

Introduced by Senator BlockFebruary 20, 2013

An act to add Section 6812.5 to the Revenue and Taxation Code, relating to bulk sales.

LEGISLATIVE COUNSEL'S DIGEST

SB 385, as introduced, Block. Bulk sales: sales and use taxes: collection of taxes: successor's liability: notifications: disclosures.

Existing law, the Uniform Commercial Code–Bulk Sales, is a comprehensive body of law regulating bulk sales, which are defined to include a sale not in the ordinary course of the seller's business of more than ½ the seller's inventory and equipment, as specified, and which imposes specified obligations on an escrow agent for that sale.

The Sales and Use Tax Law, employment tax laws, and personal property laws impose liabilities for unpaid taxes upon the purchaser of a business under specified circumstances. Under the Sales and Use Tax Law, if any person liable for any amount under that law sells out the business or stock of goods or quits the business, the successors or assigns are required to withhold sufficient of the purchase price to cover such amount until the former owner either produces a receipt from the State Board of Equalization showing that it has been paid or produces a certificate from the board stating that no amount is due. Under that law, if the purchaser of a business or stock of goods fails to withhold from the purchase price as required, the purchaser becomes personally liable for the payment of the amount required to have been withheld to the extent of the purchase price, valued in money.

This bill would require an escrow agent to make specified notifications in writing to a potential purchaser of a business regarding a purchaser's liabilities under the Sales and Use Tax Law. This bill would also require

specified sellers of a business to provide under penalty of perjury a successor liability disclosure statement, as may be prescribed by the State Board of Equalization, to all potential purchasers or their authorized agents. By expanding the crime of perjury, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 6812.5 is added to the Revenue and
2 Taxation Code, to read:
3 6812.5. (a) For a bulk sale handled through an escrow, the
4 escrow agent shall notify in writing a potential purchaser of a
5 business that is required to hold a permit under this part of the
6 following information:
7 (1) That if a person is liable for any amount under this part sells
8 his or her business or stock of goods, the purchaser must withhold
9 a sufficient amount of the purchase price to cover that amount,
10 until the seller produces a receipt from the board showing payment
11 or no amount due.
12 (2) That a tax clearance certificate is available from the board
13 that will identify amounts owed under this part by the seller of the
14 business.
15 (3) That the purchaser may be personally liable for the payment
16 of the amounts owed by the seller under this part to the extent of
17 the purchase price.
18 (b) If a person liable for any amount due under this part sells
19 out his or her business or stock of goods or quits the business, the
20 person shall provide under penalty of perjury a successor liability
21 disclosure statement, as may be prescribed by the board, to all
22 potential purchasers or their authorized agents to identify any
23 unpaid amounts due under this part.

1 (c) For purposes of this section, “bulk sale” has the same
2 meaning as defined in paragraph (3) of subdivision (a) of Section
3 6102 of the Commercial Code.

4 SEC. 2. No reimbursement is required by this act pursuant to
5 Section 6 of Article XIII B of the California Constitution because
6 the only costs that may be incurred by a local agency or school
7 district will be incurred because this act creates a new crime or
8 infraction, eliminates a crime or infraction, or changes the penalty
9 for a crime or infraction, within the meaning of Section 17556 of
10 the Government Code, or changes the definition of a crime within
11 the meaning of Section 6 of Article XIII B of the California
12 Constitution.