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BILL ANALYSIS



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Senate Bills 516, 517, and 518 (as introduced 9-6-17)
Sponsor: Senator Wayne Schmidt
Committee: Banking and Financial Institutions

Date Completed: 10-31-17

CONTENT

Senate Bill 517 would enact the "Farm Loan Mediation Act" to do the following:

- Permit a debtor that owned agricultural property or a creditor to request voluntary mediation of a debt related to the property.
- Require the Department of Agriculture and Rural Development Director to evaluate each request and appoint a mediator to assist in mediation.
- Prohibit a creditor that received a mediation proceeding notice from starting or continuing a proceeding to enforce a debt against a debtor's agricultural property until 90 days after the date the debtor filed a mediation request.
- Prescribe procedures for a creditor to start or continue a proceeding to enforce a debt.
- Require a debtor to state certain information in a mediation request.
- Require the Director to provide a financial analyst to meet with a debtor to assure that information relative to the debtor's finances was prepared for an initial mediation meeting.
- Require a financial analyst to review and, if necessary, prepare a debtor's financial records before an initial mediation meeting.
- Require the Director to send a mediation proceeding notice, containing certain information, to a debtor and all creditors listed by the debtor in a mediation request.
- Require the Director to schedule an orientation meeting, which a debtor, financial analyst, and mediator would have to attend, and schedule an initial mediation meeting.
- Require the Director to provide mediators who were experienced in farm finance, agricultural law, and negotiation, and provide training and support for individuals to act as mediators.
- Permit a debtor and one or more creditors to select and pay for a professional mediator, instead of having the Director assign one.
- Permit a creditor that was participating in a mediation and that had a security agreement relating to a debtor's agriculture property to inspect the property.
- Require the parties to mediation to participate in good faith.
- Permit a debtor to request court-supervised mandatory mediation, if a mediator determined that a creditor had not participated in a mediation in good faith.
- Require the creditor, debtor, and mediator to sign a mediation agreement, if an agreement were reached.
- Require the Director to promulgate rules to implement the Act.

Senate Bill 516 would amend the Revised Judicature Act (RJA) to do the following:

- Prohibit a person from filing an action or publishing a notice to foreclose a mortgage or land contract if the Farm Loan Mediation Act applied to the debt, unless the person had served a mediation notice and foreclosure was allowed under that Act.**
- Prohibit a person from applying for a writ of attachment, garnishment, or execution against agricultural property that was subject to the Farm Loan Mediation Act, unless the person had served a mediation notice and applying for a writ was allowed under that Act.**
- Prohibit a person from declaring a forfeiture of an executory contract for the purchase of agricultural property or commencing a proceeding to recover possession of the property if the Farm Loan Mediation Act applied to the contractual indebtedness, unless the person had served a mediation notice and forfeiture of the land contract was allowed under that Act.**
- Require a mediation notice to contain certain language.**

Senate Bill 518 would amend the Uniform Commercial Code (UCC) to prohibit a person from filing an action to enforce a security interest in collateral if the Farm Loan Mediation Act applied to the debt on which the security interest was based, unless the person had served a mediation notice and enforcement of the security interest was allowed under that Act.

Senate Bills 516 and 518 are tie-barred to Senate Bill 517, which is tie-barred to both of those bills. Each bill would take effect 90 days after it was enacted.

Senate Bill 517

Definitions

The bill would define "agricultural property" as real property that is principally used for farming and personal property that is used as security to finance or as part of a farming operation, including equipment, crops, livestock, proceeds of the security, and removable agricultural structures under lease with option to purchase. Agricultural property would not include property that is leased to the debtor other than removable agricultural structures under lease with option to purchase or farm machinery that is primarily used for custom field work.

"Creditor" would mean a person that is the holder of a mortgage on agricultural property, a vendor of a land contract for the sale of agricultural property, a person with a lien against or security interest in agricultural property, or a judgment creditor with a judgment against a debtor with agricultural property.

"Farming" would mean that term as defined in Section 2 of the Michigan Family Farm Development Act (the cultivation of land for the production of agricultural crops, including the production of poultry and poultry products, the production of livestock including breeding and grazing, the production of grains and feeds, the production of forages and sod, the production of dairy products, the production of fruits and vegetables, the production of timber and timber products, the production of seeds and grasses, and the production of equine).

