

June [redacted], 2012

To: Honorable [redacted] (your legislator name, fax)

From: [redacted] (your name, title)

Subject: SB 12 (Corbett) – OPPOSE

Dear Assembly Member [redacted],

Senate Bill 12 (Corbett) is scheduled for hearing in the Assembly Judiciary Committee on Tuesday, June 19, 2012. As your constituent, and also as a member of the California Escrow Association which has adopted an “**oppose**” position, I would respectfully request your “**NO**” vote on Senate Bill 12, relating to the repeal of California’s bulk sales law, Division 6 of the Uniform Commercial Code. I and other members of the California Escrow Association are the escrow officers and other professionals who close escrows – sales of businesses (bulk sales), as well as purchases, sales, and refinances of real property in California.

ADD YOUR STORY HERE – WHO YOU ARE, HOW LONG IN THE BUSINESS, ETC., HOW THIS WOULD AFFECT YOU AND OTHERS (sellers, buyers, creditors, etc.)

DELETE OR MODIFY THE FOLOWING PARAGRAPHS/ADD YOUR OWN CONCERNS HERE, including any pertinent illustration, i.e., about a state agency that wouldn’t have been paid, how much you estimate was paid to state agencies in the last year from the sales of businesses that you’ve handled (if it’s a significant number), etc.

In the course of those transactions private creditors, many of them small businesses themselves, including food and beverage distributors, energy and fuel providers, lessors of specialty equipment, landlords under real property leases, and others, are given notification of pending sale transactions and accorded the opportunity to be paid the amounts due them through the escrow process.

Also in this process, the tax collector in the county(ies) in which the business is located is contacted, as well as state agencies, including the California Franchise Tax Board, Board of Equalization, and Employment Development Department, as well as the Internal Revenue Service. Additionally, notification of the pending sale is made in a publication of general circulation, affording remaining creditors, if any, the opportunity to submit claims prior to closing and payment of the remaining funds or equity to the business seller.

Additionally, just as the economic downturn in California has resulted in “underwater” homes and “short sales”, equity-poor business sale transactions are not unusual.

California's bulk sales law currently provides for prioritization of the payment of claims in the event of an "upside down" business. It is unclear, other than by way of post-transfer litigation, how a determination of payment priority would be made in the wake of any repeal of the bulk sales law.

Despite the economic downturn, buyers and sellers, as well as business brokers and business creditors, still rely on the bulk sales process. Despite proponents' assertions that it has become standard business practice for many buyers and sellers in California to knowingly *not* comply with California bulk sales law or circumvent it in some manner, I and my associates are still busy with bulk sales transactions.

Business buyers benefit from bulk sale law by significantly decreasing the likelihood of seller's creditors knocking on the door of the business after the sale and engaging in collection efforts against unknowing buyers, and sellers benefit from the opportunity to settle and account for business debts in a process that satisfies creditors before providing funds to the seller. Often sellers of businesses are also buyers of businesses, who immediately invest those net proceeds into their next business.

Those who extend credit to buyers of businesses also benefit from bulk sales laws by having a predictable method by which to collect funds, repossess leased equipment, or take other action for repayment of those obligations prior to the transfer of the business, increasing the likelihood that a business owner could obtain inventory and specialty manufacturing or processing equipment on the most favorable terms, in reliance upon the provisions of the existing bulk sales law.

Without a reasonable method to prioritize and pay the claims of the seller's business, it appears that any after-sale recovery would be limited to court actions – in the same California courts where civil matters take increasingly longer.

Where processes exist to resolve these matters in a method that has worked well in California for decades, it would seem that the provisions of the bulk sales law remain relevant today.

For these reasons, I respectfully request your "**NO**" vote on AB 2299 on June 19, 2012.

Sincerely,

(your name, title)

Your contact information (name, address, phone, email)

Remember to delete the yellow highlighting or other extraneous text from your letter, and to sign your letter before faxing to your legislator and faxing or emailing to CEA.

cc: California Escrow Association