
HOUSE BILL 1188

State of Washington 52nd Legislature 1991 Regular Session

By Representatives Appelwick and Paris.

Read first time January 23, 1991. Referred to Committee on Judiciary.

1 AN ACT Relating to the Uniform Commercial Code--Bulk Sales; adding
2 a new chapter to Title 62A RCW; and repealing RCW 62A.6-101, 62A.6-102,
3 62A.6-103, 62A.6-104, 62A.6-105, 62A.6-106, 62A.6-107, 62A.6-108,
4 62A.6-109, 62A.6-110, and 62A.6-111.

5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

6 NEW SECTION. **Sec. 6-101.** SHORT TITLE. This Article shall be
7 known and may be cited as Uniform Commercial Code--Bulk Sales.

8 NEW SECTION. **Sec. 6-102.** DEFINITIONS AND INDEX OF DEFINITIONS.

9 (1) In this Article, unless the context otherwise requires:

10 (a) "Assets" means the inventory that is the subject of a bulk sale
11 and any tangible and intangible personal property used or held for use
12 primarily in, or arising from, the seller's business and sold in
13 connection with that inventory, but the term does not include:

1 (i) Fixtures (RCW 62A.9-313(1)(a)) other than readily removable
2 factory and office machines;

3 (ii) The lessee's interest in a lease of real property; or

4 (iii) Property to the extent it is generally exempt under
5 nonbankruptcy law.

6 (b) "Auctioneer" means a person whom the seller engages to direct,
7 conduct, control, or be responsible for a sale by auction.

8 (c) "Bulk sale" means:

9 (i) In the case of a sale by auction or a sale or series of sales
10 conducted by a liquidator on the seller's behalf, a sale or series of
11 sales not in the ordinary course of the seller's business of more than
12 half of the seller's inventory, as measured by value on the date of the
13 bulk sale agreement, if on that date the auctioneer or liquidator has
14 notice, or after reasonable inquiry would have had notice, that the
15 seller will not continue to operate the same or a similar kind of
16 business after the sale or series of sales; and

17 (ii) In all other cases, a sale not in the ordinary course of the
18 seller's business of more than half the seller's inventory, as measured
19 by value on the date of the bulk sale agreement, if on that date the
20 buyer has notice, or after reasonable inquiry would have had notice,
21 that the seller will not continue to operate the same or a similar kind
22 of business after the sale.

23 (d) "Claim" means a right to payment from the seller, whether or
24 not the right is reduced to judgment, liquidated, fixed, matured,
25 disputed, secured, legal, or equitable. The term includes costs of
26 collection and attorneys' fees only to the extent that the laws of this
27 state permit the holder of the claim to recover them in an action
28 against the obligor.

29 (e) "Claimant" means a person who holds a claim incurred in the
30 seller's business other than:

1 (i) An unsecured and unmatured claim for employment compensation
2 and benefits, including commissions and vacation, severance, and sick-
3 leave pay;

4 (ii) A claim for injury to an individual or to property, or for
5 breach of warranty, unless:

6 (A) A cause of action for the claim has accrued;

7 (B) The claim has been asserted against the seller; and

8 (C) The seller knows the identity of the person asserting the claim
9 and the basis upon which the person has asserted it; and

10 (iii) A claim for taxes owing to a governmental unit.

11 (f) "Creditor" means a person holding a claim and includes a
12 claimant.

13 (g) "Date of the bulk sale" means:

14 (i) If the sale is by auction or is conducted by a liquidator on
15 the seller's behalf, the date on which more than ten percent of the net
16 proceeds is paid to or for the benefit of the seller; and

17 (ii) In all other cases, the later of the date on which:

18 (A) More than ten percent of the net contract price is paid to or
19 for the benefit of the seller; or

20 (B) More than ten percent of the assets, as measured by value, are
21 transferred to the buyer. Delivery of a negotiable instrument (RCW
22 62A.3-104(1)) to or for the benefit of the seller in exchange for
23 assets constitutes payment of the contract price pro tanto. To the
24 extent that the contract price is deposited in an escrow, the contract
25 price is paid to or for the benefit of the seller when the seller
26 acquires the unconditional right to receive the deposit or when the
27 deposit is delivered to the seller or for the benefit of the seller,
28 whichever is earlier. An asset is transferred when a person holding an
29 unsecured claim can no longer obtain through judicial proceedings
30 rights to the asset that are superior to those of the buyer arising as

1 a result of the bulk sale. Notwithstanding other law to the contrary,
2 a person holding an unsecured claim can obtain such superior rights to
3 a tangible asset at least until the buyer has an unconditional right,
4 under the bulk sale agreement, to possession of the asset, and a person
5 holding an unsecured claim can obtain such superior rights to an
6 intangible asset at least until the buyer has the unconditional right,
7 under the bulk sale agreement, to use of the asset.