"File", with respect to a mediation request, claim form, objection, affidavit, proof of service, or other document required to be filed in relation to mediation under the proposed Act, would mean to deliver by the required date by certified mail or by a method that requires acknowledgment of receipt. It would not apply to the filing of court documents.

"Serve" would mean to provide a document to a person by any of the following methods:

- Personally delivering the document.
- Sending the document by certified mail using a return receipt signed by the addressee only.
- Providing the document and obtaining a receipt signed by the person acknowledging receipt of the document.
- Sending the document by mail with a certificate of mailing to the last known address of the person, if an unsuccessful attempt has been made to serve by personal delivery or certified mail.

(For purposes of service, the addressee would be considered to have been served the documents five days after the date on the certificate of filing.)

"Start a proceeding" would mean any of the following:

- Filing an action to foreclose a mortgage or land contract under Chapter 31 (Foreclosure of Mortgages and Land Contracts) of the RJA.
- Publishing a notice to foreclose a mortgage by advertisement under Chapter 32 (Foreclosure of Mortgages by Advertisement) of the RJA.
- Commencing a proceeding to recover possession of property after forfeiture of a land contract under Chapter 57 (Summary Proceedings to Recover Possession of Premises) of the RJA.
- Applying for a writ of attachment or garnishment under Chapter 40 (Attachment and Garnishment) of the RJA, or a writ of execution under Chapter 60 (Enforcement of Judgments) of the Act.
- Enforcing a security interest under Article 9 (Secured Transactions) of the Uniform Commercial Code.

Applicability of the Act

Except as otherwise provided, the proposed Farm Loan Mediation Act would apply to a debt if it exceeded \$5,000 and if one of the following applied: the subject of the debt was agricultural property, the debt was secured by agricultural property, the debt was sought to be enforced against agricultural property, or the debt in any other way related to agricultural property.

The Act would not apply if either of the following applied to the debtor:

- The debtor owned and leased less than 60 acres of land and had less than \$20,000 in gross sales of agricultural products in the year preceding the year in which the creditor wished to start a proceeding against the debtor.
- The debtor filed a petition in bankruptcy after July 1, 1987, under Chapter 7 (Liquidation), Chapter 11 (Reorganization), Chapter 12 (Adjustment of Debts of a Family Farmer or Fisherman with Regular Annual Income), or Chapter 13 (Adjustment of Debts of an Individual with Regular Income) of the U.S. Bankruptcy Code.

The Act would not apply to a debt that was any of the following:

- Listed as a scheduled debt in a bankruptcy proceeding or as to which a creditor filed a proof of claim form in a bankruptcy proceeding.
- Previously the subject of a mediation under the Act to which either the mediation was unresolved or a mediation agreement with respect to the debt was signed.

- A debt as to which the creditor served a mediation notice under the Act, the debtor failed to make a timely request for mediation, and within 60 days after the debtor's failure, the creditor started a proceeding to enforce the debt against the debtor's agricultural property.
- A debt as to which the creditor had received a mediation notice under the Act and the creditor and debtor had restructured the debt and signed a separate mediation agreement.

Procedures for Requesting Mediation

A debtor that owned agricultural property or a creditor could request voluntary mediation of an indebtedness by a mediator by applying to the Director of the Department of Agriculture and Rural Development. The Director would have to make application forms for voluntary mediation available through MSU Extension county offices. The Director also would have to evaluate each request and could direct a mediator to meet with the debtor and creditor to assist in mediation.

A creditor that wished to start a proceeding to enforce a debt to which the Act applied would have to serve on the debtor and the Director a mediation notice under Section 3104, 3204, 4010, or 5726 of the Revised Judicature Act or Section 9601 of the Uniform Commercial Code, as applicable. (Senate Bill 516 would add Sections 3104 and 4010 to the RJA and would amend Sections 3204 and 5726. Senate Bill 518 would amend Section 9601 of the UCC.) The creditor also would have to file with the Director a proof of service that included the date the mediation notice was served on the debtor. The creditor could not start the proceeding until allowed to do so under the Act.

