

13 GCA UNIFORM COMMERCIAL CODE
DIV. 6 BULK TRANSFERS

**DIVISION 6
BULK TRANSFERS**

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§ 6101. Short Title.

This division shall be known and may be cited as *Uniform Commercial Code -- Bulk Transfers*.

§ 6102. Bulk Transfers; Transfers of Equipment; Enterprises Subject to This Division; Bulk Transfers Subject to This Division.

(1) A bulk transfer is any transfer in bulk and not in the ordinary course of the transferor's business of a substantial part of the materials, supplies, merchandise, or other inventory (Section 9109) of an enterprise subject to this division.

(2) A transfer of a substantial part of the equipment (Section 9109) of such an enterprise is also a bulk transfer.

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

(4) Except as limited by the following section all bulk transfers of goods located within this Territory are subject to this division.

(5) The word “*transfer*” as used in this division includes the creation of a security interest.

(6) Bulk Transfer Filing Fee. A fee of Twenty Dollars (\$20.00) *shall* be assessed for each bulk transfer document that is filed with the Department of Revenue and Taxation.

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SOURCE: Subsection (6) added by P.L. 29-002:V:I:7 (May 18, 2007).

COMMENT: Subdivision (3) of Section 6102 conforms substantively to Section 6-102(3) of the Uniform Commercial Code. See 1972 Official Text of the Uniform Commercial Code and Official Comment thereto. Certain service establishments are not included as in California but any manufacturer "whose principal business is the sale of merchandise from stock" is included.

§ 6103. Transfers Excepted from This Division.

The following transfers are not subject to this division:

(1) Those made to give a purchase money security interest (Section 9107);

(2) Assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder;

(3) Transfers of property subject to a lien or other security interest in settlement or realization of such lien or other security interest, if there was compliance with this division in connection with the creation of such lien or security interest or such creation was exempt from compliance with this division;

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

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

(6) Transfers of property which is exempt from execution.

COMMENT: Section 6102(5) provides that the creation of a security interest in inventory may be a "transfer" subject to the notice and filing requirements of this Division. On the other hand, subdivision (1) of Section 6103 makes clear that transfers made to give a purchase money security interest are excluded. Both these provisions are consistent with the California law. However, three special California exclusions for (1) certain vehicles and equipment, (2) inventory of a wholesale merchant and (3) goods in a warehouse are deleted. Compare Cal. Comm. Code 6103(1)(b), (c), (7). California kept these exclusions more for historical continuity than for any other reason. Their deletion is based on the belief that there is no policy justification for their inclusion here. See West Ann. Cal. Comm. Code 6103, California Code Comment (1964).

(2003) Official Appendix I of the "Official Text" adopted by P.L. 26-172 appears to amend a different section numbered § 6103 than was adopted on Guam. Since the amendments appear to have no relation to the section Guam has adopted the

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Compiler will not change this section until better guidance is had from the Legislature.

§ 6104. [Not Adopted in California or Guam.]

§ 6105. Notice to Creditors.

Any bulk transfer subject to this division except one made by auction sale (Section 6108) is ineffective against any creditor of the transferor unless the transferee gives notice of the transfer in the manner and within the time hereafter provided (Section 6107).

§ 6106. [Not Adopted in California or Guam.]

§ 6107. Notice; Recordation; Publication; Notice by Mail.

(1) The notice to creditors (Section 6105) shall state:

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

(b) The names and business addresses of the transferor and, except in the case of a sale at auction, the transferee, and all other business names and addresses used by the transferor within three years last past so far as known to the transferee; and

(c) The location and general description of the property to be transferred; and

(d) The place, and the date on or after which, the bulk transfer is to be consummated.

(2) The notice shall be filed in the Department of Revenue and Taxation and published at least twice in a newspaper of general circulation in the Territory at least 10 days before the bulk transfer is to be consummated or the sale by auction is to be commenced.

§ 6108. Auction Sales; "Auctioneer".

(1) A bulk transfer is subject to this division even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The person or persons other than the transferor who direct, control or are responsible for the auction are collectively called the "auctioneer." The auctioneer shall be responsible for giving the notice of the transfer (Section 6107). In the case of a sale by auction, in addition to the matters specified in Section 6107, the notice shall state that the sale is to

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be by auction, the name of the auctioneer, and the time and place of the auction.

(3) Failure of the auctioneer to give the notice of the transfer does not affect the validity of the sale to or the title of the purchasers, but such failure renders the auctioneer liable to the creditors of the transferor as a class for the sums owing to them from the transferor up to but not exceeding the reasonable value of the assets sold. If the auctioneer consists of several persons their liability is joint and several.

§ 6109. What Creditors Protected.

The creditors of the transferor mentioned in this division are those holding claims based on transactions or events occurring before the bulk transfer.

§ 6110. Subsequent Transfers.

When the title of a transferee to property is subject to a defect by reason of his noncompliance with the requirements of this division, then:

(1) A purchaser of any such property from such transferee who pays no value or who takes with notice of such non-compliance takes subject to such defect, but

(2) A purchaser for value in good faith and without such notice takes free of such defect.

§ 6111. Limitation of Actions and Levies.

No action under this division shall be brought nor levy made more than one year after the date on which the transferee took possession of the goods unless the transfer has been concealed or, in the case of a security interest which constitutes a bulk transfer under this division, after the date on which said security interest is perfected under Division 9. If the transfer has been concealed, an action may be brought or levy made within one year after its discovery by the creditor bringing such action or making such levy or after it should have been discovered by such creditor in the exercise of reasonable diligence, whichever first occurs.
