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BILL ANALYSIS

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Senate Bill 551 (as introduced 9-25-13)
Sponsor: Senator Darwin L. Booher
Committee: Banking and Financial Institutions

Date Completed: 10-9-13

CONTENT

The bill would amend Article 9, Part 6 of the Uniform Commercial Code, which governs default of secured transactions, to specify limitations on the recovery available for loss to a debtor or secondary obligor; and extend rules in deficiency actions to consumer transactions.

(As a rule, secured transactions are transactions in which credit is granted and the creditor receives an interest in personal property of the debtor (the collateral). The debtor also may be the obligor, i.e., the party who owes the obligation secured by the collateral. A secondary obligor is essentially a guarantor of the obligation. Part 6 of Article 9 contains collection and enforcement provisions that are triggered by a default, such as the failure to make a payment under the secured obligation when due. Part 6 also specifies rules that apply when a party does not comply with Article 9.)

Under Section 9625, a person is liable for damages for loss caused by failure to comply with Article 9. A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral at issue may recover damages for his or her loss. If the collateral is consumer goods, a debtor or a secondary obligor may recover an amount not less than either: 1) the credit service charge plus 10% of the principal amount of the obligation; or 2) the time-price differential plus 10% of the cash price.

A debtor whose deficiency is eliminated under Section 9626 (described below) may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under Section 9626 may not otherwise recover for losses due to the secured party's noncompliance with Article 9.

Under the bill, regardless of whether the debtor's or secondary obligor's deficiency was eliminated or reduced under Section 9626 or other law, any damages recovered by the debtor or secondary obligor under the method discussed above would have to be reduced by the amount by which the sum of the secured obligation, expenses, and attorney's fees exceeded the proceeds of collection, enforcement, disposition, or acceptance.

Section 9626 specifies rules that apply to an action arising out of a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is at issue. Under these rules, a secured party does not need to prove compliance with Part 6 provisions regarding collection, enforcement, disposition, or acceptance, unless a debtor or secondary obligor raises the issue of a secured party's compliance.

If a secured party fails to prove compliance with collection, enforcement, disposition, or acceptance provisions, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney fees exceeds the greater of either: 1) the proceeds of the collection, enforcement, disposition, or acceptance; or 2) the amount of proceeds that would have been realized if the secured party had acted in compliance with the provisions (which is equal to the sum of the secured obligation, expenses, and attorney fees, unless the secured party proves that the amount is less).

The bill would delete the exemption of consumer transactions from the rules specified in Section 9626. The bill also would delete the following statement: "The limitation of the rules…to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches."

MCL 440.9625 & 440.9626 Legislative Analyst: Glenn Steffens

FISCAL IMPACT

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

Fiscal Analyst: Dan O'Connor

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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.