

By Senator Bronson

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A bill to be entitled  
An act relating to bulk sales; providing  
definitions; providing applicability;  
prescribing duties of buyers and sellers in  
bulk-sales transactions; requiring notice to be  
given to certain creditors of sellers;  
providing limits for filing actions against  
buyers in bulk sales; providing an effective  
date.

Be It Enacted by the Legislature of the State of Florida:

Section 1. Bulk sales.--

(1) As used in this section, the term:

(a) "Assets" means the inventory that is the subject  
of a bulk sale and any tangible personal property 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:

1. Fixtures other than readily removable factory and  
office machines;

2. The lessee's interest in a lease of real property;

or

3. Property to the extent that it is generally exempt  
from creditor process under nonbankruptcy law.

(b) "Bulk sale" means 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

1 not continue to operate the same or a similar kind of business  
2 after the sale.

3 (c) "Claim" means a right to payment from the seller,  
4 whether or not the right is reduced to judgment, liquidated,  
5 fixed, matured, disputed, secured, legal, or equitable. The  
6 term includes costs of collection and attorney's fees only to  
7 the extent that the laws of this state permit the holder of  
8 the claim to recover them in an action against the obligor.

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

11 1. An unsecured and unmatured claim for employment  
12 compensation and benefits, including commissions and vacation,  
13 severance, and sick-leave pay.

14 2. A claim for injury to an individual or to property,  
15 or for breach of warranty, unless:

16 a. A right of action for the claim has accrued;  
17 b. The claim has been asserted against the seller; and  
18 c. The seller knows the identity of the person  
19 asserting the claim and the basis upon which the person has  
20 asserted it.

21 3. A claim for taxes owing to a governmental unit.

22 (e) "Creditor" means a claimant or other person  
23 holding a claim.

24 (f) "Date of the bulk sale" means the later of the  
25 date on which:

26 1. More than 10 percent of the net contract price is  
27 paid to or for the benefit of the seller; or

28 2. More than 10 percent of the assets, as measured by  
29 value, are transferred to the buyer.

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

20 (g) "Date of the bulk-sale agreement" means the date  
21 on which a bulk-sale agreement becomes enforceable between the  
22 buyer and the seller.

23 (h) "Debt" means liability on a claim.

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

26 1. The amount of any proceeds of the sale of an asset,  
27 to the extent the proceeds are applied in partial or total  
28 satisfaction of a debt secured by the asset; and

29 2. The amount of any debt to the extent it is secured  
30 by a security interest or lien that is enforceable against the  
31 asset before and after it has been sold to a buyer. If a debt

1 is secured by an asset and other property of the seller, the  
2 amount of the debt secured by a security interest or lien that  
3 is enforceable against the asset is determined by multiplying  
4 the debt by a fraction, the numerator of which is the value of  
5 the new consideration for the asset on the date of the bulk  
6 sale and the denominator of which is the value of all property  
7 securing the debt on the date of the bulk sale.

8 (j) "In the ordinary course of the seller's business,"  
9 with reference to a sale, means that the sale comports with  
10 usual or customary practices in the kind of business in which  
11 the seller is engaged or with the seller's own usual or  
12 customary practices.

13 (k) "United States" includes its territories and  
14 possessions and the Commonwealth of Puerto Rico.

15 (l) "Value" means fair market value.

16 (m) "Verified" means signed and sworn to or affirmed.

17 (2)(a) Except as otherwise provided in paragraph (b),  
18 this section applies to a bulk sale if:

19 1. The seller's principal business is the sale of  
20 inventory from stock; and

21 2. On the date of the bulk-sale agreement the seller  
22 is located in this state or, if the seller is located in a  
23 jurisdiction that is not a part of the United States, the  
24 seller's major executive office in the United States is in  
25 this state.

26 (b) A seller is deemed to be located at his or her  
27 place of business. If a seller has more than one place of  
28 business, the seller is deemed located at the seller's  
29 executive office.

30 (c) This section does not apply to:

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1           1. A transfer made to secure payment or performance of  
2 an obligation.

3           2. A transfer of property that is exempt from  
4 execution.

5           3. A sale of an asset encumbered by a security  
6 interest or lien if all the proceeds of the sale are applied  
7 in partial or total satisfaction of the debt secured by the  
8 security interest or lien or if the security interest or lien  
9 is enforceable against the asset after it has been sold to the  
10 buyer and the net contract price is zero.

11           4. A general assignment for the benefit of creditors  
12 or to a subsequent transfer by the assignee.

13           5. A sale by an executor, an administrator, a  
14 receiver, a trustee in bankruptcy, or any public officer under  
15 judicial process.

