

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE DRS35055-LTz-20A* (2/14)

Short Title: Revise UCC Article on Bulk Transfers. (Public)

Sponsors: Senator Hartsell.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ENACT REVISED ARTICLE 6 OF THE UNIFORM COMMERCIAL
3 CODE, BULK SALES, AND CONFORMING AMENDMENTS TO OTHER
4 ARTICLES OF THE UNIFORM COMMERCIAL CODE, AS RECOMMENDED
5 BY THE GENERAL STATUTES COMMISSION.

6 The General Assembly of North Carolina enacts:

7
8 **PART I. REVISED ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE.**

9
10 **SECTION 1.** Article 6 of Chapter 25 of the General Statutes is rewritten to
11 read:

12 "Article 6.

13 "Bulk Sales.

14 **"§ 25-6-101. Short title.**

15 This Article shall be known and may be cited as Uniform Commercial Code–Bulk
16 Sales.

17 **"§ 25-6-102. Definitions and index of definitions.**

18 (a) In this Article:

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

23 a. Fixtures (G.S. 25-9-102(a)(41)) other than readily removable
24 factory and office machines;

25 b. The lessee's interest in a lease of real property; or

26 c. Property to the extent it is generally exempt from creditor
27 process under nonbankruptcy law.

- 1 (2) 'Auctioneer' means a person whom the seller engages to direct,
2 conduct, control, or be responsible for a sale by auction.
- 3 (3) 'Bulk sale' means:
4 a. In the case of a sale by auction or a sale or series of sales
5 conducted by a liquidator on the seller's behalf, a sale or series
6 of sales not in the ordinary course of the seller's business of
7 more than half of the seller's inventory, as measured by value
8 on the date of the bulk-sale agreement, if on that date the
9 auctioneer or liquidator has notice, or after reasonable inquiry
10 would have had notice, that the seller will not continue to
11 operate the same or a similar kind of business after the sale or
12 series of sales; and
13 b. In all other cases, a sale not in the ordinary course of the seller's
14 business of more than half the seller's inventory, as measured
15 by value on the date of the bulk-sale agreement, if on that date
16 the buyer has notice, or after reasonable inquiry would have had
17 notice, that the seller will not continue to operate the same or a
18 similar kind of business after the sale.
- 19 (4) 'Claim' means a right to payment from the seller, whether or not the
20 right is reduced to judgment, liquidated, fixed, matured, disputed,
21 secured, legal, or equitable. The term includes costs of collection and
22 attorneys' fees only to the extent that the laws of this State permit the
23 holder of the claim to recover them in an action against the obligor.
- 24 (5) 'Claimant' means a person holding a claim incurred in the seller's
25 business other than:
26 a. An unsecured and unmatured claim for employment
27 compensation and benefits, including commissions and
28 vacation, severance, and sick-leave pay;
29 b. A claim for injury to an individual or to property, or for breach
30 of warranty, unless:
31 1. A right of action for the claim has accrued;
32 2. The claim has been asserted against the seller; and
33 3. The seller knows the identity of the person asserting the
34 claim and the basis upon which the person has asserted
35 it; and
36 c. A claim for taxes owing to a governmental unit.
- 37 (6) 'Creditor' means a claimant or other person holding a claim.
- 38 (7) 'Date of the bulk sale' means (i) if the sale is by auction or is conducted
39 by a liquidator on the seller's behalf, the date on which more than ten
40 percent (10%) of the net proceeds is paid to or for the benefit of the
41 seller and (ii) in all other cases, the later of the date on which more
42 than ten percent (10%) of the net contract price is paid to or for the
43 benefit of the seller or the date on which more than ten percent (10%)

1 of the assets, as measured by value, are transferred to the buyer. For
2 purposes of this subdivision:

