House Bill 4774 (Substitute H-1 as passed by the House)
Sponsor: Representative Andrew Richner
House Committee: Commerce
Senate Committee: Financial Services

Date Completed: 10-2-01

CONTENT

The bill would amend Article 9 of the Uniform Commercial Code (which governs secured transactions) 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 titled property (such as an automobile or boat).
-- 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.

MCL 440.9311 & 440.9616

BACKGROUND

Article 9 governs most transactions that involve the granting of credit coupled with a creditor's interest in personal property belonging to the debtor. (These include, for example, transactions in which retailers finance inventory, or consumers finance household furniture.) The creditor's interest is called a "security interest". The security interest must be "perfected" in order for the creditor to have "priority" in relation to other creditors of the debtor who have an interest in the same property (the collateral). Typically, perfection occurs when a "financing statement" is filed with the State, although a security interest may be perfected by other means (such as the circumstances described in the bill).

In 1999, the American Law Institute and the National Conference of Commissioners on Uniform State Laws approved a revised version of Article 9, and recommended that every state adopt the revisions. Michigan did so with the enactment of Public Act 348 of 2000.

Legislative Analyst: S. Lowe

FISCAL IMPACT

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

Fiscal Analyst: J. Runnels