

ENROLLMENT(S)

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AN ACT

D.C. ACT 11-499

IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

DECEMBER 24, 1996

*Codification
District of
Columbia
Code
1997 Supp.*

To revise Article 6 of the Uniform Commercial Code and to make conforming amendments to Articles 1 and 2.

BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Uniform Commercial Code--Bulk Sales Act of 1996".

Sec. 2. Article 6 of Subtitle I of Title 28 of the District of Columbia Code is amended to read as follows:

"ARTICLE 6. BULK SALES.

"Sec.

"28:6-101. Short title.

"28:6-102. Definitions and index of definitions.

"28:6-103. Applicability of Article.

"28:6-104. Obligations of buyer.

"28:6-105. Notice to claimants.

"28:6-106. Schedule of distribution.

"28:6-107. Liability for noncompliance.

"28:6-108. Bulk sales by auction; bulk sales conducted by liquidator.

"28:6-109. What constitutes filing; duties of filing officer; information from filing officer.

"28:6-110. Limitation of actions.

"§ 28:6-101. Short title.

"This article may be cited as the "Uniform Commercial Code--Bulk Sales".

**Section
28:6-101**

"§ 28:6-102. Definitions and index of definitions.

**Section
28:6-102**

"(a) In this article, unless the context otherwise requires, the term:

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

"(A) Fixtures (§ 28:9-313(a)(1)) other than readily removable factory and office machines;

"(B) The lessee's interest in a lease of real property; or

"(C) Property to the extent it is generally exempt from creditor process under nonbankruptcy law.

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

"(3) "Bulk sale" means:

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

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

"(4) "Claim" means a right to payment from the seller, whether or not the right is reduced to judgment, liquidated, fixed, matured, disputed, secured, legal, or equitable. The term includes costs of collection and attorney's fees only to the extent that the laws of the District permit the holder of the claim to recover them in an action against the obligor.

"(5) "Claimant" means a person holding a claim incurred in the seller's business other than:

"(A) An unsecured and unmatured claim for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay;

"(B) A claim for injury to an individual or to property, or for breach of warranty, unless:

"(i) A right of action for the claim has accrued;

"(ii) The claim has been asserted against the seller; and

"(iii) The seller knows the identity of the person asserting the claim and the basis upon which the person has asserted it; and

(C) A claim for taxes owing to a governmental unit, if:

(i) A statute governing the enforcement of the claim permits or requires notice of the bulk sale to be given to the governmental unit in a manner other than by compliance with the requirements of this article; and

(ii) Notice is given in accordance with the statute.

"(6) "Creditor" means a claimant or other person holding a claim.

"(7) (A) "Date of the bulk sale" means:

"(i) If the sale is by auction or is conducted by a liquidator on the seller's behalf, the date on which more than 10% of the net proceeds is paid to or for the benefit of the seller; and

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

"(I) More than 10% of the net contract price is paid to or for the benefit of the seller; or

"(II) More than 10% of the assets, as measured by value, are transferred to the buyer.

"(B) For purposes of this subsection:

"(i) Delivery of a negotiable instrument (§ 28:3-104(a)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

"(ii) To the extent that the contract price is deposited in an escrow, the contract price is paid to or for the benefit of the seller when the seller acquires the unconditional right to receive the deposit or when the deposit is delivered to the seller or for the benefit of the seller, whichever is earlier; and

"(iii) An asset is transferred when a person holding an unsecured claim can no longer obtain through judicial proceedings rights to the asset that are superior to those of the buyer arising as a result of the bulk sale. A person holding an unsecured claim can obtain those superior rights to a tangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to possess the asset, and a person holding an unsecured claim can obtain those superior rights to an intangible asset at least until the buyer has an unconditional right, under the bulk-sale agreement, to use the asset.

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

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

"(B) In all other cases, the date on which a bulk-sale agreement becomes enforceable between the buyer and the seller.

"(9) "Debt" means liability on a claim.

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

"(11) "Mayor" means the Mayor of the District of Columbia.

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"(12) "Net contract price" means the new consideration the buyer is obligated to pay for the assets less:

"(A) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

"(B) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

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

"(A) Commissions and reasonable expenses of the sale;

"(B) The amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset; and

"(C) The amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the new consideration for the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale.