8 (h) "Date of the bulk sale agreement" means:

9 (i) In the case of a sale by auction or conducted by a liquidator,
10 the date on which the seller engages the auctioneer or liquidator; and

11 (ii) In all other cases, the date on which an agreement for a bulk
12 sale becomes enforceable between the buyer and the seller.

13 (i) "Debt" means liability on a claim.

14 (j) "Liquidator" means a person who is regularly engaged in the
15 business of disposing of assets for businesses contemplating
16 liquidation or dissolution.

17 (k) "Net contract price" means the value of new consideration that
18 the buyer is obligated to pay for the assets less:

19 (i) The amount of any proceeds of an asset, to the extent the
20 proceeds are applied in partial or total satisfaction of a debt secured
21 by the asset; and

22 (ii) The amount of any debt to the extent it is secured by a
23 security interest or lien that is enforceable against the asset before
24 and after it has been sold to a buyer.

25 (l) "Net proceeds" means the value of new consideration received
26 for assets sold at a sale by auction or a sale conducted by a
27 liquidator on the seller's behalf less:

28 (i) The reasonable expenses of the auction or sale, including
29 commissions;

1 (ii) The amount of any proceeds of an asset, to the extent the
2 proceeds are applied in partial or total satisfaction of a debt secured
3 by the asset; and

4 (iii) The amount of any debt to the extent it is secured by a
5 security interest or lien that is enforceable against the asset before
6 and after it has been sold to a buyer.

7 (m) A sale is "in the ordinary course of the seller's business" if
8 the sale comports either with usual or customary practices in the kind
9 of business in which the seller is engaged or with the seller's own
10 usual or customary practices.

11 (n) "United States" means its states, territories, and possessions
12 including the Commonwealth of Puerto Rico and the District of Columbia.

13 (o) "Value" means fair market value.

14 (p) "Verified" means signed and sworn to or affirmed.

15 (2) The following definitions in other Articles apply to this
16 Article:

17 (a) "Buyer." RCW 62A.2-103(1)(a).

18 (b) "Equipment." RCW 62A.9-109(2).

19 (c) "Good faith." RCW 62A.1-201(19).

20 (d) "Inventory." RCW 62A.9-109(4).

21 (e) "Sale." RCW 62A.2-106(1).

22 (f) "Seller." RCW 62A.2-103(1)(d).

23 (3) In addition, Article 1 contains general definitions and
24 principles of construction and interpretation applicable throughout
25 this Article.

26 NEW SECTION. **Sec. 6-103.** APPLICABILITY OF THIS ARTICLE. (1)
27 Except as otherwise provided in subsection (2) of this section, this
28 Article applies to a bulk sale if:

1 (a) The seller's principal business is the sale of inventory from
2 stock; and

3 (b) On the date of the bulk sale agreement the seller is located in
4 this state or, if the seller is located in a jurisdiction that is not
5 a part of the United States, the seller's major executive office in the
6 United States is in this state. A seller is deemed located at his or
7 her place of business. If a seller has more than one place of
8 business, the seller is deemed located at his or her chief executive
9 office.

10 (2) This Article does not apply to:

11 (a) A transfer made to secure the payment or performance of an
12 obligation;

13 (b)(i) A transfer of collateral to a secured party pursuant to RCW
14 62A.9-503;

15 (ii) A sale of collateral pursuant to RCW 62A.9-504;

16 (iii) Retention of collateral pursuant to RCW 62A.9-505; or

17 (iv) A sale of an asset encumbered by a security interest or lien
18 if (A) all the proceeds of the sale are applied in partial or total
19 satisfaction of the debt secured by the security interest or lien or
20 (B) the security interest or lien is enforceable against the asset
21 after it has been sold to the buyer and the net contract price is zero;

22 (c) A general assignment for the benefit of creditors or to a
23 subsequent transfer by the assignee;

