



## 1997 ASSEMBLY BILL 457

July 15, 1997 - Introduced by Representatives CULLEN and GREEN, cosponsored by Senators GEORGE and HUELSMAN. Referred to Committee on Financial Institutions.

1     **AN ACT to repeal** 401.105 (2) (c), chapter 406 (title), 406.101, 406.102 (3) and  
2           409.111; **to renumber and amend** 406.102 (title), (1), (2), (3m) and (4),  
3           406.103, 406.104, 406.105, 406.107, 406.108, 406.109, 406.110 and 406.111; **to**  
4           **amend** 402.403 (4), 452.09 (3) (a), 480.08 (2m) (intro.) and 480.14 (4); and **to**  
5           **create** subchapter IV (title) of chapter 125 [precedes 125.80] of the statutes;  
6           **relating to:** bulk transfers of inventory.

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### ***Analysis by the Legislative Reference Bureau***

Under current law, the bulk transfer provisions of the uniform commercial code (UCC) generally require a business enterprise to give creditors notice before any transfer of a major part of the value of the business's inventory or a substantial part of the equipment of the business, if the equipment is included with a bulk transfer of inventory. These provisions apply to all business enterprises whose principal business is the sale of merchandise from stock, including retailers of alcohol beverages. This bill removes the bulk transfer provisions from the UCC and makes the bulk transfer provisions applicable *only* to retailers of alcohol beverages.

The National Conference of Commissioners on Uniform State Laws and the American Law Institute recommended repeal of the UCC bulk transfers law in 1989

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and promulgated the official text. The American Bar Association approved the text in 1990.

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*The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:*

1           **SECTION 1.** Subchapter IV (title) of chapter 125 [precedes 125.80] of the  
2 statutes is created to read:

3                                   **CHAPTER 125**

4                                   SUBCHAPTER IV

5                                   BULK TRANSFERS BY RETAILERS

6           **SECTION 2.** 401.105 (2) (c) of the statutes is repealed.

7           **SECTION 3.** 402.403 (4) of the statutes is amended to read:

8           402.403 (4) The rights of other purchasers of goods and of lien creditors are  
9 governed by chs. 406, 407 and 409.

10          **SECTION 4.** Chapter 406 (title) of the statutes is repealed.

11          **SECTION 5.** 406.101 of the statutes is repealed.

12          **SECTION 6.** 406.102 (title), (1), (2), (3m) and (4) of the statutes are renumbered  
13 125.80 (title), (1), (2), (3m) and (4) and amended to read:

14          **125.80** (title) ~~“Bulk transfers”; transfers of equipment; enterprises~~  
15 ~~subject to this chapter; bulk transfers subject to Applicability of this~~  
16 ~~chapter subchapter.~~ **(1)** A “bulk transfer” is any transfer in bulk and not in the  
17 ordinary course of the transferor’s retailer’s business of a major part in value of the  
18 retailer’s inventory (, as described under s. 409.109) ~~of an enterprise subject to this~~  
19 chapter (4).

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1           (2) A transfer of a substantial part of the equipment (~~as described under s.~~  
2           409.109) ~~of such an enterprise~~ (2), of a retailer is a bulk transfer if it is made in  
3           connection with a bulk transfer of inventory, but not otherwise.

4           (3m) The sale, transfer or assignment, in bulk, of any stock of merchandise or  
5           of fixtures, pertaining to the merchandise, including any sale, transfer or  
6           assignment made in consideration of any existing indebtedness, otherwise than in  
7           the ordinary course of trade and in the usual conduct of business by retailers of  
8           alcohol beverages, is subject to this ~~chapter~~ subchapter.

9           (4) Except as limited by s. ~~406.103~~ 125.81, all bulk transfers of goods located  
10          within this state are subject to this ~~chapter~~ subchapter.

11          **SECTION 7.** 406.102 (3) of the statutes is repealed.

12          **SECTION 8.** 406.103 of the statutes is renumbered 125.81 and amended to read:

13          **125.81** (title) **Transfers excepted from this ~~chapter~~ subchapter.** (1) The  
14          following transfers are not subject to this ~~chapter~~ subchapter:

15          (a) Those made to give security for the performance of an obligation;<sub>2</sub>

16          (b) General assignments for the benefit of all the creditors of the ~~transferor~~  
17          retailer, and subsequent transfers by the assignee thereunder;<sub>2</sub>

18          (c) Transfers Except as provided in s. 125.80 (3m), transfers in settlement or  
19          realization of a lien or other security interest;<sub>2</sub>

20          (d) Sales by executors, administrators, receivers, trustees in bankruptcy, or any  
21          public officer under judicial process;<sub>2</sub>

22          (e) Sales made in the course of judicial or administrative proceedings for the  
23          dissolution or reorganization of a ~~corporation~~ retailer and of which notice is sent to  
24          the creditors of the ~~corporation~~ retailer pursuant to order of the court or  
25          administrative agency;<sub>2</sub>

