

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 11/1/99

BILL NO. SB 117

OF  
SUBJECT BOOK TRANSFERS

OF INVENTORY

RAY SOBOCINSKI FR (STAFF)  
(NAME)

SEN. JOHANE B. HUELSMAN  
(Street Address or Route Number)

MADISON, WI 53707  
(City and Zip Code)

SEN. JOHANE HUELSMAN  
(Representing)

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

**SENATE HEARING SLIP**

(Please Print Plainly)

DATE: 11-1-99

BILL NO. \_\_\_\_\_

OF  
SUBJECT SB 117

BRICK MURPHY  
(NAME)

(Street Address or Route Number)

Green Bay, WI  
(City and Zip Code)

Business Law Section of State  
(Representing) Book of WI

Speaking in Favor:

Speaking Against:

Registering in Favor:  
but not speaking:

Registering Against:  
but not speaking:

Speaking for information  
only; Neither for nor against:

Please return this slip to a messenger PROMPTLY.

Senate Sergeant-At-Arms  
State Capitol - B35 South  
P.O. Box 7882  
Madison, WI 53707-7882

# Vote Record

## Senate Committee on Judiciary and Consumer Affairs

Date: 11/1/99  
 Moved by: Sen. George      Seconded by: Sen. Darling  
 AB: \_\_\_\_\_      Clearinghouse Rule: \_\_\_\_\_  
 AB: \_\_\_\_\_ SB: 117      Appointment: \_\_\_\_\_  
 AJR: \_\_\_\_\_ SJR: \_\_\_\_\_      Other: \_\_\_\_\_  
 A: \_\_\_\_\_ SR: \_\_\_\_\_

A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_  
 A/S Amdt: \_\_\_\_\_ to A/S Amdt: \_\_\_\_\_ to A/S Sub Amdt: \_\_\_\_\_

- Be recommended for:
- Passage
  - Introduction
  - Adoption
  - Rejection
  - Indefinite Postponement
  - Tabling
  - Concurrence
  - Nonconcurrence
  - Confirmation

| Committee Member                         | Aye                                 | No                       | Absent                   | Not Voting               |
|--|-------------------------------------|--------------------------|--------------------------|--------------------------|
| Sen. Gary George, Chair                  | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Fred Risser                         | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Alice Clausing                      | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Joanne Huelsman <i>(by polling)</i> | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Sen. Alberta Darling                     | <input checked="" type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Totals:                                  | <u>5</u>                            | <u>0</u>                 | _____                    | _____                    |

Motion Carried       Motion Failed



**STATE BAR  
of WISCONSIN**

5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158

October 19, 1999

State Senator Gary George  
State Capitol, Room 118 South  
Madison, Wisconsin

Dear Senator George:

There are three bills in the Senate Judiciary and Consumer Affairs Committee that we would like to bring to your attention.

**Senate Bill 202** is supported by the State Bar Family Law Section. In Mendez v Hernandez Mendez, 213 Wis. 2d 217 (Wis. App 1997), the court decided that a married person coming or returning to Wisconsin can no longer end the marriage in Wisconsin courts unless the other spouse also spent some time in the state during the marriage. The bill corrects this jurisdictional problem and will allow our courts to provide a divorce to people who have come or returned to Wisconsin to pursue opportunities or seek safety.

**Senate Bill 158** is supported by both the Elder Law and Real Property, Probate and Trust Law Sections of the State Bar. In addition, the Milwaukee Bar Association's Board of Directors also voted to support SB 158. SB 158 is in response to a 1997 case, Community Care of Milwaukee County v. Evelyn O., 214 Wis. 2d 433 (Ct. App. 1997), which did not allow for petitioner's attorney fees to be paid for by the ward's estate. As a result of this case it has been difficult for elder law attorneys, county social services, adult protective services and others to be able to provide for the protection of incompetent individuals within the current guardianship system. SB 158 balances the interests of the ward by establishing guidelines for awarding these fees under the court's discretion.

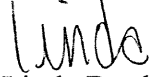
**Senate Bill 117** is supported by the Business Law Section of the State Bar. SB 117 repeals the antiquated bulk transfer provision under Article 6 of the Uniform Commercial Code. UCC Article 6 relates to the transfer of bulk goods and the notice which is required when there is a bulk sale of inventory. The repeal of Article 6 has been recommended by the National Conference of Commissioners on Uniform State Laws and the American Law Institute since 1989 and has already been adopted by 36 other states.



We would appreciate a public hearing on these bills before your committee and we would be happy to further discuss their merits with you.

Thank you for your time and attention.

Sincerely,

A handwritten signature in cursive script that reads "Linda".

Linda Barth

Public Affairs Director



**STATE BAR  
of WISCONSIN**

5302 Eastpark Blvd.  
P.O. Box 7158  
Madison, WI 53707-7158

**MEMORANDUM**

**To:** Senate Committee on Judiciary and Consumer Affairs  
**From:** Business Law Section  
*State Bar of Wisconsin*  
**Date:** November 1, 1999  
**Re:** Support for Senate Bill 117 - Repeal of Notice Provision

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The Business Law Section of the State Bar of Wisconsin **supports Senate Bill 117** relating to the repeal of the bulk transfer notice provision under Article 6 of the Uniform Commercial Code (UCC) in order to provide equity to *all* parties - buyers, sellers and creditors - who are affected in business transactions.

