

HOUSE BILL No. 5644

March 10, 1998, Introduced by Reps. Baird and Richner and referred to the Committee on Commerce.

A bill to amend 1962 PA 174, entitled "Uniform commercial code," by amending sections 1105, 9203, and 9402 (MCL 440.1105, 440.9203, and 440.9402), section 1105 as amended by 1992 PA 101, section 9203 as amended by 1987 PA 16, and section 9402 as amended by 1989 PA 216; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1105. (1) Except as provided ~~hereafter~~ in this sec-
2 tion, ~~when~~ IF a transaction bears a reasonable relation to this
3 state and also to another state or nation the parties may agree
4 that the law either of this state or of ~~such~~ THE other state or
5 nation shall govern their rights and duties. Failing ~~such~~
6 agreement this act applies to transactions bearing an appropriate
7 relation to this state.

1 (2) ~~where~~ IF 1 of the following provisions of this act
 2 specifies the applicable law, that provision governs and a
 3 contrary agreement is effective only to the extent permitted by
 4 the law (including the conflict of laws rules) ~~so~~ specified:

5

6 Rights of creditors against sold goods. Section 2402.

7 Applicability of the article on bank deposits and
 8 collections. Section 4102.

9 Governing law in the article on funds transfers. Section 4A502.

10 ~~Bulk transfers subject to the article on bulk~~
 11 ~~transfers.~~ ~~Section 6102.~~

12 Applicability of the article on investment
 13 securities. Section 8106.

14 Applicability of the article on leases. Sections 2A105 and 2A106.

15 Perfection provisions of the article on secured
 16 transactions. Section 9103.

17 Sec. 9203. (1) Subject to ~~the provisions of~~ section 4208
 18 on the security interest of a collecting bank, section 8321 on
 19 security interests in securities, and section 9113 on a security
 20 interest arising under the article on sales, a security interest
 21 is not enforceable against the debtor or third parties with
 22 respect to the collateral and does not attach unless ALL OF THE
 23 FOLLOWING ARE TRUE:

24 (a) The collateral is in the possession of the secured party
 25 pursuant to agreement, or the debtor has signed a security agree-
 26 ment ~~which~~ THAT contains a description of the collateral and in
 27 addition, when the security interest covers ~~crops growing or to~~

1 ~~be grown or~~ timber to be cut, a description of the land
2 concerned. ~~/ and~~

3 (b) Value has been given. ~~/ and~~

4 (c) The debtor has rights in the collateral.

5 (2) A security interest attaches when it becomes enforceable
6 against the debtor with respect to the collateral. Attachment
7 occurs as soon as all of the events specified in subsection (1)
8 have taken place unless explicit agreement postpones the time of
9 attaching.

10 (3) Unless otherwise agreed a security agreement gives the
11 secured party the rights to proceeds provided by section 9306.

12 (4) A transaction, although subject to this article, is also
13 subject to ~~Act No. 21 of the Public Acts of 1939, as amended,~~
14 ~~being sections 493.1 to 493.26 of the Michigan Compiled Laws, Act~~
15 ~~No. 305 of the Public Acts of 1939, as amended, being sections~~
16 ~~566.301 and 566.302 of the Michigan Compiled Laws, and Act No. 27~~
17 ~~of the Public Acts of the Extra Session of 1950, as amended,~~
18 ~~being sections 492.101 to 492.141 of the Michigan Compiled Laws,~~
19 ~~and in the case of~~ THE REGULATORY LOAN ACT OF 1963, 1939 PA 21,
20 MCL 493.1 TO 493.26, 1939 PA 305, MCL 566.301 TO 566.302, AND THE
21 MOTOR VEHICLE SALES FINANCE ACT, 1950 (EX SESS) PA 27, MCL
22 492.101 TO 492.141, IF A conflict ARISES between ~~the provisions~~
23 ~~of~~ this article and ~~any such~~ ANOTHER statute, the ~~provisions~~
24 ~~of such~~ OTHER statute ~~control~~ CONTROLS. Failure to comply
25 with any applicable statute has only the effect ~~which~~ THAT is
26 specified ~~therein~~ IN THAT STATUTE.

1 Sec. 9402. (1) A financing statement is sufficient if it
2 gives the names of the debtor and the secured party, in printed
3 or typewritten form, is signed by the debtor, gives an address of
4 the secured party from which information concerning the security
5 interest may be obtained, gives a mailing address of the debtor,
6 and contains a statement indicating the types or describing the
7 items of collateral. A financing statement may be filed before a
8 security agreement is made or a security interest otherwise
9 attaches. ~~If the financing statement covers crops growing or to~~
10 ~~be grown, the statement shall also contain a description of the~~
11 ~~real estate concerned, and the description shall reasonably iden-~~
12 ~~tify the real estate, as provided in section 9110.~~ If the
13 financing statement covers timber to be cut, covers minerals or
14 ~~the like~~ SIMILAR SUBSTANCES, including oil and gas, or accounts
15 subject to section 9103(5), or if the financing statement is
16 filed as a fixture filing under section 9313 and the collateral
17 is goods ~~which~~ THAT are or are to become fixtures, the state-
18 ment shall also comply with subsection (5). A copy of the secur-
19 ity agreement is sufficient as a financing statement if it con-
20 tains the above information and is signed by the debtor. A legi-
21 ble carbon, photographic, or other reproduction of a security
22 agreement or a financing statement is sufficient as a financing
23 statement if the security agreement so provides or if the origi-
24 nal has been filed in this state.

