

REPEAL BULK TRANSFERS

House Bill 5644 with committee amendment First Analysis (3-26-98)

Sponsor: Rep. Laura Baird
Committee: Commerce

THE APPARENT PROBLEM:

According to the Michigan Law Revision Commission, bulk sales laws were originally drafted in response to a fraud perceived to be common around the turn of the century: a merchant would acquire his stock in trade on credit, then sell his entire inventory ("in bulk") and abscond with the proceeds, leaving creditors unpaid. When the Uniform Commercial Code was proposed in the early 1960s (following over two decades of research and development by the National Conference of Commissioners on Uniform State Laws), Article 6 of the code was drafted as a response to this "bulk sale risk." It imposes several duties on the buyer in bulk, including the duty to notify all creditors of the impending bulk transfer. It also requires compliance even when there is no reason to believe that the seller is conducting a fraudulent transfer. The article imposes strict liability for noncompliance. Failure to comply with the provisions renders the transfer ineffective, even when the buyer has complied in good faith.

There is no evidence that in today's economy fraudulent bulk sales are frequent enough, or engender credit losses significant enough, to require regulations of all bulk sales, including the vast majority that are conducted in good faith.

Consequently, some, including the National Conference of Commissioners on Uniform State Laws, argue that those states that have enacted Article 6, such as Michigan, should repeal it. In the alternative, the commissioners have argued that states update Article 6. As of August 1996, 4 states had revised Article 6 (while one revision was pending) and 35 states had repealed the article (while three repeals were pending).

THE CONTENT OF THE BILL:

House Bill 5644 would repeal Article 6 and Section 9111 of the Uniform Commercial Code, which deal with bulk transfers of goods, although the bill would

stipulate that rights and obligations that arose under Article 6 before its repeal would remain valid and enforceable.

MCL 440.1105 et al.

BACKGROUND INFORMATION:

This bill is one of several recommended to the Michigan legislature by the Michigan Law Revision Commission, in order to update and to recodify bodies of law, including for example, the Uniform Commercial Code.

The National Conference of Commissioners on Uniform State Laws was created in 1892. The conference identifies outmoded statutes, substantiates its recommendations to eliminate those statutes with scholarly research, and then drafts uniform up-dated statutes. The updated "tentative" statutes are drafted over several years, allowing for ample review, argument, and revision. Revisions of the drafts are facilitated through a network of linkages constituted by scholars and practitioners who serve as members of the law sections of the federal and local bar associations, as well as those who serve as volunteer commissioners in state-level review commissions. These contexts provide an opportunity for stakeholders to study unacceptable statutes in light of emerging legal doctrines. The conference proposes the new statutes, first to the law sections, and then to the entirety of the American Bar Association for review by scholars, teachers of law, and legal practitioners. Once endorsed by the American Bar Association, the uniform statutes are disseminated to a network of state-level Uniform Law Commissions (for example the Michigan Law Revision Commission), whose members review the proposals once again, and then in some instances recommend their introduction as bills in the state legislatures.

According to the conference, since its organization, the conference has drafted more than 200 uniform laws on many subjects and in various fields of law, setting patterns for uniformity across the nation. Uniform acts include the Uniform Probate Code, the Uniform Child Custody Jurisdiction Act, the Uniform Partnership Act, the Uniform Anatomical Gift Act and the Uniform Limited Partnership Act. Beginning in 1940, the conference made a significant decision to attack major commercial problems with comprehensive legal solutions--a decision that set in motion the project to produce the Uniform Commercial Code. The code took ten years to complete and another 14 years before it was enacted across the country. It remains the signature product of the conference. Today the conference is recognized primarily for its work in commercial law, family law, probate and estates, law of business organizations, health law, and conflicts in law. It rarely drafts law that is regulatory in character.

In Michigan, the Law Revision Commission has issued more than 30 annual reports, although the commission was created by statute in 1986 (MCL 4.1401). Each year the commission issues a report to describe the topics of its study reports, and to recommend statutes. Some statutes are enacted into law. Under its enabling statute, section 401 of Public Act 268 of 1986, the commission's membership is: four legislators to be bicameral and bipartisan, the director of the Legislative Service Bureau (or designee), and four members appointed by the Legislative Council. The Legislative Council designates the chair. The Commission's reports are available at its Web Site, <http://www.dcl.edu>.

FISCAL IMPLICATIONS:

Fiscal information is not available.

ARGUMENTS:

For:

The National Conference of Commissioners on Uniform State Laws points out that changes in the business and legal contexts in which sales are conducted have made regulation of bulk sales unnecessary. Creditors are better able to make informed decisions about whether to extend credit. Changes in technology have enabled credit reporting services to provide fast, accurate, and more complete credit histories at relatively small cost. Creditors also have greater opportunity to collect their debts. The adoption of state "long-arm" statutes and rules has

greatly improved the possibility of obtaining personal jurisdiction over a debtor who flees to another state. And creditors no longer face the choice of extending unsecured credit or no credit at all. Retaining an interest in inventory to secure its price has become relatively simply and inexpensive under Article 9 of the Uniform Commercial Code, adopted in 49 states. If a bulk sale is fraudulent and the buyer is party to the fraud, creditors have remedies under the Uniform Fraudulent Transfer Act.

For:

Farmers often pledge their crops for collateral. Currently it is customary that in order to perfect a crop mortgage, the mortgagee (together with the mortgagor) must describe, in real estate detail, each field of crop. This bill will make that practice optional for lenders. These crop mortgage descriptions have long been optional in other states where legislatures already have adopted these proposed modifications to the Uniform Commercial Code.

POSITIONS:

The National Conference of Commissioners on Uniform State Laws proposed the enactment of the bill.

The Michigan Bankers Association supports the bill. (3-25-98)

Farm Credit Services supports the bill. (3-25-98)

Analyst: J. Hunault

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.