Except as otherwise provided, if a creditor received a mediation proceeding notice, the creditor could not start or continue a proceeding to enforce a debt against a debtor's agricultural property if the debt were subject to the proposed Act until 90 days after the date the debtor filed a mediation request with the Director.

A creditor could start or continue proceedings to enforce a debt against a debtor's agricultural property as follows:

- After the creditor received a mediator's affidavit of the debtor's lack of good faith.
- Five business days after the date the debtor and creditor signed an agreement allowing the creditor to proceed to enforce the debt if the debtor had not rescinded the agreement within the five days.

A debtor that received a mediation notice and wished to have the debt mediated would have to file a mediation request form with the Director within 14 days after receiving the notice.

In a mediation request, a debtor would have to state the following:

- All known creditors of the debtor that had debts secured by the debtor's agricultural property.
- At the debtor's discretion, any unsecured creditors to whom payment was necessary for continuing the debtor's farming operation.
- The date that the notice was served on the debtor.

If a proceeding to enforce a debt against agricultural property had been started against a debtor and the debtor had not received a mediation notice, the debtor could file a mediation request with the Director. The debtor would have to state in the mediation request that the debtor had not received a mediation notice.

Ineligibility of the Debtor

A debtor that, in violation of a security agreement, fraudulently concealed, removed, or transferred agricultural property in which the debtor knew there was a security interest without remitting the proceeds to the secured party would be ineligible for mediation under the Act.

If such a debtor had filed a mediation request, the secured party could petition the circuit court for the county where the debtor resided for an order permitting the secured party to start proceedings to enforce the security interest. A petition would have to be brought within one year after the concealment, removal, or transfer occurred.

Within seven days after a petition was filed, the court would have to issue a summons commanding the debtor to appear for a hearing before the court on the petition on a day that was at least seven but not more than 14 days after the summons was issued. The court would have to deliver findings within 10 days after the close of the hearing.

A secured party could not file a petition if the secured party had served a mediation notice on the debtor.

Director Responsibilities

Within three business days after receiving a mediation request, the Director would have to provide a financial analyst to meet with a debtor and assure that information relative to the debtor's finances was prepared for an initial mediation meeting. The financial analyst would have to review and, if necessary, prepare the debtor's financial records before the initial mediation meeting.

("Financial analyst" would mean an individual who is all of the following:

- Knowledgeable in agricultural and financial matters and able to provide financial analysis.
- Able to aid the debtor in preparing financial information for an initial mediation meeting.
- Approved by the Department.)

After receiving a mediation notice, the Director would have to provide the debtor with a list of farm advocates that could be available without charge to assist the debtor and the financial analyst.

Within 10 days after receiving a mediation request, the Director would have to send a mediation proceeding notice to the debtor and to all creditors listed by the debtor in the request. The notice would have to state all of the following:

- The name and address of the debtor.
- That the debtor had requested mediation.
- The time and place for the orientation session.
- The time and place for the initial mediation meeting.
- A list of the names of three mediators who could be assigned to the proceeding, with background information on each mediator, including biographical information, a summary of previous mediation experience, and the number of agreements signed by parties to previous mediations conducted by the mediator.
- That the debtor and the initiating creditor could each request the Director to exclude one mediator.
- That instead of having the director assign a mediator, the debtor and any one or more of the creditors could agree to select and pay for a mediator.

- That, with certain exceptions, the Act would prohibit the creditor from starting or continuing a proceeding to enforce the debt against agricultural property for 90 days after the debtor filed a mediation request with the Director.
- That by the initial mediation meeting the creditor would have to provide the debtor with certain documents.

The Director also would have to send a claim form to all creditors stated by the debtor in the mediation request who had filed mediation notices set to the debtor.

If, before sending a mediation proceeding notice, the Director received mediation notices to the debtor from more than one creditor, the Director would have to combine all the debts in the notices for purposes of sending the notice. The creditors whose notice the Director received first would be the initiating creditor.