"(14) A sale is "in the ordinary course of the seller's business" if the sale comports with usual or customary practices in the kind of business in which the seller is engaged or with the seller's own usual or customary practices.

"(15) "United States" includes its territories and possessions and the Commonwealth of Puerto Rico.

"(16) "Value" means fair market value.

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

"(b) The following definitions in other Articles apply to this article:

"(1) "Buyer." § 28:2-103(1)(a).

"(2) "Equipment." § 28:9-109(2).

"(3) "Inventory." § 28:9-109(4).

"(4) "Sale." § 28:2-106(1).

"(5) "Seller." § 28:2-103(1)(d).

"(c) In addition, Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

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Section
28:6-103

"§ 28:6-103. Applicability of article.

"(a) Except as otherwise provided in subsection (c) of this section, this article applies to a bulk sale if:

"(1) The seller's principal business is:

"(A) The sale of inventory from stock; or

"(B) A restaurant, cafe, bakery, tavern, or similar establishment where food or drink is furnished for consideration; and

"(2) On the date of the bulk-sale agreement the seller is located in the District or, if the seller is located in a jurisdiction that is not a part of the United States, the seller's major executive office in the United States is in the District.

"(b) A seller is deemed to be located at his or her place of business. If a seller has more than one place of business, the seller is deemed located at his or her chief executive office.

"(c) This article does not apply to:

"(1) A transfer made to secure payment or performance of an obligation;

"(2) A transfer of collateral to a secured party pursuant to § 28:9-503;

"(3) A sale of collateral pursuant to § 28:9-504;

"(4) Retention of collateral pursuant to § 28:9-505;

"(5) A sale of an asset encumbered by a security interest or lien if (i) all the proceeds of the sale are applied in partial or total satisfaction of the debt secured by the security interest or lien, or (ii) the security interest or lien is enforceable against the asset after it has been sold to the buyer and the net contract price is zero;

"(6) A general assignment for the benefit of creditors or to a subsequent transfer by the assignee;

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

"(8) A sale made in the course of judicial or administrative proceedings for the dissolution or reorganization of an organization;

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

"(A) Not earlier than 21 days before the date of the bulk sale, (i) obtains from the seller a verified and dated list of claimants of whom the seller has notice 3 days before the seller sends or delivers the list to the buyer, or (ii) conducts a reasonable inquiry to discover the claimants;

"(B) Assumes in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or on the date the buyer completes the reasonable inquiry, as the case may be;

"(C) Is not insolvent after the assumption; and

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"(D) Gives written notice of the assumption not later than 30 days after the date of the bulk sale by sending or delivering a notice to the claimants identified in subparagraph (B) of this paragraph or by filing a notice in the office of the Mayor;

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

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

"(B) Is not insolvent after the assumption; and

"(C) Gives written notice of the assumption not later than 30 days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the office of the Mayor;

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

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

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

"(C) The buyer gives written notice of the assumption not later than 30 days after the date of the bulk sale by sending or delivering a notice to each creditor whose debt is assumed or by filing a notice in the office of the Mayor;

"(12) A sale of assets having:

"(A) A value, net of liens and security interests, of less than \$10,000. If a debt is secured by assets and other property of the seller, the net value of the assets is determined by subtracting from their value an amount equal to the product of the debt multiplied by a fraction, the numerator of which is the value of the assets on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale; or

"(B) A value of more than \$25,000,000 on the date of the bulk-sale agreement; or

"(13) A sale required by, and made pursuant to, statute.

"(d) The notice under subsection (c)(9)(D) of this section must state (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective date of the bulk sale; (iii) the individual, partnership, or corporate names and the addresses of the seller and buyer; (iv) the address to which inquiries about the sale may be made, if different from the seller's address; and (v) that the buyer has assumed or will assume in full the debts owed to claimants of whom the buyer has knowledge on the date the buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.

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"(e) The notice under subsections (c)(10)(C) and (c)(11)(C) of this section must state (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective date of the bulk sale; (iii) the individual, partnership, or corporate names and the addresses of the seller and buyer; (iv) the address to which inquiries about the sale may be made, if different from the seller's address; and (v) that the buyer has assumed or will assume the debts that were incurred in the seller's business before the date of the bulk sale.

