

CHAPTER 406.

BULK TRANSFERS.

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406.101 Short title. This chapter shall be known and may be cited as uniform commercial code—bulk transfers.

History: 1963 c. 158.

The impact of the commercial code. Helstad, 1964 WLR 355.

406.102 "Bulk transfers"; transfers of equipment; enterprises subject to this chapter; bulk transfers subject to this chapter. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part in value of the inventory (s. 409.109) of an enterprise subject to this chapter.

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

(3) The enterprises subject to this chapter are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell.

(3m) Subject to this chapter is the sale, transfer or assignment, in bulk, otherwise than in the ordinary course of trade and in the regular prosecution of the business of seller, transferor or assignor, by retailers of fermented malt beverages or retailers of intoxicating liquors and wines, or retailers of such beverages, liquors and wines, of any part, or the whole, of any stock of goods, wares and merchandise, or of fixtures, pertaining to the same, or of such goods, wares and merchandise and fixtures, including such sales, transfers and assignments made in consideration of any existing indebtedness.

(4) Except as limited by s. 406.103 all bulk transfers of goods located within this state are subject to this chapter.

History: 1963 c. 158; 1965 c. 523.

Legislative Council Note, 1963: In order to make clear that "major part" refers to value rather than quantity, the study committee added the words "in value" where they appear in sub. (1). Also, the study committee deleted from the official text of sub. (1) the words "materials, supplies, merchandise or other" where they appeared before the word "inventory." Since the word

"inventory" is defined in s. 409.109 so as to include materials, supplies and merchandise, these words were surplusage. Moreover, the use of the disjunctive "or" could have resulted in the interpretation that sale of a major part of the supplies (such as office supplies) of a business would be a bulk transfer. This quite clearly was not the intent of the section. (Bill No. 1-S)

406.103 Transfers excepted from this chapter. (1) The following transfers are not subject to this chapter:

- (a) Those made to give security for the performance of an obligation;
- (b) General assignments for the benefit of all the creditors of the transferor; and subsequent transfers by the assignee thereunder;
- (c) Transfers in settlement or realization of a lien or other security interest;
- (d) Sales by executors, administrators, receivers, trustees in bankruptcy, or any public officer under judicial process;
- (e) Sales made in the course of judicial or administrative proceedings for the dissolution or reorganization of a corporation and of which notice is sent to the creditors of the corporation pursuant to order of the court or administrative agency;
- (f) Transfers to a person maintaining a known place of business in this 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 so bound;
- (g) 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 he receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors;
- (h) Transfers of property which is exempt from execution.

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

History: 1963 c. 158; 1965 c. 252.

406.104 Schedule of property, list of creditors. (1) Except as provided with respect to auction sales (s. 406.108), a bulk transfer subject to this chapter is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of his existing creditors prepared as stated in this section; and

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

(c) The transferee preserves the list and schedule for 6 months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the secretary of state.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or his agent. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against him even though such claims are disputed. If the transferor is the obligor of an outstanding issue of bonds, debentures or the like as to 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. The list of creditors shall include the name and address of the clerk of the municipality in which the property was last assessed.

(3) 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 therein unless the transferee is shown to have had knowledge.

History: 1963 c. 158, 429.

Legislative Council Note, 1963: The last sentence of sub. (2) was added by the study committee. It is derived from Wis. Stats. s. 241.18 (2), enacted in 1959, and is designed to make clear that the municipality to which taxes may be owing is entitled to receive the notices prescribed by ss. 406.105 and 406.107 for creditors generally. (Bill No. 1-S)

406.105 Notice to creditors. In addition to the requirements of s. 406.104, any bulk transfer subject to this chapter except one made by auction sale (s. 406.108) is ineffective against any creditor of the transferor unless at least 10 days before he takes possession of the goods or pays the major part of the purchase price, whichever happens first, the transferee gives notice of the transfer in the manner and to the persons specified in s. 406.107.

History: 1963 c. 158.

Legislative Council Note, 1963: The study committee deleted the words "for them" where they appeared after the word "pays" in the official text and substituted in lieu thereof the words "the major part of the purchase price" so as to make clear that the ordinary earnest money payment does not bring this section into operation.

The study committee omitted optional

section 6-106 of the official Code draft on the ground that it would impose an entirely new burden on bulk transferees in this state. Section 6-106 of the official draft requires the bulk transferee, in addition to his notice obligations, to apply the consideration for the sale directly to the debts of the transferor rather than turning the consideration over to the transferor. (Bill No. 1-S)

406.107 The notice. (1) The notice to creditors (s. 406.105) shall state:

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

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

(c) 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 if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

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

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

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

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered mail or by certified mail as specified in s. 990.001 (13) to all the persons shown on the list of creditors furnished by the transferor (s. 406.104) and to all other persons who are known to the transferee to hold or assert claims against the transferor.

History: 1963 c. 158.

Legislative Council Note, 1963: The study committee to make clear that the phrase "or by certified mail as specified in s. 990.001 (13)" was added to sub. (3) by the applicable here. (Bill No. 1-S)

406.108 Auction sales; "auctioneer". (1) A bulk transfer is subject to this chapter even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of his creditors and assist in the preparation of a schedule of the property to be sold, both prepared as stated in s. 406.104.

(3) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer". The auctioneer shall:

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

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

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

History: 1963 c. 158.

406.109 What creditors protected. The creditors of the transferor mentioned in this chapter are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given (ss. 406.105 and 406.107) are not entitled to notice.

History: 1963 c. 158.

406.110 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this chapter, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect, but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

History: 1963 c. 158.

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

History: 1963 c. 158.