

# VIRGINIA ACTS OF ASSEMBLY -- 1997 SESSION

## CHAPTER 121

*An Act to amend and reenact §§ 8.1-105 and 8.2-403 of the Code of Virginia; to amend the Code of Virginia by adding a title numbered 8.6A, consisting of sections numbered 8.6A-101 through 8.6A-110; and to repeal Title 8.6 (§§ 8.6-101 through 8.6-111) of the Code of Virginia, relating to the Uniform Commercial Code; bulk sales.*

[H 1567]

Approved March 6, 1997

**Be it enacted by the General Assembly of Virginia:**

**1. That §§ 8.1-105 and 8.2-403 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a title numbered 8.6A, consisting of sections numbered 8.6A-101 through 8.6A-110, as follows:**

§ 8.1-105. Territorial application of the act; parties' power to choose applicable law.

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

(2) Where one of the following provisions of this act 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. § 8.2-402.

Applicability of the title on leases. §§ 8.2A-105 and 8.2A-106.

Applicability of the title on bank deposits and collections. § 8.4-102.

Applicability of the title on funds transfers. § 8.4A-507.

Bulk transfers subject to the title on bulk transfers ~~§ 8.6-102~~ sales. § 8.6A-103.

Applicability of the title on investment securities. § 8.8A-110.

Perfection provisions of the title on secured transactions. § 8.9-103.

§ 8.2-403. Power to transfer; good faith purchase of goods; "entrusting."

(1) A purchaser of goods acquires all title which his transferor had or had power to transfer except that a purchaser of a limited interest acquires rights only to the extent of the interest purchased. A person with voidable title has power to transfer a good title to a good faith purchaser for value. When goods have been delivered under a transaction of purchase the purchaser has such power even though

(a) the transferor was deceived as to the identity of the purchaser, or

(b) the delivery was in exchange for a check which is later dishonored, or

(c) it was agreed that the transaction was to be a "cash sale," or

(d) the delivery was procured through fraud punishable as larcenous under the criminal law.

(2) Any entrusting of possession of goods to a merchant who deals in goods of that kind gives him power to transfer all rights of the entruster to a buyer in ordinary course of business.

(3) "Entrusting" includes any delivery and any acquiescence in retention of possession regardless of any condition expressed between the parties to the delivery or acquiescence and regardless of whether the procurement of the entrusting or the possessor's disposition of the goods have been such as to be larcenous under the criminal law.

(4) The rights of other purchasers of goods and of lien creditors are governed by the titles on secured transactions (Title 8.9), bulk transfers (~~Title 8.6~~) sales (Title 8.6A) and documents of title (Title 8.7).

*Title 8.6A.*

*Commercial Code - Bulk Sales.*

*§ 8.6A-101. Short title.*

*This title shall be known and may be cited as Uniform Commercial Code - Bulk Sales.*

*§ 8.6A-102. Definitions and index of definitions.*

*(1) In this title, unless the context otherwise requires:*

*(a) "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:*

*(i) Fixtures (§ 8.9-313(1)(a)) other than readily removable factory and office machines;*

*(ii) The lessee's interest in a lease of real property; or*

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

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

(c) "Bulk sale" means:

(i) 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

(ii) 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.

(d) "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 this state permit the holder of the claim to recover them in an action against the obligor.

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

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

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

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

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

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

(iii) A claim for taxes owing to a governmental unit.

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

(g) "Date of the bulk sale" means:

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

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

(i) More than ten percent of the net contract price is paid to or for the benefit of the seller; or

(ii) More than ten percent of the assets, as measured by value, are transferred to the buyer.

(iii) For purposes of this subsection:

(A) Delivery of a negotiable instrument (§ 8.3A-104(a)) to or for the benefit of the seller in exchange for assets constitutes payment of the contract price pro tanto;

(B) To the extent that the contract price is deposited in an escrow account, 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

(C) 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.

(h) "Date of the bulk sale agreement" means:

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

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

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

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

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

(i) The amount of any proceeds of the sale of an asset to the extent that 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 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.

(l) "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:

(i) Commissions and reasonable expenses of the sale;

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

(iii) *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.*

(m) *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.*

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

(o) *"Value" means fair market value.*

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

(2) *The following definitions in other titles apply to this title:*

(a) *"Buyer" - § 8.2-103(1)(a);*

(b) *"Equipment" - § 8.9-109(2);*

(c) *"Inventory" - § 8.9-109(4);*

(d) *"Sale" - § 8.2-106(1);*

(e) *"Seller" - § 8.2-103(1)(d).*

(3) *In addition, Title 8.1 contains general definitions and principles of construction and interpretation applicable throughout this title.*

*§ 8.6A-103. Applicability of title.*

(1) *Except as otherwise provided in subsection (3), this title applies to a bulk sale if:*

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

(b) *On the date of the bulk sale agreement the seller is located in this state 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 this state.*