16           6. A sale made in the course of judicial or  
17 administrative proceedings for the dissolution or  
18 reorganization or an organization.

19           7. A sale to a buyer whose principal place of business  
20 is in the United States and who:

21           a. Not earlier than 21 days before the date of the  
22 bulk sale obtains from the seller a verified and dated list of  
23 claimants of whom the seller had notice 3 days before the day  
24 the seller sent or delivered the list to the buyer or conducts  
25 a reasonable inquiry to discover the claimants;

26           b. Assumes in full the debts owed to claimants of whom  
27 the buyer has knowledge on the date the buyer receives the  
28 list of claimants from the seller or on the date the buyer  
29 completes the reasonable inquiry, as the case may be;

30           c. Is not insolvent after the assumption; and  
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1           d. Gives written notice of the assumption not later  
2 than 30 days after the date of the bulk sale by sending or  
3 delivering a notice to the claimants identified in  
4 sub-subparagraph b.

5           8. A sale to a new organization that is organized to  
6 take over and continue the business of the seller and that has  
7 its principal place of business in the United States if:

8           a. The buyer assumes in full the debts that were  
9 incurred in the seller's business before the date of the bulk  
10 sale;

11           b. The seller receives nothing from the sale except an  
12 interest in the new organization which is subordinate to the  
13 claims against the organization arising from the assumption;  
14 and

15           c. The buyer gives written notice of the assumption  
16 not later than 30 days after the date of the bulk sale by  
17 sending or delivering a notice to each creditor whose debt is  
18 assumed.

19           9. A sale of assets having:

20           a. A value, net of liens and security interests, of  
21 less than \$10,000. If a debt is secured by assets and other  
22 property of the seller, the net value of the assets is  
23 determined by subtracting from their value an amount equal to  
24 the product of the debt multiplied by a fraction, the  
25 numerator of which is the value of the assets on the date of  
26 the bulk sale and the denominator of which is the value of all  
27 property securing the debt on the date of the bulk sale; or

28           b. A value of more than \$25 million on the date of the  
29 bulk-sale agreement.

30           10. A sale required by, and made pursuant to, statute.

31           (3)(a) In any bulk sale, the buyer shall:

- 1           1. Obtain from the seller a list of all business names  
2 and addresses used by the seller within 3 years before the  
3 date the list is sent or delivered to the buyer;
- 4           2. Unless excused under paragraph (b), obtain from the  
5 seller a verified and dated list of claimants of whom the  
6 seller had notice three days before sending or delivering the  
7 list to the buyer and including, to the extent known by the  
8 seller, the address of and the amount claimed by each  
9 claimant;
- 10           3. Give notice of the bulk sale in accordance with  
11 paragraph (4)(a);
- 12           4. Unless excused under paragraph (b), make available  
13 the list of claimants by:
- 14           a. Promptly sending or delivering a copy of the list  
15 without charge to any claimant whose written request is  
16 received by the buyer no later than 6 months after the date of  
17 the bulk sale; and
- 18           b. Permitting any claimant to inspect and copy the  
19 list at any reasonable hour upon request received by the buyer  
20 no later than 6 months after the date of the bulk sale; and
- 21           5. Assure that the consideration payable to the seller  
22 in a transaction under this section is applied so far as  
23 necessary to pay those debts of the seller which are indicated  
24 on the list of claimants.
- 25           (b) A buyer who gives notice in accordance with  
26 paragraph (4)(b) is excused from complying with the  
27 requirements of sub-subparagraphs (a)2. and 4.
- 28           (4)(a) Except as otherwise provided in paragraph (b),  
29 the buyer shall send or deliver a written notice of the bulk  
30 sale to each claimant on the list of claimants and to any  
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1 other claimant of whom the buyer has knowledge at the time the  
2 notice of the bulk sale is sent or delivered.

3 (b) The written notice of the bulk sale must state at  
4 least:

5 1. That the seller and buyer have entered into an  
6 agreement for a sale that may constitute a bulk sale under the  
7 laws of this state;

8 2. The date of the agreement;

9 3. The date on or after which more than 10 percent of  
10 the assets were or will be transferred;

11 4. The date on or after which more than 10 percent of  
12 the net contract price was or will be paid;

13 5. The name and mailing address of the seller;

14 6. Any other business name and address listed by the  
15 seller;

16 7. The name of the buyer and an address of the buyer  
17 from which information concerning the sale can be obtained;

18 8. A statement indicating the type of assets or  
19 describing the assets item by item;

20 9. The manner in which the buyer will make available  
21 the list of claimants, if applicable; and

22 10. If the sale is in total or partial satisfaction of  
23 an antecedent debt owed by the seller, the amount of the debt  
24 to be satisfied and the name of the person to whom it is owed.