**Background**

The repeal of Article 6 was recommended in 1989 by the National Conference of Commissioners on Uniform State Laws and the American Law Institute; that recommendation was also supported at the national level by the American Bar Association. To date, 37 other states, plus Puerto Rico, have already enacted the repeal of the notice provision without any noticeable dislocation of business practices. Repeal has been enacted in:

|             |               |               |
|-------------|---------------|---------------|
| Alabama     | Louisiana     | Ohio          |
| Alaska      | Maine         | Oklahoma      |
| Arkansas    | Massachusetts | Oregon        |
| Colorado    | Minnesota     | Pennsylvania  |
| Connecticut | Mississippi   | South Dakota  |
| Delaware    | Montana       | Tennessee     |
| Florida     | Nebraska      | Texas         |
| Hawaii      | Nevada        | Utah          |
| Idaho       | New Hampshire | Vermont       |
| Illinois    | New Jersey    | Washington    |
| Iowa        | New Mexico    | West Virginia |
| Kansas      | North Dakota  | Wyoming       |
| Kentucky    |               |               |

Four other states - California, Arizona, Indiana, Virginia - and the District of Columbia have also adopted a revised Article 6, and legislation is currently pending on Article 6 in additional states, such as North Carolina and Wisconsin.



**How Did The Article 6 Notice Provision Originate?**

The bulk transfer provision, Article 6 of the Uniform Commercial Code, states that notice must be given to creditors if a seller will be making a large sale of inventory (i.e.: the bulk transfer). Decades ago the provision was originally enacted to catch the "fly by night" merchant who, usually in collusion with a buyer, would sell off large parts of inventory. Both would then disappear with the profits into the darkness of the night, leaving creditors unpaid and in the lurch. *At that time*, the provision was needed to provide a level of protection against the acts of the unscrupulous merchant.

**Why Should The Notice Provision Be Repealed Today?**

First, the Business Law Section believes that the business environment and laws of today offer more remedies and protections than in the decades of yesteryear. For the following reasons the notice provision is no longer necessary.

- There are other protections against loss and fraud available to suppliers of inventory that available under today's laws.
- Cheap and readily available credit reports.
- Supplier can take a UCC Purchase Money Security Interest in all inventory supplied.
- The Uniform Fraudulent Transfer Action (Chapter 242 Wis. Stats.) gives much greater protection against actual fraud, or sale of the inventory at less than fair value.
- Unpaid creditors can sue the seller here under our "Long Arm" jurisdiction statute. Even if seller attempts to "abscond" to another state with the proceeds of a Bulk Sale...Wisconsin's "Long Arm" will follow.
- The bulk sale of inventory scam - sellers and buyers in collusion - is a risk of another era.

Second, the Business Law Section believes that the protection under Article 6, which may have been necessary decades ago, has now become an inequitable liability on legitimate business transactions, which was never its intent. Inequitableness results in the following ways:

- The bulk notice provision places an undue burden during legitimate business transactions onto a third party buyer who has had no previous relationship to the seller's creditors.

## **Business Law Section - SB 117**

### ***Page 3***

- In all acquisitions, the bulk transfer statute places an unfair risk on innocent buyers of having to pay twice for the goods. This happens when there is even a technical violation of the statute and the creditor has yet to be paid. Under the bulk transfer provision, that creditor has a right to reclaim the goods even though the goods have already been paid for by the buyer and have changed hands.
- In small acquisitions, the bulk transfer statute is a trap for the unwary buyer who may not even be aware of its existence, particularly so for very small businesses.
- In large acquisitions, the buyer must send notices, by registered or certified mail, to all the seller's creditors, often numbering in the thousands.

Third, the Business Law Section believes that the notice provision has become largely ineffective in general day-to-day business transactions for these and other reasons:

- It applies only to bulk sales of inventory by manufacturers and other sellers of goods, and doesn't protect suppliers and other creditors of service businesses (except taverns).
- It provides creditors only 10 days' notice that the sale will occur – too short a time to get a judgment from the court or otherwise protect themselves.
- The notice provision is just that - a notice. Creditors must still seek a court judgement.

### **Summary**

The bulk transfer provision should be repealed because creditors have other means of recourse under today's laws, the provision is ineffective, legitimate businesses can be unduly penalized, it is a trap for the unwary buyer and, the burden during business transactions is now placed on the one party - the buyer - that has had no previous relationship with the seller's creditors. Simply put, the costs associated with keeping the provision in statute is no longer equitable in the context of today's business environment and laws.

**The Business Law Section urges your support of Senate Bill 117.**

*For more information contact Jenny Boese at the State Bar at 608-250-6045 or email at 'jboese@wisbar.org'.*

## **Testimony in favor of Senate Bill 117**

By Senator Joanne B. Huelsman

November 1, 1999

Senate Bill 117 was introduced at the request of the Wisconsin Uniform Law Commissioners. As the chair of this committee, who is also a Uniform Law Commissioner, knows, the National Conference of Commissioners on Uniform State Laws recommended repeal of the bulk transfer law in 1989. That repeal was introduced in the Wisconsin Legislature for several sessions but was defeated due to the opposition of retailers of alcohol beverages.

The most recent introductions, including this bill, include a repeal of the bulk transfer provisions from the Uniform Commercial Code but leave them in place for retailers of alcohol beverages.

The Business Law Section of the State Bar of Wisconsin has testified in favor of this legislation in past years noting that the Bulk Transfer Provision:

- 1) Is no longer needed to protect against the acts of the unscrupulous merchant following the passage of the Uniform Fraudulent Transfer Act and the Uniform Enforcement of Foreign Judgements Act
- 2) Is an expensive burden on legitimate sales transactions, especially for small businesses

I request that you review the information provided by the State Bar of Wisconsin Business Law Section and vote in favor of Senate bill 117.