24 (d) A sale by an executor, administrator, receiver, trustee in
25 bankruptcy, or any public officer under judicial process;

26 (e) A sale made in the course of judicial or administrative
27 proceedings for the dissolution or reorganization of an organization;

28 (f) A sale to a buyer whose principal place of business is in the
29 United States and who:

1 (i) Not earlier than twenty-one days before the date of the bulk
2 sale, either (A) obtains from the seller a verified list of claimants
3 of which the seller has notice three days before the seller sends or
4 delivers the list to the buyer or (B) conducts a reasonable inquiry to
5 discover the claimants;

6 (ii) Assumes in full the debts owed to claimants of which the buyer
7 has knowledge on the date the buyer receives the list of claimants from
8 the seller or on the date the buyer completes the reasonable inquiry,
9 as the case may be;

10 (iii) Is not insolvent after the assumption; and

11 (iv) Gives written notice of the assumption not later than thirty
12 days after the date of the bulk sale by sending a notice to the
13 claimants identified in (f)(ii) of this subsection or by filing a
14 notice in the office of the secretary of state. The notice must state:

15 (A) That a sale that may constitute a bulk sale has been or will be
16 made; (B) the date or prospective date of the bulk sale; (C) the
17 individual, partnership, or corporate names and the addresses of the
18 seller and buyer; (D) the address to which inquiries about the sale
19 should be made, if different from the seller's address; and (E) that
20 the buyer has assumed or will assume in full the debts owed to
21 claimants of which the buyer has knowledge on the date the buyer
22 receives the list of claimants from the seller or completes a
23 reasonable inquiry to discover the claimants;

24 (g) A sale to a buyer whose principal place of business is in the
25 United States and who:

26 (i) Assumes in full the debts that were incurred in the seller's
27 business before the date of the bulk sale;

28 (ii) Is not insolvent after the assumption; and

29 (iii) Gives written notice of the assumption not later than thirty
30 days after the date of the bulk sale by sending a notice to each

1 creditor whose debt is assumed or by filing a notice in the office of
2 the secretary of state. The notice must state: (A) That a sale that
3 may constitute a bulk sale has been or will be made; (B) the date or
4 prospective date of the bulk sale; (C) the individual, partnership, or
5 corporate names and the addresses of the seller and buyer; (D) the
6 address to which inquiries about the sale may be made, if different
7 from the seller's address; and (E) that the buyer has assumed or will
8 assume the debts that were incurred in the seller's business before the
9 date of the bulk sale;

10 (h) A sale to a new organization that is organized to take over and
11 continue the business of the seller and that has its principal place of
12 business in the United States if:

13 (i) The buyer assumes in full the debts that were incurred in the
14 seller's business before the date of the bulk sale;

15 (ii) The seller receives nothing from the sale except an interest
16 in the new organization that is subordinate to the claims against the
17 organization arising from the assumption; and

18 (iii) The buyer gives written notice of the assumption not later
19 than thirty days after the date of the bulk sale by sending a notice to
20 each creditor whose debt is assumed or by filing a notice in the office
21 of the secretary of state. The notice must state: (A) That a sale
22 that may constitute a bulk sale has been or will be made; (B) the date
23 or prospective date of the bulk sale; (C) the individual, partnership,
24 or corporate names and the addresses of the seller and buyer; (D) the
25 address to which inquiries about the sale may be made, if different
26 from the seller's address; and (E) that the buyer has assumed or will
27 assume in full the debts that were incurred in the seller's business
28 before the date of the bulk sale;

29 (i) A sale of assets having:

1 (i) A value, net of liens and security interests, of less than ten
2 thousand dollars; or

3 (ii) A value of more than twenty-five million dollars on the date
4 of the bulk sale agreement. For purposes of this paragraph, the value
5 of assets is presumed to be equal to the price that the buyer agrees to
6 pay for the assets; however, in a sale by auction or a sale conducted
7 by a liquidator on the seller's behalf, the value of assets is presumed
8 to be the amount that the auctioneer or liquidator reasonably estimates
9 that the assets will bring at auction or upon liquidation; or

10 (j) A sale required by, and made pursuant to, statute.

