW CONSIDERATION BECOMES PAYABLE, THE TRANSFEREE SHALL ASSURE THAT THE CONSIDERATION IS APPLIED TO PAY THOSE DEBTS OF THE TRANSFEROR THAT ARE EITHER SHOWN ON THE LIST FURNISHED BY THE TRANSFEROR OR FILED IN WRITING IN THE PLACE STATED IN THE NOTICE WITHIN

(Over)

30 DAYS AFTER THE MAILING OF THE NOTICE.

(2) THE DUTY OF THE TRANSFEREE RUNS TO ALL DEBTORS OF THE TRANSFEROR, AND MAY BE ENFORCED BY ANY DEBTOR FOR THE BENEFIT OF ALL DEBTORS.

(3) IF ANY OF THE TRANSFEROR'S DEBTS ARE IN DISPUTE, THE SUM IN DISPUTE MAY BE WITHHELD FROM DISTRIBUTION UNTIL THE DISPUTE IS SETTLED OR ADJUDICATED.

(4) IF THE CONSIDERATION PAYABLE IS NOT ENOUGH TO PAY ALL OF THE TRANSFEROR'S DEBTS IN FULL, DISTRIBUTION SHALL BE MADE PRO RATA.

(5) WITHIN 10 DAYS AFTER TAKING POSSESSION OF THE GOODS, A TRANSFEREE MAY FILE A PETITION IN THE CIRCUIT COURT FOR THE COUNTY IN WHICH THE PLACE OF BUSINESS OF THE TRANSFEROR IS LOCATED AND PAY THE CONSIDERATION TO THE COURT, REQUESTING THAT THE COURT APPOINT A RECEIVER TO TAKE CHARGE OF THE DISTRIBUTION OF THE AGREED PURCHASE PRICE.

(6) THE TRANSFEREE MAY DISCHARGE THE TRANSFEROR'S DUTY UNDER THIS SECTION BY GIVING NOTICE BY REGISTERED OR CERTIFIED MAIL TO THE CREDITORS REQUIRED TO RECEIVE NOTICE THAT:

(I) CONSIDERATION HAS BEEN PAID TO THE COURT; AND

(II) THE CREDITORS SHOULD FILE THEIR CLAIMS IN THE COURT; AND

(7) IF A RECEIVERSHIP IS GRANTED, THE RECEIVER, AFTER FILING AN APPROVED BOND IN THE AMOUNT FIXED BY THE COURT, SHALL BE ENTITLED TO THE CUSTODY AND DISTRIBUTION OF THE AGREED PURCHASE PRICE UNDER THE ORDER OF THE COURT.

22-107.

(A) THE NOTICE TO CREDITORS UNDER § 22-105 OF THIS TITLE SHALL STATE:

(1) THAT A BULK TRANSFER IS ABOUT TO BE MADE;

(2) THE NAMES AND BUSINESS ADDRESSES OF THE TRANSFEROR AND TRANSFEREE, AND ALL OTHER BUSINESS NAMES AND ADDRESSES USED BY THE TRANSFEROR WITHIN THE LAST 3 YEARS THAT ARE KNOWN TO THE TRANSFEREE; AND

(3) (I) WHETHER OR NOT ALL THE DEBTS OF THE TRANSFEROR ARE TO BE PAID IN FULL AS THEY FALL DUE AS A RESULT OF THE TRANSACTION; AND

(II) THE ADDRESS TO WHICH CREDITORS SHOULD SEND THEIR BILLS.

(B) IF THE DEBTS OF THE TRANSFEROR ARE NOT TO BE PAID IN FULL AS THEY FALL DUE OR IF THE TRANSFEREE IS UNSURE, THE NOTICE SHALL STATE FURTHER:

(1) THE LOCATION AND GENERAL DESCRIPTION OF THE PROPERTY TO BE TRANSFERRED AND THE ESTIMATED TOTAL OF THE TRANSFEROR'S DEBTS;

(2) THE ADDRESS WHERE THE SCHEDULE OF PROPERTY AND LIST OF CREDITORS MAY BE INSPECTED;

(3) WHETHER THE TRANSFER IS TO PAY EXISTING DEBTS AND IF SO THE AMOUNT OF THE DEBTS AND TO WHOM THE DEBTS ARE OWED;

(4) WHETHER THE TRANSFER IS FOR NEW CONSIDERATION AND IF SO THE AMOUNT OF THE CONSIDERATION AND THE TIME AND PLACE OF PAYMENT;

(Over)

AND

(5) IF THE TRANSFER IS FOR NEW CONSIDERATION, THE TIME AND PLACE WHERE CREDITORS OF THE TRANSFEROR ARE TO FILE THEIR CLAIMS.

