

[No. 145]

(HB 4774)

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 9311 and 9616 (MCL 440.9311 and 440.9616), section 9311 as amended and section 9616 as added by 2000 PA 348.

The People of the State of Michigan enact:

440.9311 Perfection of security interests in property subject to certain statutes, regulations, and treaties.

Sec. 9311. (1) Except as otherwise provided in subsection (4), the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to 1 or more of the following:

(a) A statute, regulation, or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9310(1).

(b) The following statutes of this state:

(i) Chapter II of the Michigan vehicle code, 1949 PA 300, MCL 257.201 to 257.259.

(ii) Part 803 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.80301 to 324.80322.

(iii) Part 811 of the natural resources and environmental protection act, 1994 PA 451, MCL 324.81101 to 324.81150.

(iv) Sections 30 through 30h of the mobile home commission act, 1987 PA 96, MCL 125.2330 to 125.2330h.

(c) A certificate-of-title statute of another jurisdiction which provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(2) Compliance with a statute, regulation, or treaty described in subsection (1) is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (4) and sections 9313 and 9316(4) and (5) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation, or treaty described in subsection (1) may be perfected only by compliance with the statute, regulation, or treaty, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(3) Except as otherwise provided in subsection (4) and section 9316(4) and (5), duration and renewal of perfection of a security interest perfected by compliance with a statute, regulation, or treaty described in subsection (1) are governed by the statute, regulation, or treaty. In other respects, the security interest is subject to this article.

(4) During any period in which collateral subject to a statute specified in subsection (1)(b) is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

440.9616 Calculation of surplus or deficiency; explanation.

Sec. 9616. (1) As used in this section:

(a) “Explanation” means a writing that does all of the following:

(i) States the amount of the surplus or deficiency.

(ii) Provides an explanation in accordance with subsection (3) of how the secured party calculated the surplus or deficiency.

(iii) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency.

(iv) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(b) “Request” means a record that meets all of the following:

(i) Authenticated by a debtor or consumer obligor.

(ii) Requesting that the recipient provide an explanation.

(iii) Sent after disposition of the collateral under section 9610.

(2) In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 9615, the secured party shall do 1 or both of the following:

(a) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and in accordance with both of the following:

(i) Sent before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency.

(ii) Sent within 14 days after receipt of a request.

(b) In the case of a consumer obligor who is liable for a deficiency, within 14 days after receipt of a request, send to the consumer obligor a record waiving the secured party’s right to a deficiency.

(3) To comply with subsection (1)(a)(ii), a writing must provide the following information in the following order:

(a) The aggregate amount of obligations secured by the security interest under which the disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date, that is 1 of the following:

(i) If the secured party takes or receives possession of the collateral after default, not more than 35 days before the secured party takes or receives possession.

(ii) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than 35 days before the disposition.

(b) The amount of proceeds of the disposition.

(c) The aggregate amount of the obligations after deducting the amount of proceeds.

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(d) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney fees secured by the collateral that are known to the secured party and relate to the current disposition.

(e) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and that are not reflected in the amount in subdivision (a).

(f) The amount of the surplus or deficiency.

(4) A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (1) is sufficient, even if it includes minor errors that are not seriously misleading.

(5) A debtor or consumer obligor is entitled without charge to 1 response to a request under this section during any 6-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subsection (2)(a). The secured party may require payment of a charge not exceeding \$25.00 for each additional response.

Effective date.

Enacting section 1. This amendatory act takes effect January 1, 2002.

This act is ordered to take immediate effect.

Approved October 26, 2001.

Filed with Secretary of State October 26, 2001.