25 (2) A financing statement ~~which~~ THAT otherwise complies
26 with subsection (1) is sufficient ~~when~~ IF it is signed by the

1 secured party instead of the debtor if it is filed to perfect a
2 security interest in any of the following:

3 (a) Collateral already subject to a security interest in
4 another jurisdiction when it is brought into this state, or when
5 the debtor's location is changed to this state. The financing
6 statement shall state that the collateral was brought into this
7 state or that the debtor's location was changed to this state
8 under those circumstances.

9 (b) Proceeds under section 9306 if the security interest in
10 the original collateral was perfected. The financing statement
11 shall describe the original collateral.

12 (c) Collateral as to which the filing has lapsed.

13 (d) Collateral acquired after a change of name, identity, or
14 corporate structure of the debtor as provided in subsection (7).

15 (3) A form substantially as follows is sufficient to comply
16 with subsection (1):

17 (PRINT OR TYPE)

18 Name of debtor (or assignor).....
19 Address.....
20 Name of secured party (or assignee).....
21 Social security number or federal employer tax identification number
22 of debtor (when required).....
23 Address.....

24 1. This financing statement covers the following types or items
25 of property:

1 (Describe).....

2 2. (If applicable check box below)

3 a. The goods are to become fixtures on

4 b. The above described timber is standing on

5 c. The above described minerals or the like (including
6 oil and gas) are to be extracted from the wellhead
7 or minehead of the well or mine located on

8 d. The above described accounts include accounts
9 resulting from the sale of minerals or the like
10 (including oil and gas) to be extracted from the
11 wellhead or minehead of the well or mine located on

12 (Describe real estate).....

13 If 1 of the above boxes is checked, this financing statement is to
be
14 recorded in the real estate records. If the debtor does not have an
15 interest of record, the name of the record owner is.....

16 3. (If products of collateral are claimed) Products of the col-
17 lateral are also covered.

18 (Use whichever is applicable)

19 Signature of debtor (or assignor).....

20 Signature of secured party (or assignee).....

21 (4) A financing statement may be amended by filing a writing
22 signed by both the debtor and the secured party ~~which~~ THAT
23 identifies the original filing by file number and, if applicable,
24 by liber and page. An amendment also may, but is not required
25 to, include the debtor's tax identification number. An amendment
26 does not extend the period of effectiveness of a financing
27 statement. If any amendment adds collateral, it is effective as

1 to the added collateral only from the filing date of the
2 amendment. As used in this article, unless the context otherwise
3 requires, "financing statement" means the original financing
4 statement and any amendments.

5 (5) A financing statement covering timber to be cut, cover-
6 ing minerals or ~~the like~~ SIMILAR SUBSTANCES, including oil and
7 gas, or accounts subject to section 9103(5), or a financing
8 statement filed as a fixture filing under section 9313 if the
9 debtor is not a transmitting utility, shall show that it covers
10 this type of collateral, recite that it is to be recorded in the
11 real estate records, and contain a description of the real estate
12 sufficient if it were contained in a mortgage of the real estate
13 to give constructive notice of the mortgage under the law of this
14 state. If the debtor does not have an interest of record in the
15 real estate, the financing statement shall show the name of a
16 record owner.

17 (6) A mortgage is effective as a financing statement filed
18 as a fixture filing from the date of its recording if all of the
19 following apply:

20 (a) The goods are described in the mortgage by item or
21 type.

22 (b) The goods are or are to become fixtures related to the
23 real estate described in the mortgage.

24 (c) The mortgage complies with the requirements for a
25 financing statement in this section other than a recital that it
26 is to be recorded in the real estate records.

1 (d) The mortgage is duly recorded. Other than the regular
2 recording and satisfaction fees for the mortgage, a fee for the
3 financing statement is not required.

4 (7) A financing statement sufficiently shows the name of the
5 debtor if it includes the individual, partnership, or corporate
6 name of the debtor, whether or not it adds other trade names or
7 the names of partners. If the debtor changes his or her name, or
8 in the case of an organization, its name, identity, or corporate
9 structure, so that a filed financing statement becomes seriously
10 misleading, the filing is not effective to perfect a security
11 interest in collateral acquired by the debtor more than 4 months
12 after the debtor notifies the secured party in writing of the
13 change, unless a new appropriate financing statement is filed
14 before the expiration of that time. A filed financing statement
15 remains effective for collateral transferred by the debtor even
16 though the secured party knows of or consents to the transfer.

