

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]

HOUSE BILL NO. 904

92ND GENERAL ASSEMBLY

3503L.01T

2004

AN ACT

To repeal sections 400.1-105, 400.6-101, 400.6-102, 400.6-103, 400.6-104, 400.6-105, 400.6-107, 400.6-108, 400.6-109, 400.6-110, and 400.6-111, RSMo, and to enact in lieu thereof one new section relating to bulk transfers.

Be it enacted by the General Assembly of the state of Missouri, as follows:

Section A. Sections 400.1-105, 400.6-101, 400.6-102, 400.6-103, 400.6-104, 400.6-105, 400.6-107, 400.6-108, 400.6-109, 400.6-110, and 400.6-111, RSMo, are repealed and one new section enacted in lieu thereof, to be known as section 400.1-105, to read as follows:

400.1-105. (1) Except as provided hereafter in this section, when a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of such other state or nation shall govern their rights and duties. Failing such agreement this chapter applies to transactions bearing an appropriate relation to this state.

(2) Where one of the following provisions of this chapter 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. Section 400.2-402.

Applicability of the Article on Leases. Sections 400.2A-105 and 400.2A-106.

Applicability of the Article on Bank Deposits and Collections. Section 400.4-102.

Letter of credit. Section 400.5-116.

[Bulk transfers subject to the Article on Bulk Transfers. Section 400.6-102.]

Applicability of the Article on Investment Securities. Section 400.8-110.

Law governing perfection, the effect of perfection or nonperfection, and the priority of security interests. Sections 400.9-301 through 400.9-307.

[400.6-101. This article shall be known and may be cited as "Uniform Commercial Code--Bulk Transfers".]

EXPLANATION — Matter enclosed in bold faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law. Matter in boldface type in the above law is proposed language.

2 [400.6-102. (1) A "bulk transfer" is any transfer in bulk and not in the
3 ordinary course of the transferor's business of a major part of the materials, supplies,
4 merchandise or other inventory (section 400.9-109) of an enterprise subject to this
5 article.

6 (2) A transfer of a substantial part of the equipment (section 400.9-109) of
7 such an enterprise is a bulk transfer if it is made in connection with a bulk transfer
8 of inventory, but not otherwise.

9 (3) The enterprises subject to this article are all those whose principal
10 business is the sale of merchandise from stock, including those who manufacture
11 what they sell.

12 (4) Except as limited by the following section all bulk transfers of goods
located within this state are subject to this article.]

[400.6-103. The following transfers are not subject to this article:

2 (1) Those made to give security for the performance of an obligation;

3 (2) General assignments for the benefit of all the creditors of the transferor,
4 and subsequent transfers by the assignee thereunder;

5 (3) Transfers in settlement or realization of a lien or other security interest;

6 (4) Sales by executors, administrators, receivers, trustees in bankruptcy, or
7 any public officer under judicial process;

8 (5) Sales made in the course of judicial or administrative proceedings for the
9 dissolution or reorganization of a corporation and of which notice is sent to the
10 creditors of the corporation pursuant to order of the court or administrative agency;

11 (6) Transfers to a person maintaining a known place of business in this state
12 who becomes bound to pay the debts of a transferor in full and gives public notice
13 of that fact, and who is solvent after becoming so bound;

14 (7) A transfer to a new business enterprise organized to take over and
15 continue the business, if public notice of the transaction is given and the new
16 enterprise assumes the debts of the transferor and he receives nothing from the
17 transaction except an interest in the new enterprise junior to the claims of creditors;

18 (8) Transfers of property which is exempt from execution.

19 Public notice under subsection (6) or subsection (7) may be given by publishing once
20 a week for two consecutive weeks in a newspaper of general circulation where the
21 transferor had its principal place of business in this state an advertisement including
22 the names and addresses of the transferor and transferee and the effective date of the
23 transfer.]

[400.6-104. (1) Except as provided with respect to auction sales (section
2 400.6-108), a bulk transfer subject to this article is ineffective against any creditor of
3 the transferor unless:

4 (a) The transferee requires the transferor to furnish a list of his existing
5 creditors prepared as stated in this section; and

6 (b) The parties prepare a schedule of the property transferred sufficient to
7 identify it; and

8 (c) The transferee preserves the list and schedule for six months next
9 following the transfer and permits inspection of either or both and copying therefrom

10 at all reasonable hours by any creditor of the transferor, or files the list and schedule
11 in the office of the recorder of deeds of the county in which the transferor resides.