- 3 a. Delivery of a negotiable instrument (G.S. 25-3-104(a)) to or for
4 the benefit of the seller in exchange for assets constitutes
5 payment of the contract price pro tanto;
6 b. To the extent that the contract price is deposited in an escrow,
7 the contract price is paid to or for the benefit of the seller when
8 the seller acquires the unconditional right to receive the deposit
9 or when the deposit is delivered to the seller or for the benefit of
10 the seller, whichever is earlier; and
11 c. An asset is transferred when a person holding an unsecured
12 claim can no longer obtain through judicial proceedings rights
13 to the asset that are superior to those of the buyer arising as a
14 result of the bulk sale. A person holding an unsecured claim can
15 obtain those superior rights to a tangible asset at least until the
16 buyer has an unconditional right, under the bulk-sale
17 agreement, to possess the asset, and a person holding an
18 unsecured claim can obtain those superior rights to an
19 intangible asset at least until the buyer has an unconditional
20 right, under the bulk-sale agreement, to use the asset.

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

- 22 a. In the case of a sale by auction or conducted by a liquidator
23 (subdivision (a)(3)a. of this section), the date on which the
24 seller engages the auctioneer or liquidator; and
25 b. In all other cases, the date on which a bulk-sale agreement
26 becomes enforceable between the buyer and the seller.

27 (9) 'Debt' means liability on a claim.

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

31 (11) 'Net contract price' means the new consideration the buyer is obligated
32 to pay for the assets less:

- 33 a. The amount of any proceeds of the sale of an asset, to the extent
34 the proceeds are applied in partial or total satisfaction of a debt
35 secured by the asset; and
36 b. The amount of any debt to the extent it is secured by a security
37 interest or lien that is enforceable against the asset before and
38 after it has been sold to a buyer. If a debt is secured by an asset
39 and other property of the seller, the amount of the debt secured
40 by a security interest or lien that is enforceable against the asset
41 is determined by multiplying the debt by a fraction, the
42 numerator of which is the value of the new consideration for the
43 asset on the date of the bulk sale and the denominator of which

1 is the value of all property securing the debt on the date of the
2 bulk sale.

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

6 a. Commissions and reasonable expenses of the sale;

7 b. The amount of any proceeds of the sale of an asset, to the extent
8 the proceeds are applied in partial or total satisfaction of a debt
9 secured by the asset; and

10 c. The amount of any debt to the extent it is secured by a security
11 interest or lien that is enforceable against the asset before and
12 after it has been sold to a buyer. If a debt is secured by an asset
13 and other property of the seller, the amount of the debt secured
14 by a security interest or lien that is enforceable against the asset
15 is determined by multiplying the debt by a fraction, the
16 numerator of which is the value of the new consideration for the
17 asset on the date of the bulk sale and the denominator of which
18 is the value of all property securing the debt on the date of the
19 bulk sale.

20 (13) A sale is 'in the ordinary course of the seller's business' if the sale
21 comports with usual or customary practices in the kind of business in
22 which the seller is engaged or with the seller's own usual or customary
23 practices.

24 (14) 'United States' includes its territories and possessions and the
25 Commonwealth of Puerto Rico.

26 (15) 'Value' means fair market value.

27 (16) 'Verified' means signed and sworn to or affirmed.

28 (b) The following definitions in other Articles of this Chapter apply to this
29 Article:

30 'Buyer' G.S. 25-2-103(l)(a).

31 'Equipment' G.S. 25-9-102(a)(33).

32 'Inventory' G.S. 25-9-102(a)(48).

33 'Sale' G.S. 25-2-106(l).

34 'Seller' G.S. 25-2-103(l)(d).

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

37 **"§ 25-6-103. Applicability of Article.**

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

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

41 (2) On the date of the bulk-sale agreement, the seller is located in this
42 State.

1 (b) A seller is deemed to be located at the seller's place of business. If a seller has
2 more than one place of business, the seller is deemed located at the seller's chief
3 executive office.

