

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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SENATE BILL 230*
Judiciary II Committee Substitute Adopted 3/25/03

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

Sponsors:

Referred to:

February 26, 2003

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.

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

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

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

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

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

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

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

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

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

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

4 a. Commissions and reasonable expenses of the sale;

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

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

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

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

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

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

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

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

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

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

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

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

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

35 **"§ 25-6-103. Applicability of Article.**

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

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

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

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

44 (c) This Article does not apply to:

- 1 (1) A transfer made to secure payment or performance of an obligation;
2 (2) A transfer of collateral to a secured party pursuant to G.S. 25-9-609;
3 (3) A disposition of collateral pursuant to G.S. 25-9-610;
4 (4) Retention of collateral pursuant to G.S. 25-9-620;
5 (5) A sale of an asset encumbered by a security interest or lien if (i) all the
6 proceeds of the sale are applied in partial or total satisfaction of the
7 debt secured by the security interest or lien or (ii) the security interest
8 or lien is enforceable against the asset after it has been sold to the
9 buyer and the net contract price is zero;
10 (6) A general assignment for the benefit of creditors or to a subsequent
11 transfer by the assignee;
12 (7) A sale by an executor, administrator, receiver, trustee in bankruptcy, or
13 any public officer under judicial process;
14 (8) A sale made in the course of judicial or administrative proceedings for
15 the dissolution or reorganization of an organization;
16 (9) A sale to a buyer whose principal place of business is in the United
17 States and who:
18 a. Not earlier than 21 days before the date of the bulk sale, (i)
19 obtains from the seller a verified and dated list of claimants of
20 whom the seller has notice three days before the seller sends or
21 delivers the list to the buyer or (ii) conducts a reasonable
22 inquiry to discover the claimants;
23 b. Assumes in full the debts owed to claimants of whom the buyer
24 has knowledge on the date the buyer receives the list of
25 claimants from the seller or on the date the buyer completes the
26 reasonable inquiry, as the case may be;
27 c. Is not insolvent after the assumption; and
28 d. Gives written notice of the assumption not later than 30 days
29 after the date of the bulk sale by sending or delivering a notice
30 to the claimants identified in sub-subdivision (c)(9)b. of this
31 section;
32 (10) A sale to a buyer whose principal place of business is in the United
33 States and who:
34 a. Assumes in full the debts that were incurred in the seller's
35 business before the date of the bulk sale;
36 b. Is not insolvent after the assumption; and
37 c. Gives written notice of the assumption not later than 30 days
38 after the date of the bulk sale by sending or delivering a notice
39 to each creditor whose debt is assumed;
40 (11) A sale to a new organization that is organized to take over and
41 continue the business of the seller and that has its principal place of
42 business in the United States if:
43 a. The buyer assumes in full the debts that were incurred in the
44 seller's business before the date of the bulk sale;

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

4 c. The buyer gives written notice of the assumption not later than
5 30 days after the date of the bulk sale by sending or delivering a
6 notice to each creditor whose debt is assumed;

7 (12) A sale of assets having:

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

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

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

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

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

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

39 "**§ 25-6-104. Obligations of buyer.**

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

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

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

19 **§ 25-6-105. Notice to claimants.**

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

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

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

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

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

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

(f) A form substantially as follows is sufficient to comply with subsection (b) 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 "buyer".

(3) The seller has disclosed to the buyer that within the past three 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 North Carolina.

(5) The date on or after which more than ten percent (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 ten percent (10%) of the net contract price was or will be paid is _____.

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

(7) 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".

"§ 25-6-106. 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. A buyer who fails to distribute the net contract price in accordance with the buyer's

1 undertakings in the schedule of distribution is liable to a creditor only as provided in
2 G.S. 25-6-107(a).

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

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

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

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

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

26 (e) The notice under subdivision (d)(4) of this section must identify the buyer
27 and the seller, set forth the amended schedule, and be given in accordance with G.S.
28 25-6-105(a) at least 10 days before the buyer distributes any part of the net contract
29 price remaining available.

30 (f) If the seller undertakes in the schedule of distribution to distribute any part of
31 the net contract price, and, after the buyer has given notice in accordance with G.S.
32 25-6-105, some or all of the anticipated net contract price is or becomes unavailable for
33 distribution as a consequence of the buyer's or seller's having complied with an order of
34 court, legal process, statute, or rule of law, the seller and any person in control of the
35 seller are excused from any obligation arising under this Article or under any agreement
36 with the buyer to distribute the net contract price in accordance with the seller's
37 undertakings in the schedule if the seller:

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

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

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

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

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

12 **"§ 25-6-107. Liability for noncompliance.**

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

15 (1) A buyer who fails to comply with the requirements of G.S.
16 25-6-104(5) with respect to a creditor is liable to the creditor for
17 damages in the amount of the claim, reduced by any amount that the
18 creditor would not have realized if the buyer had complied; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

34 **"§ 25-6-108. Bulk sales by auction; bulk sales conducted by liquidator.**

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

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

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

41 (3) The written notice required under G.S. 25-6-105(b) must be
42 accompanied by a copy of the schedule of distribution (G.S.
43 25-6-106(a)) and state at least:

1 may constitute an agreement to make a bulk sale under the laws of the
2 State of North Carolina.

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

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

9 (7) The auctioneer or liquidator will make available to claimants of the
10 seller a list of the seller's claimants in the following manner: _____
11 _____.

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

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

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

19 **"§ 25-6-109. Reserved for future codification purposes.**

20 **"§ 25-6-110. Limitation of actions.**

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

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

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

33
34 **PART II. CONFORMING AMENDMENTS TO OTHER ARTICLES OF THE**
35 **UNIFORM COMMERCIAL CODE.**

36
37 **SECTION 2.** G.S. 25-1-105(2) reads as rewritten:

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

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

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

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

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

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

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

4 Law governing perfection, the effect of perfection or nonperfection, and the priority
5 of security interests and agricultural liens. (G.S. 25-9-301 through G.S.
6 25-9-307)."

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

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

11
12 **PART III. DIRECTION AND EFFECTIVE DATE.**

13
14 **SECTION 4.** The Revisor of Statutes shall cause to be printed along with
15 this act all relevant portions of the official comments to the Uniform Commercial Code,
16 Revised Article 6 and all explanatory comments of the drafters of this act as the Revisor
17 deems appropriate.

18 **SECTION 5.** This act becomes effective January 1, 2004, and applies to
19 bulk sales for which the date of the bulk sales agreement occurs on or after January 1,
20 2004.