"(f) For purposes of subsection (c)(12) of this section, the value of assets is presumed to be equal to the price the buyer agrees to pay for the assets. However, in a sale by auction or a sale conducted by a liquidator on the seller's behalf, the value of assets is presumed to be the amount the auctioneer or liquidator reasonably estimates the assets will bring at auction or upon liquidation.

"§ 28:6-104. Obligations of buyer.

Section
28:6-104

"(a) In a bulk sale as defined in § 28:6-102(a)(3)(B), the buyer shall:

"(1) Obtain from the seller a list of all business names and addresses used by the seller within 3 years before the date the list is sent or delivered to the buyer;

"(2) Unless excused under subsection (b) of this section, obtain from the seller a verified and dated list of claimants of whom the seller has notice 3 days before the seller sends or delivers the list to the buyer and including, to the extent known by the seller, the address of and the amount claimed by each claimant;

"(3) Obtain from the seller or prepare a schedule of distribution (§ 28:6-106(a));

"(4) Give notice of the bulk sale in accordance with § 28:6-105;

"(5) Unless excused under § 28:6-106(d), distribute the net contract price in accordance with the undertakings of the buyer in the schedule of distribution; and

"(6) Unless excused under subsection (b) of this section, make available the list of claimants (subsection (a)(2) of this section) by:

"(A) Promptly sending or delivering a copy of the list without charge to any claimant whose written request is received by the buyer no later than 6 months after the date of the bulk sale;

"(B) Permitting any claimant to inspect and copy the list at any reasonable hour upon request received by the buyer no later than 6 months after the date of the bulk sale; or

"(C) Filing a copy of the list in the office of the Mayor no later than the time for giving a notice of the bulk sale (§ 28:6-105(e)). A list filed in accordance with this subparagraph must state the individual, partnership, or corporate name and a mailing address of the seller.

"(b) A buyer who gives notice in accordance with § 28:6-105(b) is excused from complying with the requirements of subsection (a)(2) and (6) of this section.

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**Section
28:6-105**

"§ 28:6-105. Notice to claimants.

"(a) Except as otherwise provided in subsection (b) of this section, to comply with § 28:6-104(a)(4) the buyer shall send or deliver a written notice of the bulk sale to each claimant on the list of claimants (§ 28:6-104(a)(2)) and to any other claimant of whom the buyer has knowledge at the time the notice of the bulk sale is sent or delivered.

"(b) A buyer may comply with § 28:6-104(a)(4) by filing a written notice of the bulk sale in the office of the Mayor if:

"(1) On the date of the bulk-sale agreement the seller has 200 or more claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay; or

"(2) The buyer has received a verified statement from the seller stating that, as of the date of the bulk-sale agreement, the number of claimants, exclusive of claimants holding secured or matured claims for employment compensation and benefits, including commissions and vacation, severance, and sick-leave pay, is 200 or more.

"(c) The written notice of the bulk sale must be accompanied by a copy of the schedule of distribution (§ 28:6-106(a)) and state at least:

"(1) That the seller and buyer have entered into an agreement for a sale that may constitute a bulk sale under the laws of the District of Columbia;

"(2) The date of the agreement;

"(3) The date on or after which more than 10% of the assets were or will be transferred;

"(4) The date on or after which more than 10% of the net contract price was or will be paid, if the date is not stated in the schedule of distribution;

"(5) The name and a mailing address of the seller;

"(6) Any other business name and address listed by the seller pursuant to § 28:6-104(a)(1);

"(7) The name of the buyer and an address of the buyer from which information concerning the sale can be obtained;

"(8) A statement indicating the type of assets or describing the assets item by item;

"(9) The manner in which the buyer will make available the list of claimants (§ 28:6-104(a)(6)), if applicable; and

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

"(d) For purposes of subsection (c)(5) and (7), the name of a person is the person's individual, partnership, or corporate name.

"(e) The buyer shall give notice of the bulk sale not less than 25 days before the date of the bulk sale and, if the buyer gives notice in accordance with subsection (a) of this section, not more than 30 days after obtaining the list of claimants.