4 (c) This Article does not apply to:

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

6 (2) A transfer of collateral to a secured party pursuant to G.S. 25-9-609;

7 (3) A disposition of collateral pursuant to G.S. 25-9-610;

8 (4) Retention of collateral pursuant to G.S. 25-9-620;

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

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

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

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

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

22 a. Not earlier than 21 days before the date of the bulk sale, (i)
23 obtains from the seller a verified and dated list of claimants of
24 whom the seller has notice three days before the seller sends or
25 delivers the list to the buyer or (ii) conducts a reasonable
26 inquiry to discover the claimants;

27 b. Assumes in full the debts owed to claimants of whom the buyer
28 has knowledge on the date the buyer receives the list of
29 claimants from the seller or on the date the buyer completes the
30 reasonable inquiry, as the case may be;

31 c. Is not insolvent after the assumption; and

32 d. Gives written notice of the assumption not later than 30 days
33 after the date of the bulk sale by sending or delivering a notice
34 to the claimants identified in sub-subdivision (c)(9)b. of this
35 section;

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

38 a. Assumes in full the debts that were incurred in the seller's
39 business before the date of the bulk sale;

40 b. Is not insolvent after the assumption; and

41 c. Gives written notice of the assumption not later than 30 days
42 after the date of the bulk sale by sending or delivering a notice
43 to each creditor whose debt is assumed;

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

4 a. The buyer assumes in full the debts that were incurred in the
5 seller's business before the date of the bulk sale;

6 b. The seller receives nothing from the sale except an interest in
7 the new organization that is subordinate to the claims against
8 the organization arising from the assumption; and

9 c. The buyer gives written notice of the assumption not later than
10 30 days after the date of the bulk sale by sending or delivering a
11 notice to each creditor whose debt is assumed;

12 (12) A sale of assets having:

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

21 b. A value of more than twenty-five million dollars (\$25,000,000)
22 on the date of the bulk-sale agreement; or

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

24 (d) The notice under sub-subdivision (c)(9)d. of this section must state: (i) that a
25 sale that may constitute a bulk sale has been or will be made; (ii) the date or prospective
26 date of the bulk sale; (iii) the individual or entity names and the addresses of the seller
27 and buyer; (iv) the address to which inquiries about the sale may be made, if different
28 from the seller's address; and (v) that the buyer has assumed or will assume in full the
29 debts owed to claimants of whom the buyer has knowledge on the date the buyer
30 receives the list of claimants from the seller or completes a reasonable inquiry to
31 discover the claimants.

32 (e) The notice under sub-subdivisions (c)(10)c. and (c)(11)c. of this section must
33 state: (i) that a sale that may constitute a bulk sale has been or will be made; (ii) the date
34 or prospective date of the bulk sale; (iii) the individual or entity names and the
35 addresses of the seller and buyer; (iv) the address to which inquiries about the sale may
36 be made, if different from the seller's address; and (v) that the buyer has assumed or will
37 assume the debts that were incurred in the seller's business before the date of the bulk
38 sale.

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

44 "§ 25-6-104. Obligations of buyer.

1 In a bulk sale as defined in G.S. 25-6-102(a)(3)b. the buyer shall:

- 2 (1) Obtain from the seller a list of all business names and addresses used
3 by the seller within three years before the date the list is sent or
4 delivered to the buyer;
- 5 (2) Obtain from the seller a verified and dated list of claimants of whom
6 the seller has notice three days before the seller sends or delivers the
7 list to the buyer and including, to the extent known by the seller, the
8 address of and the amount claimed by each claimant;
- 9 (3) Obtain from the seller or prepare a schedule of distribution (G.S.
10 25-6-106(a));
- 11 (4) Give notice of the bulk sale in accordance with G.S. 25-6-105;
- 12 (5) Unless excused under G.S. 25-6-106(d), distribute the net contract
13 price in accordance with the undertakings of the buyer in the schedule
14 of distribution; and
- 15 (6) Make available the list of claimants (subdivision (2) of this section)
16 by:
- 17 a. Promptly sending or delivering a copy of the list without charge
18 to any claimant whose written request is received by the buyer
19 no later than six months after the date of the bulk sale; or
- 20 b. Permitting any claimant to inspect and copy the list at any
21 reasonable hour upon request received by the buyer no later
22 than six months after the date of the bulk sale.

