

PERFECTING SECURITY INTERESTS

House Bill 4774 as enrolled
Public Act 145 of 2001
Second Analysis (1-7-02)

Sponsor: Rep. Andrew Richner
House Committee: Commerce
Senate Committee: Financial Services

THE APPARENT PROBLEM:

Public Act 348 of 2000 (House Bill 5228) was a mammoth rewriting of Article 9 of the Uniform Commercial Code (UCC) and contains significant changes in the scope, rules, and procedures regarding secured transactions. The act took effect July 1, 2001. The revision was recommended by the American Law Institute and the National Conference of Commissioners on Uniform State Laws. Among other things, it governs the granting of credit coupled with a creditor's interest in a debtor's personal property. If the debtor defaults, the creditor can take possession of and sell the property (generally called collateral) to satisfy the debt. The creditor's interest is called a "security interest". Article 9 specifies how enforceable security interests are to be created, perfected, and enforced, and who has the first rights in the collateral when competing creditors have legally enforceable interests. Perfection of a security interest occurs when a creditor establishes his or her priority over other creditors for the same collateral. Perfection usually results from the filing of a financing statement in the appropriate public record. There are exceptions, however. The filing of a financing statement is not the way to perfect a security interest, for example, in personal property that is subject to state laws that require a certificate of title, such as laws governing the titling of motor vehicles, watercraft, off-road vehicles, and mobile homes. This means, for example, that Chapter II of the Michigan Vehicle Code governs the security interest in an automobile rather than the UCC.

A representative of the Michigan Bankers Association has testified that in rewriting Article 9, Public Act 348 created some technical problems with the provisions regarding how a security interest is to be perfected for titled property, such as a car or a boat. The new provisions do not merely cite Michigan statutes that provide for titles (as the old law did), but specify that creditors must meet "the requirements" in those statutes for obtaining priority over the rights of a lien creditor. However, the title

statutes contain no such "requirements", leading legal scholars troubled over how the provisions are to be applied. Legislation has been introduced that would essentially return Michigan's law on this subject to the condition it was in prior to the passage of Public Act 348.

THE CONTENT OF THE BILL:

The bill would amend Article 9 of the Uniform Commercial Code to revise the provisions regarding the perfecting of a security interest in property that is subject to federal and state statutes, regulations, and treaties, including Chapter II of the Michigan Vehicle Code, Part 803 of the Natural Resources and Environmental Protection Act (NREPA), Part 811 of NREPA, and Sections 30 through 34 of the Mobile Home Commission Act. The bill would essentially return the language of Section 9311 to its state prior to amendments made in 2000.

Section 9311 currently says that "compliance with the requirements of a statute, regulation, or treaty [cited earlier] for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financial statement under this article." The bill would make this provision read, "compliance with a statute, regulation, or treaty [cited earlier] is equivalent to the filing of a financial statement under this article." Similar subsequent changes in the bill would remove the references to "requirements" and instead refer just to the statute, regulation, or treaty.

The bill also would add the word "or" in a later provision where it had been unintentionally omitted by Public Act 348.

The bill would take effect January 1, 2002.

MCL 440.9311 and 440.9616

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FISCAL IMPLICATIONS:

The House Fiscal Agency reports that the bill would have no fiscal impact on the state or on local units of government. (Fiscal Note dated 6-12-01)

ARGUMENTS:

For:

The bill would make some necessary technical changes to Article 9 of the Uniform Commercial Code regarding the perfecting of security interests when titled property is involved. Recent changes to this section apparently have generated some confusion among legal specialists in this area.

Analyst: C. Couch

■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.