(C) THE NOTICE IN ANY CASE SHALL BE DELIVERED PERSONALLY OR SENT BY REGISTERED OR CERTIFIED MAIL TO:

(1) THE COMPTROLLER;

(2) ALL THE PERSONS SHOWN ON THE LIST OF CREDITORS FURNISHED BY THE TRANSFEROR; AND

(3) ALL OTHER PERSONS WHO ARE KNOWN TO THE TRANSFEREE TO HOLD OR ASSERT CLAIMS AGAINST THE TRANSFEROR.

22-108.

(A) A BULK TRANSFER IS SUBJECT TO THIS TITLE EVEN THOUGH IT IS BY SALE AT AUCTION, BUT ONLY IN THE MANNER AND WITH THE RESULTS STATED IN THIS SECTION.

(B) THE TRANSFEROR SHALL FURNISH A LIST OF THE TRANSFEROR'S CREDITORS AND ASSIST IN THE PREPARATION OF A SCHEDULE OF THE PROPERTY TO BE SOLD AS PROVIDED IN § 22-104 OF THIS TITLE.

(C) THE AUCTIONEER SHALL:

(1) RECEIVE AND RETAIN THE LIST OF CREDITORS AND PREPARE AND RETAIN THE SCHEDULE OF PROPERTY FOR THE PERIOD STATED IN THIS TITLE;

(2) GIVE NOTICE OF THE AUCTION PERSONALLY OR BY REGISTERED OR CERTIFIED MAIL AT LEAST 10 DAYS BEFORE IT OCCURS TO:

(I) THE COMPTROLLER;



(II) ALL PERSONS SHOWN ON THE LIST OF CREDITORS; AND

(III) ALL OTHER PERSONS WHO ARE KNOWN TO THE AUCTIONEER TO HOLD OR ASSERT CLAIMS AGAINST THE TRANSFEROR; AND

(3) ASSURE THAT THE NET PROCEEDS OF THE AUCTION ARE APPLIED AS PROVIDED IN THIS TITLE.

(D) (1) FAILURE OF THE AUCTIONEER TO PERFORM ANY OF THE DUTIES REQUIRED BY THIS TITLE DOES NOT AFFECT THE VALIDITY OF THE SALE OR THE TITLE OF THE PURCHASERS.

(2) FAILURE OF THE AUCTIONEER TO PERFORM ANY OF THE DUTIES REQUIRED BY THIS TITLE RENDERS THE AUCTIONEER LIABLE TO THE CREDITORS OF THE TRANSFEROR AS A CLASS FOR THE SUMS OWING TO THE CREDITORS FROM THE TRANSFEROR NOT EXCEEDING THE NET PROCEEDS OF THE AUCTION.

(3) IF THE AUCTIONEER CONSISTS OF SEVERAL PERSONS, THE AUCTIONEER'S LIABILITY IS JOINT AND SEVERAL.

22-109.

(A) A CREDITOR HOLDING CLAIMS BASED ON TRANSACTIONS OR EVENTS OCCURRING BEFORE THE BULK TRANSFER OF THE TRANSFEROR IS ENTITLED TO RECEIVE NOTICE UNDER THIS TITLE.

(B) A PERSON WHO BECOMES A CREDITOR AFTER NOTICE TO CREDITORS IS GIVEN UNDER THIS TITLE IS NOT ENTITLED TO RECEIVE NOTICE UNDER THIS TITLE.

22-110.

(Over)

(A) IF THE TITLE OF A TRANSFEREE TO PROPERTY IS SUBJECT TO A DEFECT AS A RESULT OF THE TRANSFEREE'S NONCOMPLIANCE WITH THE REQUIREMENTS OF THIS TITLE, A PURCHASER OF ANY SUCH PROPERTY FROM THE TRANSFEREE WHO DOES NOT PAY VALUE OR WHO TAKES WITH NOTICE OF THE NONCOMPLIANCE, TAKES THE PROPERTY SUBJECT TO THE DEFECT.