17 (8) A financing statement substantially complying with the
18 requirements of this section is effective even though it contains
19 minor errors ~~which~~ THAT are not seriously misleading.

20 (9) Any financing statement, indicating that it is to be
21 recorded in the real estate records, as provided in subsections
22 (3) and (5), and any continuation statement, termination state-
23 ment, amendment, or assignment relating to the statement and
24 meeting the formal requisites of this section, section 9404, and
25 section 9405, shall be recorded by the register of deeds of the
26 county in which the real property described in the financing
27 statement is located, notwithstanding the provisions for

1 witnessing and acknowledging instruments to be recorded in the
2 real property records contained in section 47 of ~~chapter 65 of~~
3 ~~the Revised Statutes of 1846, being section 565.47 of the~~
4 ~~Michigan Compiled Laws~~ 1846 RS 65, MCL 565.47.

5 (10) Each register of deeds shall certify on every financing
6 statement indicating that it is to be recorded in the real estate
7 records, as provided in subsections (3) and (5), and any continu-
8 ation statement, termination statement, amendment, or assignment
9 relating to the statement and meeting the formal requisites of
10 this section, section 9404, and section 9405, the date and time
11 when it was received for record, and a reference to the liber and
12 page where it is recorded.

13 (11) Each register of deeds shall enter any financing state-
14 ment indicating that it is to be recorded in the real estate
15 records, as provided in subsections (3) and (5), and any continu-
16 ation statement, termination statement, amendment, or assignment
17 relating to the statement and meeting the formal requisites of
18 this section, section 9404, and section 9405, in an entry book
19 where a real estate mortgage would be entered, noting in the
20 entry book the day, hour, and minute of reception, and other par-
21 ticulars in the order in which the financing statements, continu-
22 ation statements, termination statements, amendments, and assign-
23 ments are respectively received, and each instrument shall be
24 considered recorded at the time so noted.

25 (12) Each register of deeds shall index each financing
26 statement, continuation statement, termination statement,
27 amendment, or assignment, recorded under subsection (11), in a

1 book or card index under the name of the debtor, and, if
2 applicable, under the name of the record owner of the real
3 estate, in the same manner as recordings of real estate mortgages
4 are indexed.

5 (13) Beginning April 1, 1990 all original filings of a
6 security agreement or a financing statement tendered to the sec-
7 retary of state shall contain the tax identification number of
8 each debtor except for the following:

9 (a) A reproduction of a security agreement or of a financing
10 statement filed under the last sentence of subsection (1) if the
11 security agreement was entered into or the financing statement
12 was filed before April 1, 1990.

13 (b) A financing statement filed under subsection (2).

14 (c) A financing statement ~~which~~ THAT is accompanied by a
15 certificate prescribed by the secretary of state and is signed by
16 the debtor stating that the debtor does not have a tax identifi-
17 cation number.

18 (14) If an original filing of a security agreement or a
19 financing statement fails to contain the tax identification
20 number of each debtor and is not exempted under subsection (13),
21 the secretary of state shall not accept it for filing and shall
22 return it to the secured party or other person who submitted it.
23 If the records of the secretary of state indicate that a debtor's
24 tax identification number contained on a financing statement
25 received for filing is or may be incorrect, the secretary of
26 state shall nevertheless accept and file the financing
27 statement. The secretary of state may request the secured party

1 or other person who submitted the financing statement to file an
2 amendment to the statement giving the debtor's correct tax iden-
3 tification number. The signature of the debtor shall not be
4 required on an amendment ~~which~~ THAT changes only the debtor's
5 tax identification number.

6 (15) Notwithstanding subsections (13) and (14), if the sec-
7 retary of state files a financing statement that does not con-
8 tain, or that incorrectly states, the debtor's tax identification
9 number and if the financing statement otherwise complies with
10 applicable requirements, the financing statement shall be consid-
11 ered sufficient, valid, and effective.

12 (16) The secretary of state shall adopt and utilize computer
13 assisted search procedures to enable the secretary of state to
14 provide information to a person making a request under
15 section 9407(2). The secretary of state shall provide the infor-
16 mation requested by a person under section 9407(2) as accurate
17 and complete as the information the person would have received if
18 the same request had been processed under the search procedures
19 followed by the secretary of state immediately before the imple-
20 mentation of computer assisted searches.

21 Enacting section 1. Article 6 and section 9111 of the uni-
22 form commercial code, 1962 PA 174, MCL 440.6101 to 440.6111 and
23 440.9111, are repealed.

24 Enacting section 2. Rights and obligations that arose under
25 article 6 before article 6 was repealed remain valid and may be
26 enforced as if article 6 had not been repealed.