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1 (f) Transfers to a person maintaining a known place of business in this state  
2 who becomes bound to pay the debts of the ~~transferor~~ retailer in full and gives public  
3 notice of that fact, and who is solvent after becoming so bound;

4 (g) A transfer to a new business enterprise organized to take over and continue  
5 the business, if public notice of the transaction is given and the new enterprise  
6 assumes the debts of the ~~transferor~~ retailer and the ~~transferor~~ retailer receives  
7 nothing from the transaction except an interest in the new enterprise junior to the  
8 claims of creditors;

9 (h) Transfers of property which ~~which~~ that is exempt from execution.

10 (2) Public notice under sub. (1) (f) or (g) may be given by publication of a class  
11 2 notice, under ch. 985, where the ~~transferor~~ retailer had its principal place of  
12 business in this state. The notice shall include the names and addresses of the  
13 ~~transferor~~ retailer and transferee and the effective date of the transfer.

14 **SECTION 9.** 406.104 of the statutes is renumbered 125.82 and amended to read:

15 **125.82 Schedule of property, list of creditors.** (1) Except as provided with  
16 respect to auction sales (~~s. 406.108~~) under s. 125.85, a bulk transfer subject to this  
17 ~~chapter~~ subchapter is ineffective against any creditor of the ~~transferor~~ retailer  
18 unless all of the following conditions are met:

19 (a) The transferee requires the ~~transferor~~ retailer to furnish a list of the  
20 transferor's retailer's existing creditors prepared as stated in this section; ~~and~~.

21 (b) The parties prepare a schedule of the property transferred sufficient to  
22 identify it; ~~and~~.

23 (c) The transferee preserves the list and schedule for 6 months next following  
24 the transfer and permits inspection of either or both and copying therefrom at all

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1 reasonable hours by any creditor of the ~~transferor~~ retailer, or files the list and  
2 schedule with the department of financial institutions.

3 (2) The list of creditors must be signed and sworn to or affirmed by the  
4 ~~transferor~~ retailer or the ~~transferor's~~ retailer's agent. It must contain the names and  
5 business addresses of all creditors of the ~~transferor~~ retailer, with the amounts when  
6 known, and also the names of all persons who are known to the ~~transferor~~ retailer  
7 to assert claims against the ~~transferor~~ retailer even though such claims are disputed.  
8 If the ~~transferor~~ retailer is the obligor of an outstanding issue of bonds, debentures  
9 or the like as to which there is an indenture trustee, the list of creditors need include  
10 only the name and address of the indenture trustee and the aggregate outstanding  
11 principal amount of the issue. The list of creditors shall include the name and  
12 address of the clerk of the municipality in which the property was last assessed.

13 (3) Responsibility for the completeness and accuracy of the list of creditors  
14 rests on the ~~transferor~~ retailer, and the transfer is not rendered ineffective by errors  
15 or omissions therein unless the transferee is shown to have had knowledge.

16 **SECTION 10.** 406.105 of the statutes is renumbered 123.83 and amended to  
17 read:

18 **123.83 Notice to creditors.** In addition to the requirements of s. 406.104  
19 125.82, any bulk transfer subject to this ~~chapter~~ subchapter except one made by  
20 auction sale (~~s. 406.108~~) under s. 125.85 is ineffective against any creditor of the  
21 ~~transferor~~ retailer unless at least 10 days before the transferee takes possession of  
22 the goods or pays the major part of the purchase price, whichever happens first, the  
23 transferee gives notice of the transfer in the manner and to the persons specified in  
24 s. ~~406.107~~ 125.84.

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1           **SECTION 11.** 406.107 of the statutes is renumbered 125.84, and 125.84 (1), (2)  
2 (intro.), (a), (b) and (c) and (3), as renumbered, are amended to read:

3           125.84 **(1)** The notice to creditors (~~s. 406.105~~) under s. 125.83 shall state all  
4 of the following:

5           (a) That a bulk transfer is about to be made; ~~and.~~

6           (b) The names and business addresses of the ~~transferor~~ retailer and transferee,  
7 and all other business names and addresses used by the ~~transferor~~ retailer within  
8 3 years last past so far as known to the transferee; ~~and.~~

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

12           **(2)** (intro.) If the debts of the ~~transferor~~ retailer are not to be paid in full as they  
13 fall due or if the transferee is in doubt on that point then the notice shall also state  
14 ~~further~~ all of the following:

15           (a) The location and general description of the property to be transferred and  
16 the estimated total of the ~~transferor's~~ retailer's debts; ~~.~~

17           (b) The address where the schedule of property and list of creditors (~~s. 406.104~~)  
18 under s. 125.82 may be inspected; ~~.~~

19           (c) Whether the transfer is to pay existing debts and if so the amount of such  
20 debts and to whom owing; ~~.~~

21           **(3)** The notice in any case shall be delivered personally or sent by registered  
22 mail or certified mail to all the persons shown on the list of creditors furnished by the  
23 ~~transferor~~ (~~s. 406.104~~) retailer under s. 125.82 and to all other persons who are  
24 known to the transferee to hold or assert claims against the ~~transferor~~ retailer.

