



# ESCROW INSTITUTE OF CALIFORNIA

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May 29, 2012

Honorable Ellen Corbett  
California State Senate  
State Capitol  
Sacramento, California 95814

## **RE: SB 12 (Corbett) – OPPOSE**

Dear Senator Corbett:

On behalf of the California Department of Corporations Licensed Escrow Companies, we are writing to share with you our opposition to your Senate Bill 12, which proposes to repeal the Uniform Commercial Code – Bulk Sales Law here in California (Division 6 of the Commercial Code).

Within the existing Bulk Sales Law, escrow agents such as our members provide an important professional role and service as “escrow holders” to the sellers, buyers, creditors, state and local taxing authorities, and others, all of which would be lost under SB 12. For example, we provide:

- Notification and interface with State Board of Equalization, Employment Development Department and Franchise Tax Board under Successor Liability Statutes to facilitate collection of delinquent accounts.
- Collection of State Board of Equalization sales tax on Fixtures & Equipment arising from sale of business.
- A clearinghouse for payment to taxing authorities, lien holders and unsecured creditors
- Notification to the County Assessor facilitating collection of delinquent tax bills, escaped assessment taxes.
- Independent administration and processing of sales of business through an orderly process facilitating collection of state and federal capital gains tax.
- Deficit Escrow – pro rata distribution: Current statutes dictate the priority of how a state agency, secured creditor or unsecured creditor and all others are to be paid in a sale when there are insufficient funds to pay all claims submitted against the seller. We facilitate in calculation of the pro rata distribution to ensure creditors are paid appropriately and provide the 25 day notice as required.
- An orderly process for sale of businesses for a reasonable fee not otherwise available to a layperson.

The Escrow Institute of California was previously involved in and assisted the California Commission on Uniform State Laws with the last major revision to California Bulk Sales Law in 1990, with the enactment of AB 3653 (Chapter 1191) by then Assemblyman Elihu Harris. AB 3653 was the product of a year of fairly intense negotiations between an ad hoc committee, which consisted of select members from the Credit Managers Association of California,

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representatives from the Escrow Institute and California Escrow Association and from the California Newspaper Publishers Association, working with representatives from Commission on Uniform State Laws. At that time all parties had before them two separate proposals developed by the National Conference of Commissioners on Uniform State Laws: "Alternative A offers the states the option of repealing the whole of Article 6; or, Alternative B offers a revised and updated Article 6 to those states and jurisdictions that will evaluate the positions of creditors, sellers and buyers, and then decide to retain a bulk sales law." We obviously and for many good policy reasons chose to refine and amend the California Bulk Sales Law. There were many reasons that the Commission on Uniform State Laws and involved stakeholders considered in taking this approach, not the least of which were concerns that if the Bulk Sales Law were repealed, what sort of protections would be in place for creditors of businesses that sell merchandise should a business sell all or a large part of its inventory to a buyer. Other issues included:

- Does it make any sense to retain the nearly identical Alcoholic Beverage Control statutes (Business and Professions Code Sections 24074 & 24074.1 et seq) and yet repeal the Commercial Code Bulk Sale provisions?
- Buyers of business will no longer have a statutory mechanism that, if properly complied with, protects them from successor liability of debts of the seller.
- Creditors of a Business will not have notification of a pending sale and therefore have little recourse to collect outstanding debts from the seller of a business. As a result, the potential that creditors will be defrauded when a business is sold will increase and therefore lead to an increase in legal actions at the detriment of the public and increase workload to an already overcrowded judicial system.

None of these issues and concerns has changed over the past 20+ years at least not to the degree that would necessitate the complete elimination of the California Bulk Sales Law. In fact, from our perspective as "escrow holders" the retention of the Bulk Sales Law is as important today as ever. The simple concept of a "bulk sale" is for the buyers of a business as defined in law to provide notice to the seller's creditors of a pending sale, so that all parties' interests are equally protected. Remove the Bulk Sale Law and we would be exposing creditors (including taxing authorities) to undue risks that they should not be exposed to, especially since they did not initiate the transaction between the buyer and seller of a business. Further, we do not support the argument of some proponents that the risk to creditors is not as great and that other laws will provide adequate remedies for creditors, such as the Uniform Fraudulent Transfer Act.

Elimination of the California Bulk Sales Law will eliminate essential transparent protections for creditors, for the sake of possibly decreasing some burdens for "bulk sale" buyers which over the years we have seen no empirical evidence to support. The analysis and supporting arguments for SB 12 are based on some limited findings and recommendations presented in 1989 by the National Conference of Commissioners on Uniform State Laws and from our research has not been updated since then. SB 12 would eliminate the only disclosure requirements and consumer

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protections for a Bulk Sale Buyer and creditors. Maybe a path forward would be to convene an Ad Hoc Committee of stakeholders to work with the California Commission on Uniform State Laws to update and analyze the California data for the Bulk Sales Law and from this effort recommend if required changes in the law are necessary.

Thank you for your consideration of our position and we are available anytime to discuss our position further with you or share our year's of experience as "escrow holders" under the California Bulk Sales Law.

Sincerely,



Tim Egan  
Chief Executive Officer

cc: Assemblyman Mike Feuer, Chairman, Assembly Judiciary Committee  
Assemblyman Donald Wagner, Vice Chairman, Assembly Judiciary Committee  
Assemblyman Henry Perea, Chairman, Assembly Revenue & Taxation Committee  
Assemblywoman Diane Harkey, Vice Chair, Assembly Revenue & Taxation Committee  
Pamela Bertani, Chair, California Commission on Uniform State Laws