11 NEW SECTION. **Sec. 6-104.** OBLIGATIONS OF THE BUYER. (1) In a bulk
12 sale as defined in section 6-102(1)(c)(ii) of this act the buyer shall:

13 (a) Obtain from the seller a list of all business names and
14 addresses used by the seller within three years before the date the
15 list is sent or delivered to the buyer;

16 (b) Unless excused under subsection (2) of this section, obtain
17 from the seller a verified and dated list of claimants of which the
18 seller has notice three days before the seller sends or delivers the
19 list to the buyer and including, to the extent known by the seller, the
20 address of and the amount claimed by each claimant;

21 (c) Obtain from the seller or prepare a schedule of distribution
22 (section 6-106(1) of this act);

23 (d) Give notice of the bulk sale in accordance with section 6-105
24 of this act;

25 (e) Unless excused under section 6-106(4) of this act, distribute
26 the net contract price in accordance with the undertakings of the buyer
27 in the schedule of distribution; and

28 (f) Unless excused under subsection (2) of this section, make
29 available the list of claimants ((b) of this subsection) by:

1 (i) Promptly sending a copy of the list without charge to any
2 claimant whose written request is received by the buyer no later than
3 six months after the date of the bulk sale;

4 (ii) Permitting any claimant to inspect and copy the list at all
5 reasonable hours upon request received by the buyer no later than six
6 months after the date of the bulk sale; or

7 (iii) Filing a copy of the list in the office of the secretary of
8 state no later than the time for filing a notice of the bulk sale
9 (section 6-105(5) of this act).

10 A list filed in accordance with this subsection must state the
11 individual, partnership, or corporate name and a mailing address of the
12 seller.

13 (2) A buyer who gives notice in accordance with section 6-105(2) of
14 this act is excused from complying with the requirements of subsection
15 (1) (b) and (f) of this section.

16 NEW SECTION. **Sec. 6-105.** NOTICE TO CLAIMANTS. (1) Except as
17 provided to the contrary in subsection (2) of this section, to comply
18 with section 6-104(1)(d) of this act the buyer shall send or deliver a
19 written notice of the bulk sale to each claimant on the list of
20 claimants (section 6-104(1)(b) of this act) and to any other claimant
21 of which the buyer has knowledge at the time the notice of the bulk
22 sale is sent or delivered.

23 (2) Notwithstanding subsection (1) of this section to the contrary,
24 a buyer may comply with section 6-104(1)(d) of this act by filing a
25 written notice of the bulk sale in the office of the secretary of state
26 if:

27 (a) On the date of the bulk sale agreement the seller has two
28 hundred claimants or more, exclusive of claimants holding secured or

1 matured claims for employment compensation and benefits, including
2 commissions and vacation, severance, and sick-leave pay; or

3 (b) The buyer has received a verified statement from the seller
4 stating that, as of the date of the bulk sale agreement, the number of
5 claimants, exclusive of claimants holding secured or matured claims for
6 employment compensation and benefits, including commissions and
7 vacation, severance, and sick-leave pay, is two hundred or more.

8 (3) The written notice of the bulk sale must include a copy of the
9 schedule of distribution (section 6-106(1) of this act) and state at
10 least:

11 (a) That the seller and buyer have entered into an agreement for a
12 sale that may constitute a bulk sale under the laws of the state of
13 Washington;

14 (b) The dates:

15 (i) Of the agreement;

16 (ii) On or after which more than ten percent of the assets were or
17 will be transferred; and

18 (iii) On or after which more than ten percent of the net contract
19 price was or will be paid, if the date is not set forth in the schedule
20 of distribution;

21 (c) The name and a mailing address of the seller;

22 (d) Any other business name and address listed by the seller
23 (section 6-104(1)(a) of this act);

24 (e) The name of the buyer and an address of the buyer from which
25 information concerning the sale can be obtained;

26 (f) A statement indicating the type of assets or describing the
27 assets item by item;

28 (g) The manner in which the buyer will make available the list of
29 claimants (section 6-104(1)(f) of this act), if applicable; and

1 (h) If the sale is in total or partial satisfaction of an
2 antecedent debt owed by the seller, the amount of the debt to be
3 satisfied and the name of the person to whom it is owed.

4 (4) For purposes of subsection (3) (c) and (e) of this section, the
5 name of a person is the person's individual, partnership, or corporate
6 name.

7 (5) The buyer shall give notice of the bulk sale not less than
8 forty-five days before the date of the bulk sale and, where the buyer
9 gives notice in accordance with subsection (1) of this section, not
10 more than thirty days after obtaining the list of claimants.