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"(f) A written notice substantially complying with the requirements of subsection (c) of this section is effective even though it contains minor errors that are not seriously misleading.

"(g) A form substantially as follows is sufficient to comply with subsection (c):

"Notice of Sale

"(1) _____, whose address is _____, is described in this notice as the "seller."

"(2) _____, whose address is _____, is described in this notice as the "buyer."

"(3) The seller has disclosed to the buyer that within the past 3 years the seller has used other business names, operated at other addresses, or both, as follows:

"(4) The seller and the buyer have entered into an agreement dated _____, for a sale that may constitute a bulk sale under the laws of the state of _____.

"(5) The date on or after which more than 10% of the assets that are the subject of the sale were or will be transferred is _____, and if not stated in the schedule of distribution the date on or after which more than 10% of the net contract price was or will be paid is _____.

"(6) The following assets are the subject of the sale: _____.

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

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

"(9) A copy of the schedule of distribution of the net contract price accompanies this notice.

"§ 28:6-106. Schedule of distribution.

"(a) The seller and buyer shall agree on how the net contract price is to be distributed and set forth their agreement in a written schedule of distribution.

"(b) The schedule of distribution may provide for distribution to any person at any time, including distribution of the entire net contract price to the seller.

"(c) The buyer's undertakings in the schedule of distribution run only to the seller. However, a buyer who fails to distribute the net contract price in accordance with the buyer's undertakings in the schedule of distribution is liable to a creditor only as provided in § 28:6-107(1).

"(d) If the buyer undertakes in the schedule of distribution to distribute any part of the net contract price to a person other than the seller, and, after the buyer has given notice in accordance with § 28:6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an

Section
28:6-106

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order of court, legal process, statute, or rule of law, the buyer is excused from any obligation arising under this article or under any contract with the seller to distribute the net contract price in accordance with the buyer's undertakings in the schedule if the buyer:

"(1) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;

"(2) Distributes the net contract price remaining available in accordance with an order of court;

"(3) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or

"(4) Reaches a new agreement with the seller for the distribution of the net contract price remaining available, sets forth the new agreement in an amended schedule of distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the buyer's undertakings in the amended schedule.

"(e) The notice under subsection (d)(4) of this section must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and be given in accordance with § 28:6-105(a) or (b), whichever is applicable, at least 14 days before the buyer distributes any part of the net contract price remaining available.

"(f) If the seller undertakes in the schedule of distribution to distribute any part of the net contract price, and, after the buyer has given notice in accordance with § 28:6-105, some or all of the anticipated net contract price is or becomes unavailable for distribution as a consequence of the buyer's or seller's having complied with an order of court, legal process, statute, or rule of law, the seller and any person in control of the seller are excused from any obligation arising under this article or under any agreement with the buyer to distribute the net contract price in accordance with the seller's undertakings in the schedule if the seller:

"(1) Distributes the net contract price remaining available in accordance with any priorities for payment stated in the schedule of distribution and, to the extent that the price is insufficient to pay all the debts having a given priority, distributes the price pro rata among those debts shown in the schedule as having the same priority;

"(2) Distributes the net contract price remaining available in accordance with an order of court;

"(3) Commences a proceeding for interpleader in a court of competent jurisdiction and is discharged from the proceeding; or

"(4) Prepares a written amended schedule of distribution of the net contract price remaining available for distribution, gives notice of the amended schedule, and distributes the net contract price remaining available in accordance with the amended schedule.

"(g) The notice under subsection (f)(4) of this section must identify the buyer and the seller, state the filing number, if any, of the original notice, set forth the amended schedule, and

be given in accordance with § 28:6-105(a) or (b), whichever is applicable, at least 14 days before the seller distributes any part of the net contract price remaining available.

"§ 28:6-107. Liability for noncompliance.

Section
28:6-107

"(a) Except as provided in subsection (c) of this section, and subject to the limitation in subsection (d):

"(1) A buyer who fails to comply with the requirements of § 28:6-104(a)(5) with respect to a creditor is liable to the creditor for damages in the amount of the claim, reduced by any amount that the creditor would not have realized if the buyer had complied; and

"(2) A buyer who fails to comply with the requirements of any other subsection of § 28:6-104 with respect to a claimant is liable to the claimant for damages in the amount of the claim, reduced by any amount that the claimant would not have realized if the buyer had complied.