(B) A PURCHASER FOR VALUE IN GOOD FAITH AND WITHOUT NOTICE TAKES THE PROPERTY FREE OF THE DEFECT.

22-111.

(A) AN ACTION OR LEVY UNDER THIS TITLE MAY NOT BE BROUGHT OR MADE MORE THAN 6 MONTHS AFTER THE DATE ON WHICH THE TRANSFEREE TOOK POSSESSION OF THE GOODS UNLESS THE TRANSFER HAS BEEN CONCEALED.

(B) IF THE TRANSFER HAS BEEN CONCEALED, AN ACTION MAY BE BROUGHT OR A LEVY MAY BE MADE WITHIN 6 MONTHS AFTER DISCOVERY OF THE TRANSFER.

AMENDMENT NO. 3

On page 9, in line 16, strike the bracket; in line 17, after "(a)" insert "(1) IN THIS SECTION:

(I) "BULK TRANSFER" MEANS ANY TRANSFER IN BULK AND NOT IN THE ORDINARY COURSE OF THE TRANSFEROR'S BUSINESS OF A MAJOR PART OF THE MATERIALS, SUPPLIES, MERCHANDISE OR OTHER INVENTORY OF AN ENTERPRISE SUBJECT TO THIS SECTION; AND

(II) "BULK TRANSFER" INCLUDES THE TRANSFER OF A SUBSTANTIAL PART OF THE EQUIPMENT OF AN ENTERPRISE ONLY IF IT IS MADE IN CONNECTION WITH THE BULK TRANSFER OF INVENTORY.

(2) THIS SECTION APPLIES TO AN ENTERPRISE WHOSE PRINCIPAL BUSINESS IS THE SALE OF MERCHANDISE FROM STOCK, INCLUDING THOSE MANUFACTURING WHAT THEY SELL, RESTAURANTS, AND ALL VENDORS OF

ALCOHOLIC BEVERAGES, REGARDLESS OF THE FORM IN WHICH THE BEVERAGES ARE SOLD OR WHETHER THE VENDOR IS A WHOLESALER OR RETAILER.

(B)”;

strike beginning with “, as” in line 17 down through “Article,” in line 18; strike beginning with the second “the” in line 18 down through “Article,” in line 19; strike beginning with the colon in line 19 down through “(2)” in line 21; strike in their entirety lines 23 through 28, inclusive, and substitute:

“(C) THE NOTICE OF BULK TRANSFER SHALL STATE:

(1) THAT A BULK TRANSFER IS ABOUT TO BE MADE;

(2) THE NAMES AND BUSINESS ADDRESSES OF THE TRANSFEROR AND TRANSFEREE, AND ALL OTHER BUSINESS NAMES AND ADDRESSES USED BY THE TRANSFEROR WITHIN THE LAST 3 YEARS THAT ARE KNOWN TO THE TRANSFEREE;

(3) THE LOCATION AND GENERAL DESCRIPTION OF THE PROPERTY TO BE TRANSFERRED;

(4) WHETHER THE TRANSFER IS TO PAY EXISTING DEBTS AND, IF SO, THE AMOUNT OF THE DEBTS AND TO WHOM THEY ARE OWED; AND

(5) WHETHER THE TRANSFER IS FOR NEW CONSIDERATION AND, IF SO, THE AMOUNT OF THE CONSIDERATION AND THE TIME AND PLACE OF PAYMENT.

(D) IF THE COMPTROLLER FINDS THAT THE TRANSFEROR OWES SALES AND USE TAX, THE COMPTROLLER SHALL FILE A CLAIM FOR SALES AND USE TAX DUE FROM THE TRANSFEROR AT THE ADDRESS OF THE TRANSFEREE’S BUSINESS.

(E) IF THE COMPTROLLER FILES A CLAIM UNDER SUBSECTION (D) OF THIS SECTION, THE TRANSFEREE OR AUCTIONEER SHALL WITHHOLD THE AMOUNT STATED IN THE CLAIM FROM DISTRIBUTION TO THE TRANSFEROR.”;

(Over)

and in line 29, strike the bracket.

On page 10, in line 2, strike the bracket.