

Act No. 489
Public Acts of 1998
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STATE OF MICHIGAN
89TH LEGISLATURE
REGULAR SESSION OF 1998

Introduced by Reps. Baird and Richner

ENROLLED HOUSE BILL No. 5644

AN ACT to amend 1962 PA 174, entitled "An act to enact the uniform commercial code, relating to certain commercial transactions in or regarding personal property and contracts and other documents concerning them, including sales, commercial paper, bank deposits and collections, letters of credit, bulk transfers, warehouse receipts, bills of lading, other documents of title, investment securities, leases, and secured transactions, including certain sales of accounts, chattel paper and contract rights; to provide for public notice to third parties in certain circumstances; to regulate procedure, evidence and damages in certain court actions involving such transactions, contracts or documents; to make uniform the law with respect thereto; to make an appropriation; to provide penalties; and to repeal certain acts and parts of acts," by amending sections 1105, 9203, and 9402 (MCL 440.1105, 440.9203, and 440.9402), sections 1105 and 9203 as amended by 1998 PA 278 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:

Sec. 1105. (1) Except as provided in this section, if a transaction bears a reasonable relation to this state and also to another state or nation the parties may agree that the law either of this state or of the other state or nation shall govern their rights and duties. Failing agreement this act applies to transactions bearing an appropriate relation to this state.

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

Rights of creditors against sold goods.	Section 2402.
Applicability of the article on bank deposits and collections.	Section 4102.
Governing law in the article on funds transfers.	Section 4A502.
Letters of credit.	Section 5156.
Applicability of the article on investment securities.	Section 8110.
Applicability of the article on leases.	Sections 2A105 and 2A106.
Perfection provisions of the article on secured transactions.	Section 9103.

Sec. 9203. (1) Subject to section 4208 on the security interest of a collecting bank, sections 9115 and 9116 on security interests in investment property, and section 9113 on a security interest arising under the article on sales, a security interest is not enforceable against the debtor or third parties with respect to the collateral and does not attach unless all of the following are true:

(a) The collateral is in the possession of the secured party pursuant to agreement, the collateral is investment property and the secured party has control pursuant to agreement, or the debtor has signed a security agreement that contains a description of the collateral and in addition, when the security interest covers timber to be cut, a description of the land concerned.

(b) Value has been given.

(c) The debtor has rights in the collateral.

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

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

(4) A transaction, although subject to this article, is also subject to the regulatory loan act of 1963, 1939 PA 21, MCL 493.1 to 493.26, 1939 PA 305, MCL 566.301 to 566.302, and the motor vehicle sales finance act, 1950 (Ex Sess) PA 27, MCL 492.101 to 492.141. If a conflict arises between this article and another statute, the other statute controls. Failure to comply with any applicable statute has only the effect that is specified in that statute.

Sec. 9402. (1) A financing statement is sufficient if it gives the names of the debtor and the secured party, in printed or typewritten form, is signed by the debtor, gives an address of the secured party from which information concerning the security interest may be obtained, gives a mailing address of the debtor, and contains a statement indicating the types or describing the items of collateral. A financing statement may be filed before a security agreement is made or a security interest otherwise attaches. If the financing statement covers timber to be cut, covers minerals or similar substances, including oil and gas, or accounts subject to section 9103(5), or if the financing statement is filed as a fixture filing under section 9313 and the collateral is goods that are or are to become fixtures, the statement shall also comply with subsection (5). A copy of the security agreement is sufficient as a financing statement if it contains the above information and is signed by the debtor. A legible carbon, photographic, or other reproduction of a security agreement or a financing statement is sufficient as a financing statement if the security agreement so provides or if the original has been filed in this state.

(2) A financing statement that otherwise complies with subsection (1) is sufficient if it is signed by the secured party instead of the debtor if it is filed to perfect a security interest in any of the following:

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

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

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

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

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

(PRINT OR TYPE)

Name of debtor (or assignor)

Address.

Name of secured party (or assignee)

Social security number or federal employer tax identification number of debtor (when required)

Address.

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

(Describe)

2. (If applicable check box below)

a. The goods are to become fixtures on ☐

b. The above described timber is standing on ☐

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

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

(Describe real estate).

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

3. (If products of collateral are claimed) Products of the collateral are also covered.

(Use whichever is applicable)

Signature of debtor (or assignor).

Signature of secured party (or assignee).