(2) *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.*

(3) *This title does not apply to:*

(a) *A transfer made to secure payment or performance of an obligation;*

(b) *A transfer of collateral to a secured party pursuant to § 8.9-503;*

(c) *A sale of collateral pursuant to § 8.9-504;*

(d) *Retention of collateral pursuant to § 8.9-505;*

(e) *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;*

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

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

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

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

(i) *Not earlier than twenty-one days before the date of the bulk sale, (A) obtains from the seller a verified and dated list of claimants of whom the seller has notice three days before the seller sends or delivers the list to the buyer or (B) conducts a reasonable inquiry to discover the claimants;*

(ii) *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;*

(iii) *Is not insolvent after the assumption; and*

(iv) *Gives written notice of the assumption not later than thirty days after the date of the bulk sale by sending or delivering a notice to the claimants identified in subparagraph (ii) or by filing a notice in the office of the clerk of the circuit court of the county or city where the seller's business is located;*

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

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

(ii) *Is not insolvent after the assumption; and*

(iii) *Gives written notice of the assumption not later than thirty 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 clerk of the circuit court of the county or city where the seller's business is located;*

(k) *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:*

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

(ii) 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

(iii) The buyer gives written notice of the assumption not later than thirty 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 clerk of the circuit court of the county or city where the seller's business is located;

(l) A sale of assets having:

(i) 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

(ii) A value of more than \$25 million on the date of the bulk-sale agreement; or

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

(4) The notice under subsection (3)(i)(iv) 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 that the buyer receives the list of claimants from the seller or completes a reasonable inquiry to discover the claimants.

(5) The notice under subsections (3)(j)(iii) and (3)(k)(iii) 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.

(6) For purposes of subsection (3)(l), 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.

#### **§ 8.6A-104. Obligations of buyer.**

(1) In a bulk sale as defined in § 8.6A-102(1)(c)(ii) the buyer shall:

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

(b) Unless excused under subsection (2), obtain from the seller a verified and dated list of claimants of whom the seller has notice three 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;

(c) Obtain from the seller or prepare a schedule of distribution (§ 8.6A-106(1));

(d) Give notice of the bulk sale in accordance with § 8.6A-105;

(e) Unless excused under § 8.6A-106(4), distribute the net contract price in accordance with the undertakings of the buyer in the schedule of distribution; and

(f) Unless excused under subsection (2), make available the list of claimants (subsection (1)(b)) by:

(i) 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 six months after the date of the bulk sale;

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

(iii) Filing a copy of the list in the office of the clerk of the circuit court of the county or city where the seller's business is located no later than the time for giving a notice of the bulk sale (§ 8.6A-105(5)). A list filed in accordance with this subparagraph must state the individual, partnership, or corporate name and a mailing address of the seller.

(2) A buyer who gives notice in accordance with § 8.6A-105(2) is excused from complying with the requirements of subsections (1)(b) and (1)(f).

#### **§ 8.6A-105. Notice to claimants.**

(1) Except as otherwise provided in subsection (2), in order to comply with § 8.6A-104(1)(d) the buyer shall send or deliver a written notice of the bulk sale to each claimant on the list of claimants (§ 8.6A-104(1)(b)) and to any other claimant of whom the buyer has knowledge at the time that the notice of the bulk sale is sent or delivered.

(2) A buyer may comply with § 8.6A-104(1)(d) by filing a written notice of the bulk sale in the office of the clerk of the circuit court of the county or city where the seller's business is located if:

(a) 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

(b) *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.*

(3) *The written notice of the bulk sale must be accompanied by a copy of the schedule of distribution (§ 8.6A-106(1)) and state at least:*

(a) *That the seller and buyer have entered into an agreement for a sale that may constitute a bulk sale under the laws of the State of .....*;

(b) *The date of the agreement;*

(c) *The date on or after which more than ten percent of the assets were or will be transferred;*

(d) *The date on or after which more than ten percent of the net contract price was 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 § 8.6A-104(1)(a);*

(g) *The name of the buyer and an address of the buyer 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 buyer will make available the list of claimants (§ 8.6A-104(1)(f)), 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.*

(4) *For purposes of subsections (3)(e) and (3)(g), the name of a person is the person's individual, partnership, or corporate name.*

(5) *The buyer shall give notice of the bulk sale not less than forty-five days before the date of the bulk sale and, if the buyer gives notice in accordance with subsection (1), not more than thirty days after obtaining the list of claimants.*

(6) *A written notice substantially complying with the requirements of subsection (3) is effective even though it contains minor errors that are not seriously misleading.*

(7) *A form substantially as follows is sufficient to comply with subsection (3):*

#### 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 .....

(5) The date on or after which more than ten percent 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 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.