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1           **SECTION 12.** 406.108 of the statutes is renumbered 125.85 and amended to  
2 read:

3           **125.85 Auction sales; “auctioneer”.** (1) A bulk transfer is subject to this  
4 ~~chapter~~ subchapter even though it is by sale at auction, but only in the manner and  
5 with the results stated in this section.

6           (2) The ~~transferor~~ retailer shall furnish a list of the ~~transferor’s~~ retailer’s  
7 creditors and assist in the preparation of a schedule of the property to be sold, both  
8 prepared as stated in s. 406.104 125.82.

9           (3) The person or persons other than the ~~transferor~~ retailer who direct, control  
10 or are responsible for the auction are collectively called the “auctioneer”. The  
11 auctioneer shall do all of the following:

12           (a) Receive and retain the list of creditors and prepare and retain the schedule  
13 of property for the period stated in s. 406.104; ~~and~~ 125.82.

14           (b) Give notice of the auction personally or by registered or certified mail at  
15 least 10 days before it occurs to all persons shown on the list of creditors and to all  
16 other persons who are known to the auctioneer to hold or assert claims against the  
17 ~~transferor~~ retailer.

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

24           **SECTION 13.** 406.109 of the statutes is renumbered 125.86 and amended to  
25 read:

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1           **125.86 What creditors protected.** The creditors of the transferor retailer  
2 mentioned in this ~~chapter~~ subchapter are those holding claims based on transactions  
3 or events occurring before the bulk transfer, but creditors who become such after  
4 notice to creditors is given (~~ss. 406.105 and 406.107~~) under ss. 125.83 and 125.84 are  
5 not entitled to notice.

6           **SECTION 14.** 406.110 of the statutes is renumbered 125.87, and 125.87 (intro.),  
7 as renumbered, is amended to read:

8           **125.87 Subsequent transfers.** (intro.) When the title of a transferee to  
9 property is subject to a defect by reason of the transferee's noncompliance with the  
10 requirements of this ~~chapter~~ subchapter, then:

11           **SECTION 15.** 406.111 of the statutes is renumbered 125.88 and amended to read:

12           **125.88 Limitation of actions and levies.** No action under this ~~chapter~~  
13 subchapter shall be brought nor levy made more than 6 months after the date on  
14 which the transferee took possession of the goods unless the transfer has been  
15 concealed. If the transfer has been concealed, actions may be brought or levies made  
16 within 6 months after its discovery.

17           **SECTION 16.** 409.111 of the statutes is repealed.

18           **SECTION 17.** 452.09 (3) (a) of the statutes is amended to read:

19           452.09 (3) (a) In determining competency, the department shall require proof  
20 that the applicant for a broker's or salesperson's license has a fair knowledge of the  
21 English language, a fair understanding of the general purposes and general legal  
22 effect of deeds, mortgages, land contracts of sale, leases, bills of sale, chattel  
23 mortgages, and conditional sales contracts, ~~the provisions of the bulk sales law and~~  
24 a general and fair understanding of the obligations between principal and agent, as  
25 well as of this chapter. An applicant receiving a failing grade, as established by rules



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1 of the department, on any examination given under this section shall be denied a  
2 license, but any applicant may review his or her examination results in a manner  
3 established by rules of the department.

4 **SECTION 18.** 480.08 (2m) (intro.) of the statutes is amended to read:

5 480.08 **(2m)** EXAMINATION NOT REQUIRED. (intro.) Notwithstanding sub. (2) (e),  
6 the department shall register as an auctioneer under sub. (2) an individual who, not  
7 later than December 1, 1997, satisfies the requirements under sub. (2) (intro.) and  
8 (a) to (d); submits to the department a statement, signed by the individual, verifying  
9 that he or she has knowledge of the requirements for auctioneers under ss. 29.134,  
10 95.70, and 402.328 ~~and 406.108~~, subch. III of ch. 77, subch. VIII of ch. 218, this  
11 chapter, and all other state laws that include requirements for auctioneers; and  
12 submits evidence satisfactory to the department that he or she has done any of the  
13 following:

14 **SECTION 19.** 480.14 (4) of the statutes is amended to read:

15 480.14 **(4)** An auctioneer shall comply with all requirements for auctioneers  
16 under ss. s. 402.328 ~~and 406.108~~ and the rules promulgated under ss. s. 402.328 ~~and~~  
17 406.108.

18

(END)