Chapter 76

1963 REPLACEMENT PART

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Bulk Transfers

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CROSS REFERENCES

Definitional cross references, 71.2010, 76.1020, 76.1080, 76.1090

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76.010, 76.020, 76.030 [Repealed by 1961 c.726 §427]

76.1010 Short title. ORS 76.1010 to 76.1110 may be cited as Uniform Commercial Code-Bulk Transfers. [1961 c.726 §76 1010]

76.1020 "Bulk transfer"; transfers of equipment; enterprises subject to ORS 76.1010 to 76.1110; bulk transfers subject to ORS 76.1010 to 76.1110. (1) A "bulk transfer" is any transfer in bulk and not in the ordinary course of the transferor's business of a major part of the materials, supplies, merchandise or other inventory as defined in ORS 79.1090 of an enterprise subject to ORS 76.1010 to 76.1110. "Bulk transfer" shall also include a transfer out of the ordinary course of business of a major part of the goods, wares and merchandise of a restaurant or other food dispensing establishment.

(2) A transfer of a substantial part of the equipment as defined in ORS 79.1090 of such an enterprise or of the equipment of a restaurant or other food dispensing establishment is a bulk transfer if it is made in connection with a bulk transfer of inventory, but not otherwise.

(3) The enterprises subject to ORS 76.1010 to 76.1110 are all those whose principal business is the sale of merchandise from stock, including those who manufacture what they sell, and restaurants or other food dispensing establishments.

(4) Except as limited by ORS 76.1030 all bulk transfers of goods located within this state are subject to ORS 76.1010 to 76.1110. [1961 c 726 §76.1020]

76.1030 Transfers excepted from ORS 76.1010 to 76.1110. The following transfers are not subject to ORS 76.1010 to 76.1110:

(1) Those made to give security for the performance of an obligation.

(2) General assignments for the benefit of all the creditors of the transferor, and subsequent transfers by the assignee thereunder.

(3) Transfers in settlement or realization of a lien or other security interests.

(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 to a person maintaining a known place of business in this state who becomes bound to pay the debts of the transferor in full and gives public notice of that fact, and who is solvent after becoming so bound.

(7) A transfer to a new business enterprise organized to take over and continue the business, if public notice of the transaction is given and the new enterprise assumes the debts of the transferor and the transferor receives nothing from the transaction except an interest in the new enterprise junior to the claims of creditors.

(8) Transfer of property which is exempt from execution. [1961 c.726 §76.1030]

76.1040 Schedule of property; list of creditors. (1) Except as provided in ORS 76.1080 with respect to auction sales, a bulk transfer subject to ORS 76.1010 to 76.1110 is ineffective against any creditor of the transferor unless:

(a) The transferee requires the transferor to furnish a list of the existing creditors of the transferor prepared as stated in this section; and

(b) The parties prepare a schedule of the property transferred sufficient to identify it; and

(c) The transferee preserves the list and schedule for six months next following the transfer and permits inspection of either or both and copying therefrom at all reasonable hours by any creditor of the transferor, or files the list and schedule in the office of the county clerk of the county in which the transferor's principal place of business is located.

(2) The list of creditors must be signed and sworn to or affirmed by the transferor or agent of the transferor. It must contain the names and business addresses of all creditors of the transferor, with the amounts when known, and also the names of all persons who are known to the transferor to assert claims against the transferor even though such claims are disputed.

(3) Responsibility for the completeness and accuracy of the list of creditors rests on the transferor, and the transfer is not rendered ineffective by errors or omissions therein unless the transferee is shown to have had knowledge. [1961 c 726 §76 1040]

76.1050 Notice to creditors. In addition to the requirements of ORS 76.1040, any bulk transfer subject to ORS 76.1010 to 76.1110 except one made by auction sale pursuant to ORS 76.1080 is ineffective against any creditor of the transferor unless at least 10 days before the transferee takes possession of the goods or pays for them, whichever happens first, the transferee

gives notice of the transfer in the manner provided and to the persons prescribed in ORS 76.1070. [1961 c 726 §76 1050]

Note: Section 6-106 of the Uniform Commercial Code (1958 and 1962 editions) was not enacted in Oregon. Consequently, portions of 76 1070, 76 1080 and 76 1090 differ from sections 6-107, 6-108 and 6-109 of the Uniform Commercial Code (1958 and 1962 editions).

76.1070 The notice. (1) The notice to creditors provided for in ORS 76.1050 shall state:

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

(b) The names and business addresses of the transferor and 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) Whether or not all the debts of the transferor are to be paid in full as they fall due as a result of the transaction, and if so, the address to which creditors should send their bills.

(2) If the debts of the transferor are not to be paid in full as they fall due or if the transferee is in doubt on that point then the notice shall state further:

(a) The location and general description of the property to be transferred and the estimated total of the transferor's debts;

(b) The address where the schedule of property and list of creditors provided for in ORS 76.1040 may be inspected;

(c) Whether the transfer is to pay existing debts and if so the amount of such debts and to whom owing;

(d) Whether the transfer is for new consideration and if so the amount of such consideration and the time and place of payment.

(3) The notice in any case shall be delivered personally or sent by registered mail to all the persons shown on the list of creditors furnished by the transferor pursuant to ORS 76.1040 and to all other persons who are known to the transferee to hold or assert claims against the transferor. [1961 c 726 §76 1070]

Note: See note under 76 1050.

76.1080 Auction sales; "auctioneer." (1) A bulk transfer is subject to ORS 76.1010 to 76.1110 even though it is by sale at auction, but only in the manner and with the results stated in this section.

(2) The transferor shall furnish a list of the creditors of the transferor and assist in the preparation of a schedule of the property to be sold, both prepared in accordance with ORS 76.1040.

(3) 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:

(a) Receive and retain the list of creditors and prepare and retain the schedule of property for the period stated in ORS 76.1040;

(b) Give notice of the auction personally or by registered mail at least 10 days before it occurs to all persons shown on the list of creditors and to all other persons who are known to the auctioneer to hold or assert claims against the transferor.

(4) Failure of the auctioneer to perform any of these duties does not affect the validity of the sale or the title of the purchasers, but if the auctioneer knows that the auction constitutes a bulk transfer 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 net proceeds of the auction. If the auctioneer consists of several persons their liability is joint and several. [1961 c.726 §76 1080]

Note: See note under 76 1050.

76.1090 What creditors protected. The creditors of the transferor mentioned in ORS 76.1010 to 76.1110 are those holding claims based on transactions or events occurring before the bulk transfer, but creditors who become such after notice to creditors is given pursuant to ORS 76.1050 and 76.1070 are not entitled to notice. [1961 c 726 §76 1090]

Note: See note under 76 1050

76.1100 Subsequent transfers. When the title of a transferee to property is subject to a defect by reason of the noncompliance of the transferee with the requirements of ORS 76.1010 to 76.1110, then:

(1) A purchaser of any of such property from such transferee who pays no value or who takes with notice of such noncompliance takes subject to such defect; but

(2) A purchaser for value in good faith and without such notice takes free of such defect. [1961 c 726 §76.1100]

76.1110 Limitation of actions and levies. No action under ORS 76.1010 to 76.1110 shall be brought nor levy made more than six months after the date on which the transferee took possession of the goods unless the transfer has been concealed. If the transfer has been concealed, actions may be brought or levies made within six months after its discovery. [1961 c 726 §76 1110]