#### § 8.6A-106. Schedule of distribution.

(1) *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.*

(2) *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.*

(3) *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 § 8.6A-107(1).*

(4) *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 § 8.6A-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 buyer is excused from any obligation arising under this title 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:*

(a) *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;*

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

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

(d) *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.*

(5) *The notice under subsection (4)(d) 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 subsection (1) or (2) of § 8.6A-105, whichever is applicable, at least fourteen days before the buyer distributes any part of the net contract price remaining available.*

(6) *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 § 8.6A-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 title 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:*

(a) *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;*

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

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

(d) *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.*

(7) *The notice under subsection (6)(d) 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 subsection (1) or (2) of § 8.6A-105, whichever is applicable, at least fourteen days before the seller distributes any part of the net contract price remaining available.*

*§ 8.6A-107. Liability for noncompliance.*

(1) *Except as provided in subsection (3), and subject to the limitation in subsection (4):*

(a) *A buyer who fails to comply with the requirements of § 8.6A-104(1)(e) 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*

(b) *A buyer who fails to comply with the requirements of any other subsection of § 8.6A-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.*

(2) *In an action under subsection (1), 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.*

(3) *A buyer who:*

(a) *Made a good faith and commercially reasonable effort to comply with the requirements of § 8.6A-104(1) or to exclude the sale from the application of this title under § 8.6A-103(3); or*

(b) *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 title does not apply to the particular sale is not liable to creditors for failure to comply with the requirements of § 8.6A-104. The buyer has the burden of establishing the good faith and commercial reasonableness of the effort or belief.*

(4) In a single bulk sale the cumulative liability of the buyer for failure to comply with the requirements of § 8.6A-104(1) may not exceed an amount equal to:

(a) 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

(b) 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.

(5) For the purposes of subsection (4)(b), 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.

(6) A payment made by the buyer to a person to whom the buyer is, or believes he is, liable under subsection (1) reduces pro tanto the buyer's cumulative liability under subsection (4).

(7) No action may be brought under subsection (1)(b) by or on behalf of a claimant whose claim is unliquidated or contingent.

(8) A buyer's failure to comply with the requirements of § 8.6A-104(1) 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 claim, or (iv) create liability other than as provided in this title.

(9) Payment of the buyer's liability under subsection (1) discharges pro tanto the seller's debt to the creditor.

(10) 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 (1).

(11) 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.

§ 8.6A-108. Bulk sales by auction; bulk sales conducted by liquidator.

(1) Sections 8.6A-104, 8.6A-105, 8.6A-106, and 8.6A-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:

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

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

(c) The written notice required under § 8.6A-105(3) must be accompanied by a copy of the schedule of distribution (§ 8.6A-106(1)) and state at least:

(i) 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 . . . . .;

(ii) The date of the agreement;

(iii) 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;

(iv) The date on or after which more than ten percent of the net proceeds of the sale were or will be paid, if the date is not stated in the schedule of distribution;

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

(vi) Any other business name and address listed by the seller pursuant to § 8.6A-104(1)(a);

(vii) The name of the auctioneer or liquidator and an address of the auctioneer or liquidator from which information concerning the sale can be obtained;

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

(ix) The manner in which the auctioneer or liquidator will make available the list of claimants (§ 8.6A-104(1)(f)), if applicable; and

(x) 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

(d) 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.

(2) A payment made by the auctioneer or liquidator to a person to whom the auctioneer or liquidator is, or believes he is, liable under this section reduces pro tanto the auctioneer's or liquidator's cumulative liability under subsection (1)(d).

(3) A form substantially as follows is sufficient to comply with subsection (1)(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 "auctioneer" or "liquidator."
- (3) The seller has disclosed to the auctioneer or liquidator 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 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 State of .....
- (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 ten percent 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.

(4) A person who buys at a bulk sale by auction or conducted by a liquidator need not comply with the requirements of § 8.6A-104(1) and is not liable for the failure of an auctioneer or liquidator to comply with the requirements of this section.

§ 8.6A-109. What constitutes filing; duties of filing officer; information from filing officer.

(1) 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 title.

(2) The filing officer shall:

- (a) Mark each notice or list with a file number and with the date and hour of filing;
- (b) Hold the notice or list or a copy for public inspection;
- (c) Index the notice or list according to each name given for the seller and for the buyer; and
- (d) Note in the index the file number and the addresses of the seller and buyer given in the notice or list.

(3) 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.

(4) The fee for filing and indexing and for stamping a copy furnished by the person filing to show the date and place of filing is ten dollars.

(5) 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.

(6) The filing officer shall keep each notice or list for two years after it is filed.

§ 8.6A-110. Limitation of actions.

(1) Except as provided in subsection (2), an action under this title against a buyer, auctioneer, or liquidator must be commenced within one year after the date of the bulk sale.

(2) If the buyer, auctioneer, or liquidator conceals the fact that the sale has occurred, the limitation



*is tolled and an action under this title 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 two years after the date of the bulk sale. Complete noncompliance with the requirements of this title does not of itself constitute concealment.*

*(3) An action under § 8.6A-107(11) must be commenced within one year after the alleged violation occurs.*

**2. That Title 8.6 (§§ 8.6-101 through 8.6-111) of the Code of Virginia is repealed.**