23 **§ 25-6-105. Notice to claimants.**

24 (a) To comply with G.S. 25-6-104(4), the buyer shall send or deliver written
25 notice of the bulk sale to each claimant on the list of claimants (G.S. 25-6-104(2)) and
26 to any other claimant of whom the buyer has knowledge at the time the notice of the
27 bulk sale is sent or delivered.

28 (b) The written notice of the bulk sale must be accompanied by a copy of the
29 schedule of distribution (G.S. 25-6-106(a)) and state at least:

- 30 (1) That the seller and buyer have entered into an agreement for a sale that
31 may constitute a bulk sale under the laws of the State of North
32 Carolina;
- 33 (2) The date of the agreement;
- 34 (3) The date on or after which more than ten percent (10%) of the assets
35 were or will be transferred;
- 36 (4) The date on or after which more than ten percent (10%) of the net
37 contract price was or will be paid, if the date is not stated in the
38 schedule of distribution;
- 39 (5) The name and a mailing address of the seller;
- 40 (6) Any other business name and address listed by the seller pursuant to
41 G.S. 25-6-104(l);
- 42 (7) The name of the buyer and an address of the buyer from which
43 information concerning the sale can be obtained;

- 1 (8) A statement indicating the type of assets or describing the assets item
 2 by item;
 3 (9) The manner in which the buyer will make available the list of
 4 claimants (G.S. 25-6-104(6)); and
 5 (10) If the sale is in total or partial satisfaction of an antecedent debt owed
 6 by the seller, the amount of the debt to be satisfied and the name of the
 7 person to whom it is owed.

8 (c) For purposes of subdivisions (b)(5) and (b)(7) of this section, the name of a
 9 person is the person's individual or entity name.

10 (d) The buyer shall give notice of the bulk sale not less than 15 days before the
 11 date of the bulk sale and not more than 10 days after obtaining the list of claimants.

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

15 (f) A form substantially as follows is sufficient to comply with subsection (b) of
 16 this section:

17 **"Notice of Sale**

- 18 (1) _____, whose address is _____,
 19 is described in this notice as the "seller."
 20 (2) _____, whose address is _____,
 21 is described in this notice as the "buyer."
 22 (3) The seller has disclosed to the buyer that within the past three years the
 23 seller has used other business names, operated at other addresses, or
 24 both, as follows: _____.
 25 (4) The seller and the buyer have entered into an agreement dated _____,
 26 for a sale that may constitute a bulk sale under the laws of the State of
 27 North Carolina.
 28 (5) The date on or after which more than ten percent (10%) of the assets
 29 that are the subject of the sale were or will be transferred is
 30 _____, and [if not stated in the schedule of
 31 distribution] the date on or after which more than ten percent (10%) of
 32 the net contract price was or will be paid is
 33 _____.
 34 (6) The following assets are the subject of the sale: _____.
 35 (7) The buyer will make available to claimants of the seller a list of the
 36 seller's claimants in the following manner: _____.
 37 (8) [If applicable] The sale is to satisfy \$ _____ of an antecedent debt
 38 owed by the seller to _____.
 39 (9) A copy of the schedule of distribution of the net contract price
 40 accompanies this notice."

41 **"§ 25-6-106. Schedule of distribution.**

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

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

3 **(c) The buyer's undertakings in the schedule of distribution run only to the seller.**
4 **A buyer who fails to distribute the net contract price in accordance with the buyer's**
5 **undertakings in the schedule of distribution is liable to a creditor only as provided in**
6 **G.S. 25-6-107(a).**

7 **(d) If the buyer undertakes in the schedule of distribution to distribute any part of**
8 **the net contract price to a person other than the seller, and, after the buyer has given**
9 **notice in accordance with G.S. 25-6-105, some or all of the anticipated net contract**
10 **price is or becomes unavailable for distribution as a consequence of the buyer's or**
11 **seller's having complied with an order of court, legal process, statute, or rule of law, the**
12 **buyer is excused from any obligation arising under this Article or under any contract**
13 **with the seller to distribute the net contract price in accordance with the buyer's**
14 **undertakings in the schedule if the buyer:**

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

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

22 **(3) Commences an interpleader action in a court of competent jurisdiction**
23 **against all persons who would otherwise be entitled to a distribution**
24 **under the schedule and is discharged from the action; or**