The Director would have to schedule an orientation session to be held five or more days before the initial mediation meeting. The debtor, the financial analyst, and a mediator would have to participate in the orientation session. The mediator who participated in the session would not need to be the mediator assigned to the mediation. Creditors participating in the mediation could participate in the orientation session. At the session, the financial analyst would have to review the debtor's financial and inventory records to determine if they were adequate for mediation and inform the debtor of any inadequacies, and the mediator would have to inform the debtor of the requirements of the mediation process.

The Director would have to schedule an initial mediation meeting to be held within 20 days after he or she sent the mediation proceeding notice.

The Director would have to promulgate standard forms as required under the Act and make the forms available on the Department website, at MSU Extension county offices, and otherwise as the Director determined advisable.

The Director would have to provide training and support for individuals to act as mediators, and would have to set the compensation of individuals who acted as mediators and financial analysts.

The Director would have to provide mediators by contracting with qualified individuals who were experienced in farm finance, agricultural law, and negotiation.

The Director could appoint a farm mediator administrator. The farm mediation administrator and the Director would have to provide training for farm mediators and financial analysts and coordinate community legal education programs for farmers.

Mediator

Within three days after receiving a mediation proceeding notice, the initiating creditor and the debtor could each file with the Director a written request to exclude one mediator named in the list contained in the notice. After the expiration of sufficient time to allow for the receipt of exclusion requests, the Director would have to appoint a mediator from the list, excluding any individuals requested to be excluded.

Instead of the Director assigning a mediator, the debtor and any one or more of the creditors could agree to select and pay for a professional mediator for the mediation. The Director would have to approve the professional mediator before assigning the mediator to the mediation. The Director could not approve a professional mediator unless the mediator prepared and signed an affidavit that did all of the following:

- Disclosed any biases of the mediator and any relationship or previous association that the mediator had with the debtor or creditors.
- Stated the mediator's certifications, training, or qualifications as a professional mediator.
- Disclosed the fees that the mediator would charge, or a rate schedule of the mediator's fees, for the mediation.
- Affirmed that the mediator would uphold the proposed Act.

By the initial mediation meeting, a creditor that received a mediation proceeding notice would have to provide the debtor with copies of notes and contracts for debts that would be subject to the Act and a statement of interest rates on the debts, delinquent payments, unpaid principal balances, all collateral securing the debts, the creditor's estimate of the value of the collateral, and debt restructuring programs available from the creditor.

An individual who had a conflict of interest that did not allow him or her to be impartial could not serve as a mediator. A conflict of interest would include being a director or officer of a creditor.

During the 60 days after the initial mediation meeting, the mediator could call subsequent mediation meetings.

At an initial mediation meeting and subsequent mediation meetings, the mediator would have to do all of the following:

- Listen to the debtor and creditors that desired to be heard.
- Attempt to mediate between the debtor and the creditors.
- Advise the debtor and creditors of assistance programs that were available.
- Attempt to arrive at an agreement to fairly adjust, refinance, or pay the debts.
- Advise, counsel, and assist the debtor and creditors in attempting to arrive an agreement for the future conduct of financial relations among them.

A mediator would be immune from civil liability for conduct within the scope of the mediator's duty. A mediator would not have a duty to advise a creditor or debtor about the law or to encourage or assist a debtor or creditor in reserving or establishing legal rights.

A mediator could not be examined about a communication or document, including work notes, made or used in the course of or because of mediation. This would not apply to examination by the debtor or a creditor in an action to set aside or reform a mediated settlement agreement. A communication or document otherwise not privileged would not become privileged because it was used in the course of mediation. These provisions would not limit any privileges accorded to communication during mediation by common law.

Inspection

After a debtor requested a mediation, a creditor that was participating in the mediation and that had a security agreement relating to agricultural property under the debtor's control could inspect the property on 24 hours' notice to the debtor. An inspection would have to be conducted between 8 a.m. and 6 p.m. on a day other than Sunday or a State or Federal holiday.

