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BILL ANALYSIS

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House Bill 4774 (Substitute S-1 as reported)  
Sponsor: Representative Andrew Richner  
House Committee: Commerce  
Senate Committee: Financial Services

Date Completed: 10-10-01

### **RATIONALE**

Article 9 of the Uniform Commercial Code (UCC) governs secured transactions, which involve the granting of credit coupled with a creditor's interest in the debtor's personal property. These include, for example, transactions in which a manufacturer finances the acquisition of machinery, a retailer finances inventory, or a consumer finances household furniture. The creditor's interest is called a "security interest", which must be "perfected" in order for the creditor to have "priority" over other creditors of the debtor who have an interest in the same property. Typically, perfection occurs when a "financing statement" is filed with the state, although a security may be perfected by other means. For example, if property is subject to state laws that require a certificate of title (such as motor vehicles and watercraft), a creditor perfects a security interest in that property by complying with the law that governs the certificate of title.

In 1999, the American Law Institute and the National Conference of Commissioners on Uniform State Laws (NCCUSL) unanimously approved a revised version of Article 9, and recommended that every state adopt these revisions. Michigan did so with the enactment of Public Act 328 of 2000. Since then, representatives of the banking industry have identified a concern about language that deals with perfecting a security interest in titled property. The new provisions not only cite statutes that provide for certificates of title, but also require creditors to meet "the requirements" of those statutes "for obtaining priority over the rights of a lien creditor". The Michigan statutes in question, however, do not actually contain requirements governing the priority of lien creditors. Since this has generated some confusion and concern, it has

been suggested that the pertinent language be revised.

### **CONTENT**

**The bill would amend Article 9 of the Uniform Commercial Code to revise provisions under which filing a financing statement is not necessary or effective to perfect a security interest in property that is subject to a statute, regulation, or treaty described in the Code. The bill essentially would delete language referring to "the requirements of" a specified statute, regulation, or treaty "for obtaining priority over the rights of a lien creditor".**

Under the Code, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to one or more of the following:

- A statute, regulation, or treaty of the United States whose requirements for a security interest's taking priority over the rights of a lien creditor in that property preempt another section of Article 9.
- Sections or parts of the Michigan Vehicle Code, the Natural Resources and Environmental Protection Act, and the Mobile Home Commission Act that govern certificates of title for motor vehicles, watercraft, off-road vehicles, and mobile homes.
- A certificate-of-title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's taking priority over the rights of a lien creditor with respect to the property.

Currently, the Code states, "Compliance with *the requirements of a statute, regulation, or treaty...for obtaining priority over the rights of a lien creditor* is equivalent to the filing of a financing statement under this article" (emphasis added). The bill would delete the italicized language, stating instead, "Compliance with a statute, regulation, or treaty...is equivalent to the filing of a financing statement under this article."

The Code also provides that, with certain exceptions, a security interest in property subject to a statute, regulation, or treaty described above may be perfected only by compliance with "those requirements". The bill would refer, instead, to compliance with "the statute, regulation, or treaty". In addition, the Code states that, with certain exceptions, duration and renewal of perfection of a security interest perfected by compliance with "the requirements prescribed by" a statute, regulation, or treaty described above are governed by the statute, regulation, or treaty. The bill would delete the quoted language.

The bill would take effect on January 1, 2002.

MCL 440.9311 & 440.9616

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The bill simply would delete unnecessary and problematic language concerning compliance with certificate of title statutes. Although the existing provisions track the language recommended by the NCCUSL, this wording does not reflect actual Michigan law. Without making any substantive change, the bill would remove a cause for concern and confusion among legal scholars and the banking industry.

Legislative Analyst: S. Lowe

## **FISCAL IMPACT**

The bill would have no fiscal impact on State or local government.

Fiscal Analyst: J. Runnels

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.