11 (6) A written notice substantially complying with the requirements
12 of subsection (3) of this section is effective even though it contains
13 minor errors that are not seriously misleading.

14 (7) A form substantially as follows is sufficient to comply with
15 subsection (3) of this section:

16 Notice of Sale

17 1., whose address is, is
18 described in this notice as the "seller."

19 2., whose address is, is
20 described in this notice as the "buyer."

21 3. The seller has disclosed to the buyer that within the past
22 three years the seller has used other business names, operated at other
23 addresses, or both, as follows:

24 4. The seller and the buyer have entered into an agreement dated
25, for a sale that may constitute a bulk sale under the laws
26 of the state of

27 5. The date on or after which more than ten percent of the assets
28 that are the subject of the sale were or will be transferred is
29, and (if not set forth in the schedule of distribution) the

1 date on or after which more than ten percent of the net contract price
2 was or will be paid is

3 6. The following assets are the subject of the sale:
4

5 7. [If applicable] The buyer will make available to claimants of
6 the seller a list of the seller's claimants in the following manner:
7

8 8. [If applicable] The sale is to satisfy \$ of an
9 antecedent debt owed by the seller to

10 9. A copy of the schedule of distribution of the net contract
11 price is attached.

12 NEW SECTION. **Sec. 6-106.** SCHEDULE OF DISTRIBUTION. (1) The
13 seller and buyer shall agree on how the net contract price is to be
14 distributed and set forth their agreement in a written schedule of
15 distribution.

16 (2) The schedule of distribution may provide for distribution to
17 any person at any time, including distribution of the entire net
18 contract price to the seller.

19 (3) The buyer's undertakings in the schedule of distribution run
20 only to the seller. A buyer who fails to distribute the net contract
21 price in accordance with the buyer's undertakings in the schedule of
22 distribution is liable to a creditor only as provided in section 6-
23 107(1) of this act.

24 (4) If the buyer undertakes in the schedule of distribution to
25 distribute any part of the net contract price to a person other than
26 the seller, and, after the buyer has given notice in accordance with
27 section 6-105 of this act, some or all of the anticipated net contract
28 price is or becomes unavailable for distribution as a consequence of
29 the buyer's or seller's having complied with an order of court, legal

1 process, statute, or rule of law, the buyer is excused from any
2 obligation arising under this Article or under any contract with the
3 seller to distribute the net contract price in accordance with the
4 buyer's undertakings in the schedule if the buyer:

5 (a) Distributes the net contract price remaining available in
6 accordance with any priorities for payment set forth in the schedule of
7 distribution and, to the extent that the price is insufficient to pay
8 all the debts having a given priority, distributes the price pro rata
9 among those debts set forth in the schedule as having the same
10 priority;

11 (b) Distributes the net contract price remaining available in
12 accordance with an order of court;

13 (c) Commences a proceeding for interpleader in a court of competent
14 jurisdiction and is discharged from the proceeding; or

15 (d) Reaches a new agreement with the seller for the distribution of
16 the net contract price remaining available, sets forth the new
17 agreement in an amended schedule of distribution, gives notice of the
18 amended schedule, and distributes the net contract price remaining
19 available in accordance with the buyer's undertakings in the amended
20 schedule. The notice of the amended schedule must identify the buyer
21 and the seller, state the filing number, if any, of the original
22 notice, set forth the amended schedule, and be given in accordance with
23 section 6-105 (1) or (2) of this act, whichever is applicable, at least
24 fourteen days before the buyer distributes any part of the net contract
25 price remaining available.

26 (5) If the seller undertakes in the schedule of distribution to
27 distribute any part of the net contract price, and, after the buyer has
28 given notice in accordance with section 6-105 of this act, some or all
29 of the anticipated net contract price is or becomes unavailable for
30 distribution as a consequence of the buyer's or seller's having

1 complied with an order of court, legal process, statute, or rule of
2 law, the seller and any person in control of the seller are excused
3 from any obligation arising under this Article or under any contract
4 with the buyer to distribute the net contract price in accordance with
5 the seller's undertakings in the schedule if the seller:

6 (a) Distributes the net contract price remaining available in
7 accordance with any priorities for payment set forth in the schedule of
8 distribution and, to the extent that the price is insufficient to pay
9 all the debts having a given priority, distributes the price pro rata
10 among those debts set forth in the schedule as having the same
11 priority;