Good Faith

The parties to mediation would have to participate in mediation in good faith. Not participating in good faith would include any of the following:

- Failure to provide full information regarding the financial obligations of the parties and other creditors, including the obligation of a creditor to provide certain information.
- Lack of a written statement of debt restructuring alternatives and a statement of any reasons why alternatives were unacceptable.
- For a creditor, failure to release money from the sale of farm products to the debtor for necessary living expenses and necessary farm operating expenses.
- For a debtor, during the mediation period and in violation of a security agreement, fraudulently concealing, removing, or transferring agricultural property in which the debtor knew there was a security interest without remitting the proceeds to the secured party.
- For a debtor, failure to permit an inspection or destruction or waste of agricultural property that was mortgaged, the subject of a land contract, or subject to a security interest.
- Other similar behavior that evidenced lack of good faith.

("Necessary farm operating expenses" would mean an amount adequate to continue, during the mediation period, farm operations begun before the notice of default. The term would not include expenses for increasing the scale of an ongoing farming operation or planting additional crops.)

Not participating in good faith also would include failure on a regulator or continuing basis to attend and participate in mediation sessions without cause, and for a creditor, failure to designate a representative to participate in the mediation with the authority to make within one business day binding commitments to fully settle, compromise, or otherwise mediate the matter. These provisions would not apply to a creditor that elected to file an objection.

A failure to agree to reduce, restructure, refinance, or forgive a debt would not, in itself, evidence lack of good faith by a creditor.

Failure to Mediate in Good Faith

If a mediator determined that either party to a mediation was not participating in good faith, the mediator would have to file an affidavit indicating the reasons for the finding with the Director and with parties of the mediation.

If a mediator determined that a debtor had not participated in mediation in good faith and filed an affidavit indicating the reasons for the finding, a creditor could immediately start proceedings against the debtor's agricultural property.

On petition by a debtor or creditor, a court could review a mediator's filing of or failure to file an affidavit. A review would be limited to whether the mediator committed an abuse of discretion in filing or failing to file the affidavit. The court would have to review a petition within 10 days after it was filed.

After reviewing a petition by a debtor or creditor, if the court found that the mediator committed an abuse of discretion, the court do any of the following:

- Reinstate mediation and the stay of creditor's enforcement actions.
- Order court-supervised mediation.
- Allow creditors to proceed immediately with creditor's remedies.

The mediator could, but would not be required to, offer testimony as part of the court's review of a mediator's filing of or failure to file an affidavit.

Court-Supervised Mandatory Mediation

If a mediator determined that a creditor had not participated in mediation in good faith and filed an affidavit indicating the reasons for the finding, the debtor could request court-supervised mandatory mediation by doing the following:

- Filing with the circuit court for the county where the debtor resided the affidavit and a complaint for court supervision of mediation.
- Serving a copy of the complaint on the creditor.

The court would have to order both parties to mediate under the supervision of the court in good faith for up to 60 days and order all creditor remedies to be suspended during the mediation period. The court could issue orders necessary to effect good-faith mediation.

Following the mediation period, if the court found that the creditor had not participated in the mediation in good faith, the court would have to order the creditor's remedies suspended for an additional 180 days.

A creditor that a mediator determined not to have participated in good faith would have to pay costs and attorney fees of the debtor.

Mediation Agreement

If the debtor and one or more creditors in a mediation reached an agreement, the mediator would have to sign a written document that reflected the agreement, have the debtor and creditors that had agreed sign the document, and witness the signatures.

The mediator would have to provide a copy of a signed mediation agreement to the creditors who attended the mediation meetings and who did not attend, but who filed claim forms.

All of the following would apply to the debtor and creditors that were parties to a signed mediation agreement and to any creditors that had filed claim forms and had not objected to the mediation agreement:

- The debtor and creditors would be bound by the terms of the agreement.
- The debtor and creditors could enforce the mediation agreement as a legal contract.
- The debtor and creditors could use the mediation agreement as a defense against an action that was contrary to the mediation agreement.

A creditor that was notified of an initial mediation meeting and that did not file a claim form or attend mediation meeting would be subject to and bound by a signed mediation agreement.

If a creditor filed a claim form with a mediator before the initial meeting, but did not attend mediation meetings, the creditor would be bound by a mediation agreement reached at the mediation meeting unless the creditor filed an objection.

Within 10 days after receiving a signed mediation agreement, a creditor who filed a claim form with a mediator before an initial mediation meeting, but did not attend mediation meetings, could serve a written objection to the agreement on the mediator and the debtor.

