

HOUSE BILL No. 4548

March 13, 1991, Introduced by Reps. Baade, Wallace, Anthony, Gire, Gubow, Joe Young, Jr., Byrum, Harder, Knight, Dobronski, Olshove, Yokich and Clarke and referred to the Committee on Military and Veterans' Affairs.

A bill to amend sections 9503 and 9504 of Act No. 174 of the Public Acts of 1962, entitled as amended

"Uniform commercial code,"

being sections 440.9503 and 440.9504 of the Michigan Compiled Laws.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Section 1. Sections 9503 and 9504 of Act No. 174 of the
2 Public Acts of 1962, being sections 440.9503 and 440.9504 of the
3 Michigan Compiled Laws, are amended to read as follows:

4 Sec. 9503. Unless otherwise agreed, a secured party has on
5 default the right to take possession of the collateral. HOWEVER,
6 IF A DEBTOR IS A MEMBER OF A RESERVE COMPONENT OF THE ARMED
7 FORCES OF THE UNITED STATES IN ACTIVE SERVICE OR A MEMBER OF THE
8 NATIONAL GUARD OF THE UNITED STATES IN ACTIVE FEDERAL SERVICE, A
9 SECURED PARTY DOES NOT HAVE ON DEFAULT THE RIGHT TO TAKE

1 POSSESSION OF THE COLLATERAL DURING AND UNTIL THE EXPIRATION OF
2 180 DAYS AFTER THE TERMINATION OF THAT SERVICE. In taking
3 possession, a secured party may proceed without judicial process
4 if this can be done without breach of the peace or may proceed by
5 action. If the security agreement so provides, the secured party
6 may require the debtor to assemble the collateral and make it
7 available to the secured party at a place to be designated by the
8 secured party which is reasonably convenient to both parties.
9 Without removal, a secured party may render equipment unusable,
10 and may dispose of collateral on the debtor's premises under sec-
11 tion 9504.

12 Sec. 9504. (1) A secured party after default may sell,
13 lease, or otherwise dispose of any or all of the collateral in
14 its then condition or following any commercially reasonable prep-
15 aration or processing. HOWEVER, IF A DEBTOR IS A MEMBER OF A
16 RESERVE COMPONENT OF THE ARMED FORCES OF THE UNITED STATES IN
17 ACTIVE SERVICE OR A MEMBER OF THE NATIONAL GUARD OF THE UNITED
18 STATES IN ACTIVE FEDERAL SERVICE, A SECURED PARTY DOES NOT HAVE
19 AFTER DEFAULT THE RIGHT TO SELL, LEASE, OR OTHERWISE DISPOSE OF
20 ANY OR ALL OF THE COLLATERAL DURING AND UNTIL THE EXPIRATION OF
21 180 DAYS AFTER THE TERMINATION OF THAT SERVICE. Any sale of goods
22 is subject to ~~the~~ article 2 on sales. ~~(article 2)~~. The pro-
23 ceeds of disposition shall be applied in the order following to:
24 (a) The reasonable expenses of retaking, holding, preparing
25 for sale or lease, selling, leasing, and the like and, to the
26 extent provided for in the agreement and not prohibited by law,

1 the reasonable attorneys' fees and legal expenses incurred by the
2 secured party. —

3 (b) The satisfaction of indebtedness secured by the security
4 interest under which the disposition is made. —

5 (c) The satisfaction of indebtedness secured by any subordi-
6 nate security interest in the collateral if written notification
7 of demand therefor is received before distribution of the pro-
8 ceeds is completed. If requested by the secured party, the
9 holder of a subordinate security interest must seasonably furnish
10 reasonable proof of his OR HER interest, and unless he OR SHE
11 does so, the secured party need not comply with his OR HER
12 demand.

13 (2) If the security interest secures an indebtedness, the
14 secured party must account to the debtor for any surplus, and,
15 unless otherwise agreed, the debtor is liable for any
16 deficiency. But if the underlying transaction was a sale of
17 accounts or chattel paper, the debtor is entitled to any surplus
18 or is liable for any deficiency only if the security agreement so
19 provides.

20 (3) Disposition of the collateral may be by public or pri-
21 vate proceedings and may be made by way of 1 or more contracts.
22 Sale or other disposition may be as a unit or in parcels and at
23 any time and place and on any terms but every aspect of the dis-
24 position including the method, manner, time, place, and terms
25 must be commercially reasonable. Unless collateral is perishable
26 or threatens to decline speedily in value or is of a type
27 customarily sold on a recognized market, reasonable notification

1 of the time and place of any public sale or reasonable
2 notification of the time after which any private sale or other
3 intended disposition is to be made shall be sent by the secured
4 party to the debtor, if he OR SHE has not signed after default a
5 statement renouncing or modifying his OR HER right to notifica-
6 tion of sale. In the case of consumer goods, no other notifica-
7 tion need be sent. In other cases, notification shall be sent to
8 any other secured party from whom the secured party has received,
9 ~~—~~ before sending his OR HER notification to the debtor or
10 before the debtor's renunciation of his OR HER rights, ~~—~~ writ-
11 ten notice of a claim of an interest in the collateral. The
12 secured party may buy at any public sale and if the collateral is
13 of a type customarily sold in a recognized market or is of a type
14 which is the subject of widely distributed standard price
15 quotations, he OR SHE may buy at private sale.

16 (4) When collateral is disposed of by a secured party after
17 default, the disposition transfers to a purchaser for value all
18 of the debtor's rights therein, discharges the security interest
19 under which it is made and any security interest or lien subordi-
20 nate thereto. The purchaser takes free of all such rights and
21 interests even though the secured party fails to comply with the
22 requirements of this part or of any judicial proceedings:

23 (a) In the case of a public sale, if the purchaser has no
24 knowledge of any defects in the sale and if he OR SHE does not
25 buy in collusion with the secured party, other bidders, or the
26 person conducting the sale. ~~—or—~~

1 (b) In any other case, if the purchaser acts in good faith.

2 (5) A person who is liable to a secured party under a
3 guaranty, indorsement, repurchase agreement, or the like and who
4 receives a transfer of collateral from the secured party or is
5 subrogated to his OR HER rights has thereafter the rights and
6 duties of the secured party. Such a transfer of collateral is
7 not a sale or disposition of the collateral under this article.