O'NEILCANNON
HOLLMAN DEJONG & LAING S.C.

WISCONSIN REPEALS BULK TRANSFER LAW

Wisconsin has finally joined the vast majority of states who have repealed bulk transfer laws. The repeal of Wisconsin's bulk transfer law, Chapter 406 of the Wisconsin statutes, became effective February 5, 2010. Forty-five states have now dropped their bulk transfer requirements, according to the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). Wisconsin was late to join the club. The NCCUSL and the American Law Institute initially recommended repeal or revision of the bulk transfers law in 1989.

Chapter 406 of the Wisconsin Statutes required a business to notify all creditors before transferring a major part of the business's inventory outside of the ordinary course of business. Chapter 406 applied only to sellers whose primary business was the sale of inventory, such as convenience store and liquor store retailers.

Wisconsin's bulk transfer law, initially enacted in 1901, had become obsolete. Bulk transfer laws were intended to address concerns near the end of the 19th century that merchants would frequently buy inventory on credit, sell the entire bulk of inventory and disappear with the proceeds of the sale, leaving creditors with little recourse. The NCCUSL, recommended that Wisconsin repeal its bulk transfer law because today creditors can better assess the creditworthiness of a buyer and can obtain a security interest in the assets of a buyer, which was not an option for creditors when Wisconsin's bulk transfer law was enacted. In addition, creditors are better positioned today to collect amounts owed to them, including through fraudulent transfer laws and state long-arm jurisdiction statutes.

Wisconsin's bulk transfer law was also impractical. Buyers and sellers of businesses often waived compliance with the bulk transfer law and relied upon the indemnification provisions in the purchase agreement. Neither party wanted notice of the proposed sale of the business to be sent to third parties weeks before the transaction had closed and been announced.