"(b) In an action under subsection (a) of this section, the creditor has the burden of establishing the validity and amount of the claim, and the buyer has the burden of establishing the amount that the creditor would not have realized if the buyer had complied.

"(c) A buyer who:

"(1) Made a good faith and commercially reasonable effort to comply with the requirements of § 28:6-104(a) or to exclude the sale from the application of this article under § 28:6-103(c); or

"(2) On or after the date of the bulk-sale agreement, but before the date of the bulk sale, held a good faith and commercially reasonable belief that this article does not apply to the particular sale is not liable to creditors for failure to comply with the requirements of § 28:6-104. The buyer has the burden of establishing the good faith and commercial reasonableness of the effort or belief.

"(d) In a single bulk sale the cumulative liability of the buyer for failure to comply with the requirements of § 28:6-104(a) may not exceed an amount equal to:

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

"(2) If the assets include property other than inventory and equipment, twice the net value of the inventory and equipment less the amount of the portion of any part of the net contract price paid to or applied for the benefit of the seller or a creditor which is allocable to the inventory and equipment.

"(e) For the purposes of subsection (d)(2) of this section, the "net value" of an asset is the value of the asset less (i) the amount of any proceeds of the sale of an asset, to the extent the proceeds are applied in partial or total satisfaction of a debt secured by the asset, and (ii) the amount of any debt to the extent it is secured by a security interest or lien that is enforceable against the asset before and after it has been sold to a buyer. If a debt is secured by an asset and

other property of the seller, the amount of the debt secured by a security interest or lien that is enforceable against the asset is determined by multiplying the debt by a fraction, the numerator of which is the value of the asset on the date of the bulk sale and the denominator of which is the value of all property securing the debt on the date of the bulk sale. The portion of a part of the net contract price paid to or applied for the benefit of the seller or a creditor that is "allocable to the inventory and equipment" is the portion that bears the same ratio to that part of the net contract price as the net value of the inventory and equipment bears to the net value of all of the assets.

"(f) A payment made by the buyer to a person to whom the buyer is, or believes he or she is, liable under subsection (a) of this section reduces pro tanto the buyer's cumulative liability under subsection (d) of this section.

"(g) No action may be brought under subsection (a)(2) of this section by or on behalf of a claimant whose claim is unliquidated or contingent.

"(h) A buyer's failure to comply with the requirements of § 28:6-104(a) does not (i) impair the buyer's rights in or title to the assets, (ii) render the sale ineffective, void, or voidable, (iii) entitle a creditor to more than a single satisfaction of his or her claim, or (iv) create liability other than as provided in this article.

"(i) Payment of the buyer's liability under subsection (a) of this section discharges pro tanto the seller's debt to the creditor.

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

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

"§ 28:6-108. Bulk sales by auction; bulk sales conducted by liquidator.

Section
28:6-108

"(a) §§ 28:6-104, 28:6-105, 28:6-106, and 28:6-107 apply to a bulk sale by auction and a bulk sale conducted by a liquidator on the seller's behalf with the following modifications:

"(1) "Buyer" refers to auctioneer or liquidator, as the case may be;

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

"(3) The written notice required under § 28:6-105(c) must be accompanied by a copy of the schedule of distribution (§ 28:6-106(a)) and state at least:

"(A) That the seller and the auctioneer or liquidator have entered into an agreement for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the District of Columbia;

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- "(B) The date of the agreement;
- "(C) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf;
- "(D) The date on or after which more than 10% of the net proceeds of the sale were or will be paid, if the date is not stated in the schedule of distribution;
- "(E) The name and a mailing address of the seller;
- "(F) Any other business name and address listed by the seller pursuant to § 28:6-104(a)(1);
- "(G) The name of the auctioneer or liquidator and an address of the auctioneer or liquidator from which information concerning the sale can be obtained;
- "(H) A statement indicating the type of assets or describing the assets item by item;
- "(I) The manner in which the auctioneer or liquidator will make available the list of claimants (§ 28:6-104(a)(6)), if applicable; and
- "(J) If the sale is in total or partial satisfaction of an antecedent debt owed by the seller, the amount of the debt to be satisfied and the name of the person to whom it is owed; and

"(4) In a single bulk sale the cumulative liability of the auctioneer or liquidator for failure to comply with the requirements of this section may not exceed the amount of the net proceeds of the sale allocable to inventory and equipment sold less the amount of the portion of any part of the net proceeds paid to or applied for the benefit of a creditor which is allocable to the inventory and equipment.