12 (b) Distributes the net contract price remaining available in
13 accordance with an order of court;

14 (c) Commences a proceeding for interpleader in a court of competent
15 jurisdiction and is discharged from the proceeding; or

16 (d) Prepares a written amended schedule of distribution of the net
17 contract price remaining available for distribution, gives notice of
18 the amended schedule, and distributes the net contract price remaining
19 available in accordance with the amended schedule. The notice of the
20 amended schedule must identify the buyer and the seller, state the
21 filing number, if any, of the original notice, set forth the amended
22 schedule, and be given in accordance with section 6-105 (1) or (2) of
23 this act, whichever is applicable, at least fourteen days before the
24 seller distributes any part of the net contract price remaining
25 available.

26 NEW SECTION. **Sec. 6-107.** LIABILITY FOR NONCOMPLIANCE. (1) Except
27 as provided in subsection (3) of this section, and subject to the
28 limitation in subsection (4) of this section:

1 (a) A buyer who fails to comply with the requirements of section 6-
2 104(1)(e) of this act with respect to any creditor is liable to that
3 creditor for damages in the amount of the claim, reduced by any amount
4 that the creditor would not have realized if the buyer had complied;
5 and

6 (b) A buyer who fails to comply with the requirements of any other
7 subsection of section 6-104 of this act with respect to any claimant is
8 liable to that claimant for damages in the amount of the claim, reduced
9 by any amount that the claimant would not have realized if the buyer
10 had complied.

11 (2) In an action under subsection (1) of this section, the creditor
12 has the burden of establishing the validity and amount of the claim,
13 but the buyer has the burden of establishing the amount that the
14 creditor would not have realized if the buyer had complied.

15 (3) A buyer who:

16 (a) Makes a good faith effort to comply with the requirements of
17 section 6-104(1) of this act or to exclude the sale from the
18 application of this Article (section 6-103(2) of this act); or

19 (b) On the date of the bulk sale holds a good faith belief that
20 this Article does not apply to the particular sale is not liable for
21 his or her failure to comply. The buyer has the burden of establishing
22 that he or she made a good faith effort or held a good faith belief.

23 (4) In any one bulk sale the cumulative liability of the buyer for
24 failure to comply with the requirements of section 6-104(1) of this act
25 may not exceed an amount equal to:

26 (a) If the assets consist only of inventory and equipment, twice
27 the net contract price, less the amount of any part of the net contract
28 price paid to or applied for the benefit of the seller or a creditor;
29 or

1 (b) If the assets include property other than inventory and
2 equipment, twice the net value of the inventory and equipment less the
3 amount of the portion of any part of the net contract price paid to or
4 applied for the benefit of the seller or a creditor which is allocable
5 to the inventory and equipment. The "net value" of an asset is the
6 value of the asset less (i) the amount of any proceeds of an asset, to
7 the extent the proceeds are applied in partial or total satisfaction of
8 a debt secured by the asset, and (ii) the amount of any debt to the
9 extent it is secured by a security interest or lien that is enforceable
10 against the asset before and after it has been sold to a buyer. The
11 portion of a part of the net contract price paid to or applied for the
12 benefit of the seller or a creditor that is "allocable to the inventory
13 and equipment" is the portion that bears the same ratio to that part of
14 the net contract price as the net value of the inventory and equipment
15 bears to the net value of all the assets. A payment made by the buyer
16 to a person to whom the buyer is, or believes he or she is, liable
17 under subsection (1) of this section reduces the buyer's cumulative
18 liability under this subsection pro tanto.

19 (5) No action may be brought under subsection (1)(b) of this
20 section by or on behalf of a claimant whose claim is unliquidated or
21 contingent.

22 (6) A buyer's failure to comply with the requirements of section 6-
23 104(1) of this act does not (i) impair the buyer's rights in or title
24 to the assets subject to the bulk sale, (ii) render the sale
25 ineffective, void, or voidable, (iii) entitle a creditor to more than
26 a single satisfaction of his or her claim, or (iv) create liability
27 other than as provided in this Article.

28 (7) Payment of the buyer's liability under subsection (1) of this
29 section discharges the seller's debt to the creditor pro tanto.

