

**GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003**

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**SENATE BILL 230\***

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

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Sponsors: Senators Hartsell; and Clodfelter.

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Referred to: Judiciary II.

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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          (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





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  
9 and 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 comply  
39 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 of 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 conducted by a liquidator  
17           need not comply with requirements of G.S. 25-6-104 and is not liable for the failure of  
18           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. 25-9-307)."

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

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

10  
11 **PART III. DIRECTION AND EFFECTIVE DATE.**

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

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