"(b) A payment made by the auctioneer or liquidator to a person to whom the auctioneer or liquidator is, or believes he or she is, liable under this section reduces pro tanto the auctioneer's or liquidator's cumulative liability under subsection (a)(4) of this section.

"(c) A form substantially as follows is sufficient to comply with subsection (a)(3) of this section:

"Notice of Sale

"(1) _____, whose address is _____, is described in this notice as the "seller."

"(2) _____, whose address is _____, is described in this notice as the "auctioneer" or "liquidator."

"(3) The seller has disclosed to the auctioneer or liquidator that within the past 3 years the seller has used other business names, operated at other addresses, or both, as follows: _____.

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"(4) The seller and the auctioneer or liquidator have entered into an agreement dated _____ for auction or liquidation services that may constitute an agreement to make a bulk sale under the laws of the District of Columbia.

"(5) The date on or after which the auction began or will begin or the date on or after which the liquidator began or will begin to sell assets on the seller's behalf is _____, and [if not stated in the schedule of distribution] the date on or after which more than 10% of the net proceeds of the sale were or will be paid is _____.

"(6) The following assets are the subject of the sale:
_____.

"(7) [If applicable] The auctioneer or liquidator will make available to claimants of the seller a list of the seller's claimants in the following manner:
_____.

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

"(9) A copy of the schedule of distribution of the net proceeds accompanies this notice.

"(d) A person who buys at a bulk sale by auction or conducted by a liquidator need not comply with the requirements of § 28:6-104(a) and is not liable for the failure of an auctioneer or liquidator to comply with the requirements of this section.

§ 28:6-109. What constitutes filing; duties of filing officer; information from filing officer.

**Section
28:6-109**

"(a) Presentation of a notice or list of claimants for filing and tender of the filing fee or acceptance of the notice or list by the filing officer constitutes filing under this article.

"(b) The filing officer shall:

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

"(2) Hold the notice or list or a copy for public inspection;

"(3) Index the notice or list according to each name given for the seller and for the buyer; and

"(4) Note in the index the file number and the addresses of the seller and buyer given in the notice or list.

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

"(d) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing, and the fee for indexing each name more than 2 shall

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be established by the Mayor by rulemaking adopted pursuant to the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 *et seq.*).

"(e) Upon request of any person, the filing officer shall issue a certificate showing whether any notice or list with respect to a particular seller or buyer is on file on the date and hour stated in the certificate. If a notice or list is on file, the certificate must give the date and hour of filing of each notice or list and the name and address of each seller, buyer, auctioneer, or liquidator. Upon request of any person, and payment of the required fee, the filing officer shall furnish a copy of any filed notice or list. The fee for a certificate in the standard form prescribed by the Mayor, the fee for a certificate not in the standard form, and the fee for a copy of a filed notice or list shall be established by the Mayor by rulemaking adopted pursuant to the District of Columbia Administrative Procedure Act (D.C. Code § 1-1501 *et seq.*).

"(f) The filing officer shall keep each notice or list for 2 years after it is filed.

"§ 28:6-110. Limitation of actions.

**Section
28:6-110**

"(a) Except as provided in subsection (b) of this section, an action under this article against a buyer, auctioneer, or liquidator must be commenced within one year after the date of the bulk sale.

"(b) If the buyer, auctioneer, or liquidator conceals the fact that the sale has occurred, the limitation is tolled and an action under this article may be commenced within the earlier of (i) one year after the person bringing the action discovers that the sale has occurred, or (ii) one year after the person bringing the action should have discovered that the sale has occurred, but no later than 2 years after the date of the bulk sale. Complete noncompliance with the requirements of this article does not of itself constitute concealment.

"(c) An action under § 28:6-107(k) must be commenced within one year after the alleged violation occurs."