1 (8) Unless otherwise agreed a buyer has an immediate right of
2 reimbursement from the seller for any amount paid to a creditor in
3 partial or total satisfaction of the buyer's liability under subsection
4 (1) of this section.

5 (9) If the seller is an organization, any person who is in direct
6 or indirect control of the seller, and who knowingly, intentionally,
7 and without legal justification fails, or causes the seller to fail, to
8 distribute the net contract price in accordance with the schedule of
9 distribution is liable to any creditor to whom the seller was to make
10 payment under the schedule for damages caused by the failure.

11 NEW SECTION. **Sec. 6-108.** BULK SALES BY AUCTION; BULK SALES
12 CONDUCTED BY A LIQUIDATOR. (1) Sections 6-104, 6-105, 6-106, and 6-107
13 of this act apply to a bulk sale by auction and a bulk sale conducted
14 by a liquidator on the seller's behalf with the following
15 modifications:

16 (a) "Buyer" refers to an auctioneer or liquidator, as the case may
17 be;

18 (b) "Net contract price" refers to net proceeds of the auction or
19 net proceeds of the sale, as the case may be;

20 (c) The written notice (section 6-105(3) of this act) must include
21 a copy of the schedule of distribution (section 6-106(1) of this act)
22 and state at least:

23 (i) That the seller and the auctioneer or liquidator have entered
24 into an agreement for auction or liquidation services that may
25 constitute an agreement to make a bulk sale under the laws of the state
26 of Washington;

27 (ii) The dates:

28 (A) Of the agreement;

1 (B) On or after which the auction began or will begin, or on or
2 after which the liquidator began or will begin, to sell assets on the
3 seller's behalf; and

4 (C) On or after which more than ten percent of the net proceeds of
5 the auction or sale were or will be paid, if the date is not set forth
6 in the schedule of distribution;

7 (iii) The name and a mailing address of the seller;

8 (iv) Any other business name and address listed by the seller
9 (section 6-104(1)(a) of this act);

10 (v) The name of the auctioneer or liquidator and an address of the
11 auctioneer or liquidator from which information concerning the sale can
12 be obtained;

13 (vi) A statement indicating the type of assets or describing the
14 assets item by item;

15 (vii) The manner in which the auctioneer or liquidator will make
16 available the list of claimants (section 6-104(1)(f) of this act), if
17 applicable; and

18 (viii) If the sale is in total or partial satisfaction of an
19 antecedent debt owed by the seller, the amount of the debt to be
20 satisfied and the name of the person to whom it is owed; and

21 (d) In any one bulk sale the cumulative liability of the auctioneer
22 or liquidator for failure to comply with the requirements of this
23 section may not exceed the amount of the net proceeds of the auction or
24 sale allocable to inventory or equipment sold less the amount of the
25 portion of any part of the net proceeds paid to or applied for the
26 benefit of a creditor which is allocable to the inventory and
27 equipment. A payment made by the auctioneer or liquidator to a person
28 to whom the auctioneer or liquidator is, or believes he or she is,
29 liable under this section reduces the auctioneer's or liquidator's
30 cumulative liability under this subsection pro tanto.

1 (2) A form substantially as follows is sufficient to comply with
2 subsection (1)(c) of this subsection:

3 Notice of Sale

4 1., whose address is, is
5 described in this notice as the "seller."

6 2., whose address is, is
7 described in this notice as the "auctioneer" or "liquidator."

8 3. The seller has disclosed to the auctioneer or liquidator that
9 within the past three years the seller has used other business names,
10 operated at other addresses, or both, as follows:

11 4. The seller and the auctioneer or liquidator have entered into
12 an agreement dated for auction or liquidation services that
13 may constitute an agreement to make a bulk sale under the laws of the
14 state of Washington.

15 5. The date on or after which the auction began or will begin or
16 the date on or after which the liquidator began or will begin to sell
17 assets on the seller's behalf is, and (if not set forth in
18 the schedule of distribution) the date on or after which more than ten
19 percent of the net proceeds of the auction or sale were or will be paid
20 is

21 6. The following assets are the subject of the sale:
22

23 7. [If applicable] The auctioneer or liquidator will make
24 available to claimants of the seller a list of the seller's claimants
25 in the following manner:

26 8. [If applicable] The sale is to satisfy \$ of an
27 antecedent debt owed by the seller to

28 9. A copy of the schedule of distribution of the net proceeds is
29 attached.