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

30 **(e) The notice under subdivision (d)(4) of this section must identify the buyer**
31 **and the seller, set forth the amended schedule, and be given in accordance with G.S.**
32 **25-6-105(a) at least 10 days before the buyer distributes any part of the net contract**
33 **price remaining available.**

34 **(f) If the seller undertakes in the schedule of distribution to distribute any part of**
35 **the net contract price, and, after the buyer has given notice in accordance with G.S.**
36 **25-6-105, some or all of the anticipated net contract price is or becomes unavailable for**
37 **distribution as a consequence of the buyer's or seller's having complied with an order of**
38 **court, legal process, statute, or rule of law, the seller and any person in control of the**
39 **seller are excused from any obligation arising under this Article or under any agreement**
40 **with the buyer to distribute the net contract price in accordance with the seller's**
41 **undertakings in the schedule if the seller:**

42 **(1) Distributes the net contract price remaining available in accordance**
43 **with any priorities for payment stated in the schedule of distribution**
44 **and, to the extent that the price is insufficient to pay all the debts**

1 having a given priority, distributes the price pro rata among those
2 debts shown in the schedule as having the same priority;

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

5 (3) Commences an interpleader action in a court of competent jurisdiction
6 against all persons who would otherwise be entitled to a distribution
7 under the schedule and is discharged from the action; or

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

12 (g) The notice under subdivision (f)((4) of this section must identify the buyer
13 and the seller, set forth the amended schedule, and be given in accordance with G.S.
14 25-6-105(a) at least 10 days before the seller distributes any part of the net contract
15 price remaining available.

16 **"§ 25-6-107. Liability for noncompliance.**

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

19 (1) A buyer who fails to comply with the requirements of G.S.
20 25-6-104(5) with respect to a creditor is liable to the creditor for
21 damages in the amount of the claim, reduced by any amount that the
22 creditor would not have realized if the buyer had complied; and

23 (2) A buyer who fails to comply with the requirements of any other
24 subdivision of G.S. 25-6-104 with respect to a claimant is liable to the
25 claimant for damages in the amount of the claim, reduced by any
26 amount that the claimant would not have realized if the buyer had
27 complied.

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

32 (c) A buyer is not liable to creditors for failure to comply with the requirements
33 of G.S. 25-6-104 if the buyer:

34 (1) Made a good faith and commercially reasonable effort to comply with
35 the requirements of G.S. 25-6-104 or to exclude the sale from the
36 application of this Article under G.S. 25-6-103(c); or

37 (2) On or after the date of the bulk-sale agreement, but before the date of
38 the bulk sale, held a good faith and commercially reasonable belief
39 that this Article does not apply to the particular sale.

40 The buyer has the burden of establishing the good faith and commercial reasonableness
41 of the effort or belief under this subsection.

42 (d) In a single bulk sale the cumulative liability of the buyer for failure to comply
43 with the requirements of G.S. 25-6-104 shall not exceed an amount equal to:

1 (1) If the assets consist only of inventory and equipment, the net contract
2 price; or

3 (2) If the assets include property other than inventory and equipment, the
4 net value of the inventory and equipment.

5 (e) For the purposes of subdivision (d)(2) of this section, the 'net value' of an
6 asset is the value of the asset less (i) the amount of any proceeds of the sale of an asset,
7 to the extent the proceeds are applied in partial or total satisfaction of a debt secured by
8 the asset and (ii) the amount of any debt to the extent it is secured by a security interest
9 or lien that is enforceable against the asset before and after it has been sold to a buyer. If
10 a debt is secured by an asset and other property of the seller, the amount of the debt
11 secured by a security interest or lien that is enforceable against the asset is determined
12 by multiplying the debt by a fraction, the numerator of which is the value of the asset on
13 the date of the bulk sale and the denominator of which is the value of all property
14 securing the debt on the date of the bulk sale. The portion of a part of the net contract
15 price paid to or applied for the benefit of the seller or a creditor that is 'allocable to the
16 inventory and equipment' is the portion that bears the same ratio to that part of the net
17 contract price as the net value of the inventory and equipment bears to the net value of
18 all of the assets.