Sec. 3. Conforming amendments to the Uniform Commercial Code.

(a) The table of contents for the Uniform Commercial Code, Subtitle 1 of Title 28 of the District of Columbia Code, is amended in the caption for Article 6 by deleting "Bulk Transfers . . . §§ 28:6-101 to 28:6-111" and inserting in place thereof "Bulk Sales . . . §§ 28:6-101 to 28:6-110" in its place.

(b) Section 28:1-105(2) is amended to read as follows:

**Section
28:1-105**

"(2) Where one of the following provisions of this subtitle specifies the applicable law, that provision governs, and a contrary agreement is effective only to the extent permitted by the law (including the conflict of laws rules) so specified:

"Rights of creditors against sold goods. § 28:2-402.

"Applicability of the article on leases. §§ 28:2A-105 and 28:2A-106.

"Applicability of the article on bank deposits and collections. § 28:4-102.

"Bulk sales subject to the article on bulk sales. § 28:6-103.

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"Applicability of the article on investment securities. § 28:8-106.

"Perfection provisions of the article on secured transactions. § 28:9-103.

"Governing law in the article on funds transfers. § 28:4A-507."

(c) Section 28:2-403(4) is amended to read as follows:

Section
28:2-403

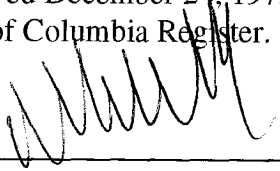
"(4) The rights of other purchasers of goods and of lien creditors are governed by the articles on secured transactions (Article 9), bulk sales (Article 6) and documents of title (Article 7)."

Sec. 4. Fiscal impact statement.

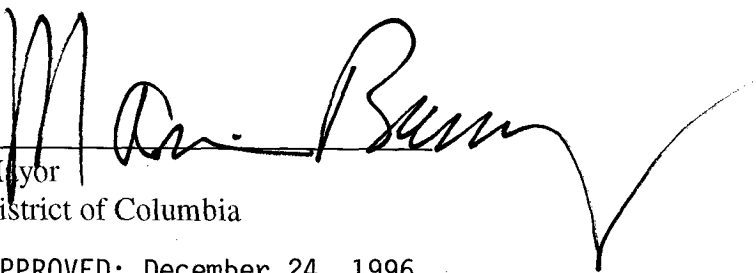
The Council adopts the fiscal impact statement in the committee report as the fiscal impact statement required by section 602(c)(3) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(3)).

Sec. 5. Effective date.

This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 30-day period of Congressional review as provided in section 602(c)(1) of the District of Columbia Self-Government and Governmental Reorganization Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(1)), and publication in the District of Columbia Register.



Chairman
Council of the District of Columbia



Mayor
District of Columbia

APPROVED: December 24, 1996



COUNCIL OF THE DISTRICT OF COLUMBIA

COUNCIL PERIOD ELEVEN

RECORD OF OFFICIAL COUNCIL VOTE

B11-575

Docket No. _____

ITEM ON CONSENT CALENDAR

ADOPTED FIRST READING, 11-7-96

ACTION & DATE

APPROVED

VOICE VOTE
RECORDED VOTE ON REQUEST

THOMAS

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

[Signature]
Secretary to the Council

[Signature] 11, 1996
Date

ITEM ON CONSENT CALENDAR

ADOPTED FINAL READING, 12-3-96

ACTION & DATE

APPROVED

VOICE VOTE
RECORDED VOTE ON REQUEST

RAY

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X-indicates no

AB-Absent

NV-Present not voting

CERTIFICATION RECORD

[Signature]
Secretary to the Council

[Signature] 11, 1996
Date

ITEM ON CONSENT CALENDAR

ACTION & DATE

VOICE VOTE
RECORDED VOTE ON REQUEST

ABSENT _____

ROLL CALL VOTE - Result _____

Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB	Councilmember	Aye	Nay	NV	AB
Chmn. Clarke					Jarvis					Smith, Jr.				
Brazil					Lightfoot					Thomas, Sr.				
Chavous					Mason					Whittington				
Cropp					Patterson									
Evans					Ray									

X - Indicates Vote

AB - Absent

NV - Present not Voting

CERTIFICATION RECORD

Secretary to the Council

Date