

Department of Legislative Services
Maryland General Assembly
2017 Session

FISCAL AND POLICY NOTE
First Reader

Senate Bill 789
Finance

(Senator Smith)

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, 2017. Bulk transfers made before October 1, 2017, remain subject to the provisions of UCC as though they had not been repealed.

Fiscal Summary

State Effect: General fund revenues decrease significantly beginning in FY 2018, as discussed below. Expenditures are not affected.

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 Article 9 of UCC, which has been adopted in every state. NCCUSL encourages those states that have enacted Article 6 to repeal it.

State Revenues: The Comptroller's Office relies on the required notice of bulk transfers to ensure timely payment of sales and use taxes levied on tangible personal property included in a 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. The Comptroller's Office advises that there is considerable volatility in bulk transfers from year to year; thus, a precise estimate of the effect on revenues cannot be made. Even so, due to notifications in fiscal 2015, the Comptroller's Office became aware of almost \$185,000 that had not been paid and for which assessments had to be made (another \$11.2 million was collected as a result of bulk transfer notifications). In fiscal 2016, the Comptroller's Office reports more than \$803,000 had not been paid while another \$3.8 million was collected in the normal course of bulk transfers. Based on these two years, it is likely, therefore, that general fund revenues decrease by at least \$500,000 on average annually. Eliminating the notice requirement could impact compliance, resulting in a greater impact on the general fund.

Small Business Effect: Creditors 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: None recently; however, similar legislation was introduced during the 2004, 2000, and 1998 sessions.

Cross File: HB 412 (Delegate West, *et al.*) - Economic Matters.

Information Source(s): Office of the Attorney General; Comptroller's Office; Judiciary (Administrative Office of the Courts); Department of Labor, Licensing, and Regulation; National Conference of Commissioners on Uniform State Laws; Department of Legislative Services

Fiscal Note History: First Reader - February 7, 2017
md/kdm

Analysis by: Eric Pierce

Direct Inquiries to:
(410) 946-5510
(301) 970-5510