(4) A financing statement may be amended by filing a writing signed by both the debtor and the secured party that identifies the original filing by file number and, if applicable, by liber and page. An amendment also may, but is not required to, include the debtor's tax identification number. An amendment does not extend the period of effectiveness of a financing statement. If any amendment adds collateral, it is effective as to the added collateral only from the filing date of the amendment. As used in this article, unless the context otherwise requires, "financing statement" means the original financing statement and any amendments.

(5) A financing statement covering timber to be cut, covering minerals or similar substances, including oil and gas, or accounts subject to section 9103(5), or a financing statement filed as a fixture filing under section 9313 if the debtor is not a transmitting utility, shall show that it covers this type of collateral, recite that it is to be recorded in the real estate records, and contain a description of the real estate sufficient if it were contained in a mortgage of the real estate to give constructive notice of the mortgage under the law of this state. If the debtor does not have an interest of record in the real estate, the financing statement shall show the name of a record owner.

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

- (a) The goods are described in the mortgage by item or type.
- (b) The goods are or are to become fixtures related to the real estate described in the mortgage.
- (c) The mortgage complies with the requirements for a financing statement in this section other than a recital that it is to be recorded in the real estate records.
- (d) The mortgage is duly recorded. Other than the regular recording and satisfaction fees for the mortgage, a fee for the financing statement is not required.

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

(8) A financing statement substantially complying with the requirements of this section is effective even though it contains minor errors that are not seriously misleading.

(9) Any financing statement, indicating that it is to be recorded in the real estate records, as provided in subsections (3) and (5), and any continuation statement, termination statement, amendment, or assignment relating to the statement and meeting the formal requisites of this section, section 9404, and section 9405, shall be recorded by the register of deeds of the county in which the real property described in the financing statement is located, notwithstanding the provisions for witnessing and acknowledging instruments to be recorded in the real property records contained in section 47 of 1846 RS 65, MCL 565.47.

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

(11) Each register of deeds shall enter any financing statement indicating that it is to be recorded in the real estate records, as provided in subsections (3) and (5), and any continuation statement, termination statement, amendment, or assignment relating to the statement and meeting the formal requisites of this section, section 9404, and section 9405, in an entry book where a real estate mortgage would be entered, noting in the entry book the day, hour, and minute of reception, and other particulars in the order in which the financing statements, continuation statements, termination statements, amendments, and assignments are respectively received, and each instrument shall be considered recorded at the time so noted.

(12) Each register of deeds shall index each financing statement, continuation statement, termination statement, amendment, or assignment, recorded under subsection (11), in a book or card index under the name of the debtor, and, if applicable, under the name of the record owner of the real estate, in the same manner as recordings of real estate mortgages are indexed.

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

- (a) A reproduction of a security agreement or of a financing statement filed under the last sentence of subsection (1) if the security agreement was entered into or the financing statement was filed before April 1, 1990.
- (b) A financing statement filed under subsection (2).

(c) A financing statement that is accompanied by a certificate prescribed by the secretary of state and is signed by the debtor stating that the debtor does not have a tax identification number.

(14) If an original filing of a security agreement or a financing statement fails to contain the tax identification number of each debtor and is not exempted under subsection (13), the secretary of state shall not accept it for filing and shall return it to the secured party or other person who submitted it. If the records of the secretary of state indicate that a debtor's tax identification number contained on a financing statement received for filing is or may be incorrect, the secretary of state shall nevertheless accept and file the financing statement. The secretary of state may request the secured party or other person who submitted the financing statement to file an amendment to the statement giving the debtor's correct tax identification number. The signature of the debtor shall not be required on an amendment that changes only the debtor's tax identification number.

(15) Notwithstanding subsections (13) and (14), if the secretary of state files a financing statement that does not contain, or that incorrectly states, the debtor's tax identification number and if the financing statement otherwise complies with applicable requirements, the financing statement shall be considered sufficient, valid, and effective.

(16) The secretary of state shall adopt and utilize computer assisted search procedures to enable the secretary of state to provide information to a person making a request under section 9407(2). The secretary of state shall provide the information requested by a person under section 9407(2) as accurate and complete as the information the person would have received if the same request had been processed under the search procedures followed by the secretary of state immediately before the implementation of computer assisted searches.

Enacting section 1. Article 6 and section 9111 of the uniform commercial code, 1962 PA 174, MCL 440.6101 to 440.6111 and 440.9111, are repealed.

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

This act is ordered to take immediate effect.

Clerk of the House of Representatives.

Secretary of the Senate.

Approved _____

Governor.