

Senate Fiscal Agency  
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**SFA****BILL ANALYSIS**

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House Bill 5644 (Substitute S-2 as reported)  
Sponsor: Representative Laura Baird  
House Committee: Commerce  
Senate Committee: Economic Development, International Trade and Regulatory Affairs

Date Completed: 12-7-98

### **RATIONALE**

According to the National Conference of Commissioners on Uniform State Laws and the American Law Institute, Article 6 of the Uniform Commercial Code provides unnecessary protection for creditors of businesses that sell merchandise from stock. Bulk sales law originally were enacted in response to a fraud perceived to be common around the turn of the century; a merchant would acquire his or her stock in trade on credit, then sell the entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid. The creditors had a right to sue the merchant on the unpaid debts, but that right often was of little practical value. The creditors ordinarily did not have access to the merchandise sold because the transfer of the inventory to an innocent buyer effectively exempted the products from the reach of the seller's creditors.

Currently, Article 6 requires buyers in bulk to provide notice to the seller's creditors and to maintain a list of the seller's creditors and a schedule of property obtained in a bulk sale, for six months after the sale takes place. Creditors may void the sale if the procedures are not followed. Auctioneers, who handle merchandise in bulk, are given similar responsibilities to that of buyers in bulk. These laws protected local business creditors from liquidations that might have taken merchandise and proceeds beyond the creditors' ability to obtain a remedy.

Apparently, however, the credit environment has changed, and the risk of the absconding merchandiser is no longer significant. Business creditors are able to evaluate creditworthiness far better than before, and they can pursue absconding sales with much less difficulty. Thus, the Michigan Law Revision Commission, in light of

the reasons set forth by the Uniform Law Commissioners and the American Law Institute, recommends that the provision governing bulk transfers in the Uniform Commercial Code should be repealed.

### **CONTENT**

The bill would repeal Article 6 (Bulk Transfers) and Section 9111 of the Uniform Commercial Code. The bill specifies that the rights and obligations that arose under Article 6 before it was repealed would remain valid and could be enforced.

Currently, Article 6 defines bulk transfers; excludes certain transfers; requires a list of creditors of the transferor; requires any governmental tax unit to be deemed a creditor; requires a notice to all creditors; specifies responsibilities for an auctioneer of bulk transfers; imposes strict liability for failure of an auctioneer to perform his or her specified duties; provides that the title of a transferee to property is subject to a defect if he or she does not comply with the article's provisions; and imposes a six-month limitation of actions and levies unless a transfer has been concealed. Section 9111 provides that the creation of a security interest is not a bulk transfer under Article 6.

The bill also would delete a provision that if a financing statement covers crops growing or to be grown, the statement must also contain a description and reasonable identification of the real estate.

MCL 440.1105 et al.

### **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate*

*from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

Currently, 38 states have repealed Article 6. There is no evidence that, in today's economy, fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulation of all bulk sales, including the vast majority that are conducted in good faith. Changes in business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary.

### **Supporting Argument**

According to the Michigan Law Revision Commission, Article 6 impedes normal business transactions, and obligates buyers in bulk to incur costs to protect the interests of the seller's creditors by providing creditors. Article 6 also provides creditors with a remedy against a good faith purchaser for full value who had no notice of any wrongdoing on the part of the seller. When bulk sales laws originally were enacted, the benefits to creditors appeared to justify the costs of interfering with good faith transactions. Today's creditors, however, are able to make informed decisions about whether to extend credit, and changes in technology have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively little cost.

In addition, changes in the law now afford creditors greater opportunities to collect their debts. The development of "minimum contacts" with the forum state as a basis for personal jurisdiction and the universal promulgation of state long-arm statutes and rules have greatly improved the possibility of obtaining personal jurisdiction over a debtor who flees to another state.

Legislative Analyst: N. Nagata

### **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: M. Tyszkiewicz

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.