25 (c) For purposes of subparagraphs (b)5. and 6., the  
26 name of a person is the person's individual, partnership, or  
27 corporate name.

28 (d) The buyer shall give notice of the bulk sale not  
29 less than 15 days before the date of the bulk sale.

30 (5)(a) Except as provided in paragraph (c), and  
31 subject to the limitation in paragraph (d):



1           1. A buyer who fails to comply with the notice  
2 requirements of paragraph (3)(a) with respect to a creditor is  
3 liable to the creditor for damages in the amount of the claim,  
4 reduced by any amount that the creditor would not have  
5 realized if the buyer had complied; and

6           2. A buyer who fails to comply with any other  
7 requirement of paragraph (3)(a) with respect to a claimant is  
8 liable to the claimant for damages in the amount of the claim,  
9 reduced by any amount that the claimant would not have  
10 realized if the buyer had complied.

11           (b) In an action under subparagraph (a)1., the  
12 creditor has the burden of establishing the validity and  
13 amount of the claim, and the buyer has the burden of  
14 establishing the amount that the creditor would not have  
15 realized if the buyer had complied.

16           (c) A buyer who:

17           1. Made a good-faith and commercially reasonable  
18 effort to comply with the requirements of paragraph (3)(a) or  
19 to exclude the sale from the application of this section under  
20 paragraph (2)(c); or

21           2. On or after the date of the bulk-sale agreement,  
22 but before the date of the bulk sale, held a good-faith and  
23 commercially reasonable belief that this section does not  
24 apply to the particular sale

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26 is not liable to creditors for failure to comply with this  
27 section. The buyer has the burden of establishing the good  
28 faith and commercial reasonableness of the effort or belief.

29           (d) A payment made by the buyer to a person to whom  
30 the buyer is, or believes he or she is, liable under paragraph  
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1 (a) reduces pro tanto the buyer's cumulative liability under  
2 that paragraph.

3 (e) An action may not be brought under subparagraph  
4 (a)2. by or on behalf of a claimant whose claim is  
5 unliquidated or contingent.

6 (f) A buyer's failure to comply with the requirements  
7 of paragraph (3)(a) does not impair the buyer's rights in or  
8 title to the assets; render the sale ineffective, void, or  
9 voidable; entitle a creditor to more than a single  
10 satisfaction of his or her claim; or create liability other  
11 than as provided in this section.

12 (g) Nothing in this section shall be construed to  
13 relieve the seller of any obligations to any unsecured  
14 creditor of the debtor.

15 (h) Unless otherwise agreed, a buyer has an immediate  
16 right of reimbursement from the seller for any amount paid to  
17 a creditor in partial or total satisfaction of the buyer's  
18 liability under this section.

19 (i) Any unsecured creditor of the seller shown on the  
20 list prescribed in this section which is not paid by the buyer  
21 shall be treated as a creditor that holds a security interest  
22 under chapter 679, Florida Statutes, in the supplies,  
23 inventory, merchandise, materials, or other property subject  
24 to the transfer. The security interest of such unsecured  
25 creditor shall be deemed valid and perfected as of the date of  
26 the transfer, but in all events shall be subject and  
27 subordinate to any validly perfected security interest held by  
28 any other creditor for value in good faith and without notice  
29 of the security interest of any unsecured creditor created  
30 under this section, regardless of whether such other interest  
31 is perfected before or after the transfer. A purchaser for

1 value in good faith and without notice of the security  
2 interest of any unsecured creditor created under this section  
3 shall be deemed to take title to such supplies, inventory,  
4 merchandise, materials, or other property free of such  
5 security interest.

6 (6)(a) Except as provided in paragraph (b), an action  
7 under this section against a buyer must be commenced within 1  
8 year after the date of the bulk sale.

9 (b) If the buyer conceals the fact that the sale has  
10 occurred, the limitation is tolled and an action under this  
11 section may be commenced within the earlier of: 1 year after  
12 the person bringing the action discovers that the sale has  
13 occurred or 1 year after the person bringing the action should  
14 have discovered that the sale has occurred, but no later than  
15 2 years after the date of the bulk sale. Complete  
16 noncompliance with the requirements of this section does not  
17 of itself constitute concealment.

18 Section 2. This act shall take effect October 1, 1999.

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21 SENATE SUMMARY

22 Prescribes duties of buyers and sellers in specified  
23 bulk-sale transactions. Requires notice of specified bulk  
24 sales to be given to the seller's creditors. Prescribes  
25 content of such notice. Prescribes the buyer's liability  
26 upon failure to give a required notice and provides  
27 remedies available to the buyer.  
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