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

22 (g) No action shall be brought under subdivision (a)(2) of this section by or on
23 behalf of a claimant whose claim is unliquidated or contingent.

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

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

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

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

38 **"§ 25-6-108. Bulk sales by auction, bulk sales conducted by liquidator.**

39 (a) G.S. 25-6-104, 25-6-105, 25-6-106, and 25-6-107 apply to a bulk sale by
40 auction and a bulk sale conducted by a liquidator on the seller's behalf with the
41 following modifications:

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

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

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- (3) The written notice required under G.S. 25-6-105(b) must be accompanied by a copy of the schedule of distribution (G.S. 25-6-106(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 State of North Carolina;
 - 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 ten percent (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 G.S. 25-6-104(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 (G.S. 25-6-104(6)); 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 shall not exceed the amount of the net proceeds of the sale allocable to inventory and equipment sold.

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

(c) A form substantially as follows is sufficient to comply with subdivision (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."

- 1 (3) The seller has disclosed to the auctioneer or liquidator that within the
2 past three years the seller has used other business names, operated at
3 other addresses, or both, as follows: _____.
- 4 (4) The seller and the auctioneer or liquidator have entered into an
5 agreement dated _____ for auction or liquidation services that
6 may constitute an agreement to make a bulk sale under the laws of the
7 State of North Carolina.
- 8 (5) The date on or after which the auction began or will begin or the date
9 on or after which the liquidator began or will begin to sell assets on the
10 seller's behalf is _____, and [if not stated in the schedule of
11 distribution] the date on or after which more than ten percent (10%) of
12 the net proceeds of the sale were or will be paid is _____.
- 13 (6) The following assets are the subject of the sale: _____.
- 14 (7) The auctioneer or liquidator will make available to claimants of the
15 seller a list of the seller's claimants in the following manner: _____
16 _____.
- 17 (8) [If applicable] The sale is to satisfy \$ _____ of an antecedent debt
18 owed by the seller to _____.
- 19 (9) A copy of the schedule of distribution of the net proceeds accompanies
20 this notice."

21 (d) A person who buys at a bulk sale by auction or conducted by a liquidator
22 need not comply with requirements of G.S. 25-6-104 and is not liable for the failure of
23 an auctioneer or liquidator to comply with the requirements of this section.

24 "**§ 25-6-109. Reserved for future codification purposes.**

25 "**§ 25-6-110. Limitation of actions.**

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

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

36 (c) An action under G.S. 25-6-107(k) must be commenced within one year after
37 the alleged violation occurs."

38
39 **PART II. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE**
40 **UNIFORM COMMERCIAL CODE.**

41
42 **SECTION 2. G.S. 25-1-105(2) reads as rewritten:**

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

4 Rights of creditors against sold goods. (G.S. 25-2-402).

5 Applicability of the article on bank deposits and collections. (G.S. 25-4-102).

6 Governing law in the article on Funds Transfers. (G.S. 25-4A-507).

7 Letters of Credit. (G.S. 25-5-116).

8 Bulk ~~transfers~~-sales subject to the article on bulk ~~transfers~~. (~~G.S. 25-6-102~~). sales.
9 (G.S. 25-6-103).

10 Applicability of the article on investment securities. (G.S. 25-8-110).

11 Law governing perfection, the effect of perfection or nonperfection, and the priority
12 of security interests and agricultural liens. (G.S. 25-9-301 through G.S. 25-9-307)."

13 **SECTION 3.** G. S. 25-2-403(4) reads as rewritten:

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

17
18 **PART III. DIRECTION AND EFFECTIVE DATE.**

19 **SECTION 4.** The Revisor of Statutes shall cause to be printed along with
20 this act all relevant portions of the official comments to the Uniform Commercial Code,
21 Revised Article 6 and all explanatory comments of the drafters of this act as the Revisor
22 deems appropriate.

23 **SECTION 5.** This act becomes effective January 1, 2004.