12 (2) The list of creditors must be signed and sworn to or affirmed by the
13 transferor or his agent. It must contain the names and business addresses of all
14 creditors of the transferor, with the amounts when known, and also the names of all
15 persons who are known to the transferor to assert claims against him even though
16 such claims are disputed. If the transferor is the obligor of an outstanding issue of
17 bonds, debentures or the like as to which there is an indenture trustee, the list of
18 creditors need include only the name and address of the indenture trustee and the
19 aggregate outstanding principal amount of the issue.

20 (3) Responsibility for the completeness and accuracy of the list of creditors
21 rests on the transferor, and the transfer is not rendered ineffective by errors or
22 omissions therein unless the transferee is shown to have had knowledge.]

2 [400.6-105. In addition to the requirements of section 400.6-104, any bulk
3 transfer subject to this article except one made by auction sale (section 400.6-108)
4 is ineffective against any creditor of the transferor unless at least ten days before he
5 takes possession of the goods or pays for them, whichever happens first, the
6 transferee gives notice of the transfer in the manner and to the persons hereafter
provided (section 400.6-107).]

2 [400.6-107. (1) The notice to creditors (section 400.6-105) shall state:

2 (a) that a bulk transfer is about to be made; and

3 (b) the names and business addresses of the transferor and transferee, and all
4 other business names and addresses used by the transferor within three years last past
5 so far as known to the transferee; and

6 (c) whether or not all the debts of the transferor are to be paid in full as they
7 fall due as a result of the transaction, and if so, the address to which creditors should
8 send their bills.

9 (2) If the debts of the transferor are not to be paid in full as they fall due or
10 if the transferee is in doubt on that point then the notice shall state further:

11 (a) the location and general description of the property to be transferred and
12 the estimated total of the transferor's debts;

13 (b) the address where the schedule of property and list of creditors (section
14 400.6-104) may be inspected;

15 (c) whether the transfer is to pay existing debts and if so the amount of such
16 debts and to whom owing;

17 (d) whether the transfer is for new consideration and if so the amount of such
18 consideration and the time and place of payment.

19 (3) The notice in any case shall be delivered personally or sent by registered
20 or certified mail to all the persons shown on the list of creditors furnished by the
21 transferor (section 400.6-104) and to all other persons who are known to the
22 transferee to hold or assert claims against the transferor.]

2 [400.6-108. (1) A bulk transfer is subject to this article even though it is by
3 sale at auction, but only in the manner and with the results stated in this section.

3 (2) The transferor shall furnish a list of his creditors and assist in the

4 preparation of a schedule of the property to be sold, both prepared as before stated
5 (section 400.6-104).

6 (3) The person or persons other than the transferor who direct, control or are
7 responsible for the auction are collectively called the "auctioneer". The auctioneer
8 shall:

9 (a) receive and retain the list of creditors and prepare and retain the schedule
10 of property for the period stated in this article (section 400.6-104);

11 (b) give notice of the auction personally or by registered or certified mail at
12 least ten days before it occurs to all persons shown on the list of creditors and to all
13 other persons who are known to him to hold or assert claims against the transferor.

14 (4) Failure of the auctioneer to perform any of these duties does not affect the
15 validity of the sale or the title of the purchasers, but if the auctioneer knows that the
16 auction constitutes a bulk transfer such failure renders the auctioneer liable to the
17 creditors of the transferor as a class for the sums owing to them from the transferor
18 up to but not exceeding the net proceeds of the auction. If the auctioneer consists of
19 several persons their liability is joint and several.]

2 [400.6-109. The creditors of the transferor mentioned in this article are those
3 holding claims based on transactions or events occurring before the bulk transfer, but
4 creditors who become such after notice to creditors is given (sections 400.6-105 and
400.6-107) are not entitled to notice.]

2 [400.6-110. When the title of a transferee to property is subject to a defect
by reason of his noncompliance with the requirements of this article, then:

3 (1) a purchaser of any of such property from such transferee who pays no
4 value or who takes with notice of such noncompliance takes subject to such defect,
5 but

6 (2) a purchaser for value in good faith and without such notice takes free of
7 such defect.]

2 [400.6-111. No action under this article shall be brought nor levy made more
3 than six months after the date on which the transferee took possession of the goods
4 unless the transfer has been concealed. If the transfer has been concealed, actions
may be brought or levies made within six months after its discovery.]