1 (3) A person who buys at a bulk sale by auction or conducted by a
2 liquidator need not comply with the requirements of section 6-104(1) of
3 this act and is not liable for the failure of an auctioneer or
4 liquidator to comply with the requirements of this section.

5 NEW SECTION. **Sec. 6-109.** WHAT CONSTITUTES FILING; DUTIES OF
6 FILING OFFICER; INFORMATION FROM FILING OFFICER. (1) Presentation of
7 a notice or list of claimants for filing and tender of the filing fee
8 or acceptance of the notice or list by the filing officer constitutes
9 filing under this Article.

10 (2) The filing officer shall:

11 (a) Mark each notice or list with a file number and with the date
12 and hour of filing;

13 (b) Hold the notice or list or a copy for public inspection;

14 (c) Index the notice or list according to each name given for the
15 seller and for the buyer; and

16 (d) Note in the index the file number and the addresses of the
17 seller and buyer given in the notice or list.

18 (3) If the person filing a notice or list furnishes the filing
19 officer with a copy, the filing officer upon request shall note upon
20 the copy the file number and date and hour of the filing of the
21 original and deliver or send the copy to the person.

22 (4) The fee for filing and indexing and for stamping a copy
23 furnished by the person filing to show the date and place of filing is
24 \$ for the first page and \$ for each additional
25 page. The fee for each name more than two required to be indexed is
26 \$.....

27 (5) Upon request of any person, the filing officer shall issue a
28 certificate showing whether any notice or list with respect to a
29 particular seller or buyer is on file on the date and hour stated in

1 the certificate. If a notice or list is on file, the certificate must
2 give the date and hour of filing of each notice or list and the name
3 and address of each seller, buyer, auctioneer, or liquidator. The fee
4 for the certificate is \$ if the request for the certificate
5 is in the standard form prescribed by the secretary of state and
6 otherwise is \$ Upon request, the filing officer shall
7 furnish a copy of any filed notice or list for a fee of \$

8 (6) The filing officer shall keep each notice or list for two years
9 after it is filed.

10 NEW SECTION. **Sec. 6-110.** LIMITATION OF ACTIONS. (1) An action
11 under this Article against a buyer, auctioneer, or liquidator must be
12 commenced within one year after the date of the bulk sale. If the
13 buyer, auctioneer, or liquidator conceals the fact that the sale has
14 occurred, the limitation is tolled and an action under this Article may
15 be commenced within the earlier of (i) one year after the person
16 bringing the action discovers that the sale has occurred or (ii) one
17 year after the person bringing the action should have discovered that
18 the sale has occurred, but in no event may an action be commenced more
19 than two years after the date of the bulk sale. Complete noncompliance
20 with the requirements of this Article does not of itself constitute
21 concealment.

22 (2) An action under section 6-107(9) of this act must be commenced
23 within one year after the alleged violation occurs.

24 NEW SECTION. **Sec. 6-111.** The following acts or parts of acts are
25 repealed:

26 (1) RCW 62A.6-101 and 1965 ex.s. c 157 s 6-101;

27 (2) RCW 62A.6-102 and 1967 c 114 s 2 & 1965 ex.s. c 157 s 6-102;

28 (3) RCW 62A.6-103 and 1965 ex.s. c 157 s 6-103;

1 (4) RCW 62A.6-104 and 1975 1st ex.s. c 278 s 33 & 1965 ex.s. c 156
2 s 6-104;

3 (5) RCW 62A.6-105 and 1971 c 23 s 1 & 1965 ex.s. c 157 s 6-105;

4 (6) RCW 62A.6-106 and 1965 ex.s. c 157 s 6-106;

5 (7) RCW 62A.6-107 and 1975 1st ex.s. c 278 s 34 & 1965 ex.s. c 157
6 s 6-107;

7 (8) RCW 62A.6-108 and 1965 ex.s. c 157 s 6-108;

8 (9) RCW 62A.6-109 and 1967 c 114 s 3 & 1965 ex.s. c 157 s 6-109;

9 (10) RCW 62A.6-110 and 1965 ex.s. c 157 s 6-110; and

10 (11) RCW 62A.6-111 and 1965 ex.s. c 157 s 6-111.

11 NEW SECTION. **Sec. 6-112.** Sections 6-101 through 6-110 of this act
12 shall constitute a new chapter in Title 62A RCW.