SB 102

Department of Legislative Services
Maryland General Assembly
2004 Session

FISCAL AND POLICY NOTE

Senate Bill 102 (Senators Mooney and Kelley)
Finance

Commercial Law - Uniform Commercial Code - Repeal of Title 6

This bill repeals Title 6 of Maryland's Uniform Commercial Code (UCC), relating to bulk transfers. The bill applies to bulk transfers made on or after October 1, 2004. Bulk transfers made before October 1, 2004 remain subject to the provisions of UCC as though they had not been repealed.

Fiscal Summary

State Effect: General fund revenues could decrease by $367,800 in FY 2005, which reflects the bill's October 1, 2004 effective date, and $550,000 on an annualized basis thereafter.

(in dollars)	FY 2005	FY 2006	FY 2007	FY 2008	FY 2009
GF Revenue	($367,800)	($550,000)	($550,000)	($550,000)	($550,000)
Expenditure	$0	$0	$0	$0	$0
Net Effect	($367,800)	($550,000)	($550,000)	($550,000)	($550,000)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: None.

Small Business Effect: Potential meaningful.

Analysis

Current Law: Title 6 of UCC protects the creditors of the transferor in a bulk sale transfer. A bulk transfer is any transfer, 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. Parties to a bulk transfer are required to prepare a schedule of the property to be transferred sufficient to identify it. The transferee is required to notify the Comptroller, all persons on a list of creditors provided by the transferee, and all other persons known to the transferee to hold or assert claims against the transferor. Priority on the proceeds of the bulk transfer goes first to the Comptroller and second to the transferor's other creditors, with the remainder going to the transferor. If the transferee does not withhold the amount due to the Comptroller, the transferee is liable for the amount of the tax, interest, and penalties. The sales and use tax is levied on all the tangible personal property included in the bulk transfer.

Background: Bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century: a merchant would acquire his stock in trade on credit, then sell his entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid.

Article 6 of UCC was drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL) as a response to this "bulk sale risk." As revisions of Article 6 were being considered, a considerable body of opinion supported the notion of repeal for Article 6. That body of opinion perceived that the balance of equities had swung from essential protection for creditors to unnecessary burdens for "bulk sale" buyers.

NCCUSL advises that changes in technology have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost. NCCUSL further advises that creditors also have greater opportunity to collect their debts because of state long-arm statutes and rules. Moreover, retaining an interest in inventory to secure its price has become relatively simple and inexpensive under UCC Article 9, which has been adopted in every state.

NCCUSL now encourages those states that have enacted Article 6 to repeal it. To date, 42 states and the U.S. Virgin Islands have repealed their versions of Article 6. For those states that do not favor a complete repeal, NCCUSL has developed a revised Article 6. Four other states and the District of Columbia have adopted the revised version of UCC Article 6. Revised Article 6 is designed to clarify definitions and provide simplification for the bulk sale buyer.

State Revenues: The Comptroller's Office relies on the required notice of bulk transfers to ensure timely payment of sale and use taxes levied on the tangible personal property included in the bulk transfer. Under the bill, the Comptroller may not become aware of any tax liability and, therefore, may be unable to collect the tax due unless the purchaser of the bulk goods is audited.

In fiscal 2003, the Comptroller received and responded to 411 bulk transfer notices from businesses without liquor licenses. Under the bill, no notice to the Comptroller would be required for these 411 bulk transfers. Other provisions of law require notice from businesses with liquor licenses. It is estimated that the Comptroller would not collect 50% of the 5% sales tax on tangible personal property resulting from the bulk sale notices from business without liquor licenses, which for fiscal 2003 would have equaled $295,500.

Taxes collected by the Comptroller also include collections under the "successor to vender" provision, through which the Comptroller's interest in taxes owed by the transferor is satisfied first. Tax revenues would have decreased by approximately $166,800 for fiscal 2003 from this provision. Total losses for fiscal 2003 would have been $462,300.

Because of year-to-year volatility of bulk transfers (in 1997 there were 340 bulk transfers resulting in $1,065,300), the annual loss of general fund revenues to the State could be $550,000 under the bill.

Small Business Effect: Creditors currently have advance notice of a bulk transfer so that they may attach the proceeds from the sale if necessary. Small business creditors would have more difficulty collecting the debts owed to them. Small business parties to bulk transfer sales would benefit. For example, the transferee would no longer have to notify the Comptroller of the sale and would not be held liable for back taxes of the transferor not placed in escrow.

Additional Information

Prior Introductions: Similar legislation was introduced during the 2000 and 1998 sessions. In 2000, HB 266, with amendments, passed the House, but it received an unfavorable report from the Senate Finance Committee. In 1998, HB 151 received an unfavorable report from the House Economic Matters Committee.

Cross File: HB 139 (Delegate Doory) – Economic Matters.

Information Source(s): Office of the Attorney General, Department of Legislative Services

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