Notwithstanding the expiration of the 60-day mediation period following an initial mediation meeting, if a creditor served an objection, the mediator would have to meet again with the debtor and creditors within 10 days after receiving the objection, in one or more meetings as necessary, to mediate a new agreement.

A court would have to enforce a mediation agreement that was reached.

Termination Statement

At the expiration of the 90-day period after a debtor filed a mediation request and a creditor started or continued a proceeding to enforce a debt against the debtor's agricultural property, a mediator would have to sign and serve on the parties and the Director a termination statement. A termination statement would have to state that mediation had ended and describe or refer to any agreements reached between a creditor and the debtor or among creditors. A signed mediation agreement could be included as part of a termination statement.

Expenses

The amount that a creditor would be required to release for necessary living expenses to be participating in mediation in good faith would be limited to \$1,600 per month less the debtor's nonfarm income.

If a debtor and creditor did not agree on the amount of necessary living expenses or necessary farm operating expenses to be released, the debtor or creditor that had requested the release of expenses could file a complaint for the circuit court for the county where the debtor resided requesting the court to make a determination of the amount to be released. After a hearing, the court would have to make a determination of the amount of living and operating expenses to be released within 10 days after the complaint was filed. The court also would have to add or subtract up to 10 days to or from the time when the creditor could begin to enforce a proceeding to collect the debt against agricultural property of the debtor and assess costs, including any attorney fees, among the parties to the court action. The court would have to equitably adjust the time to begin a creditor's proceeding and the assessment of costs based on the parties' good-faith claim to the amount of living and operating expenses to be released.

Appraisal of Real Property

If there were a dispute between the debtor and a creditor concerning the market value of real property involved in a mediation, the true and acceptable market value would have to be determined by an appraisal performed by an accredited appraiser and made within 45 days after the date of the dispute. The accredited appraiser would have to be selected by the following procedures:

- The mediator would have to submit the names of three accredited appraisers to the principal creditor and the debtor.
- The principal creditor and the debtor could each strike the name of one of the appraisers, within a time determined by the mediator.
- The accredited appraiser whose name was not stricken by either the principal creditor or the debtor would have to perform an appraisal, which all parties to the dispute would have to accept as the true market value.

The principal creditor and the debtor each would have to pay half of the cost of the appraisal.

Other Provisions

If a creditor had a purchase money security interest as described in Section 9103 of the UCC (an obligation incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used), and renegotiated the secured debt to reduce the principal balance or the interest rate or to extend

the repayment period, the creditor would retain the purchase money security interest for the renegotiated debt.

A public body would have to exempt records about finances of a debtor or creditor that were created, collected, or maintained by a mediator or the Director from disclosure under the Freedom of Information Act.

A waiver of mediation rights would be void except as expressly allowed under the proposed Act.

Senate Bill 516

Action to Foreclose a Mortgage or Land Contract

Under the bill, a person could not file an action under Chapter 31 (Foreclosure of Mortgages and Land Contracts) of the Revised Judicature Act to foreclose a mortgage or land contract if the proposed Farm Loan Mediation Act applied to the debt that was secured by the mortgage or the land contract indebtedness, unless both of the following applied:

- The person had served a mediation notice on the mortgagor or land contract vendee and a copy on the Department of Agriculture and Rural Development Director.
- Foreclosure of the mortgage or land contract was allowed under the Farm Loan Mediation Act.

A mediation notice would have to contain specific language informing the mortgagor or land contract vendee of the following: that the mortgagor or vendee had defaulted and the mortgage holder or land contract vendor intended to foreclose on the property; that the mortgagor or vendee had the right to have the debt reviewed for mediation under the Farm Loan Mediation Act; that the Director of the Department of Agriculture and Rural Development would provide an orientation meeting and a financial analyst if the mortgagor or land contract vendee participated in mediation; and that the mortgagor or vendee would have to file a mediation request with the Department Director within 14 days to have the debt reviewed for mediation.

Foreclosure by Advertisement

Section 3204 of the RJA allows a party to foreclose a mortgage by advertisement if specified circumstances exist. Under the bill, Section 3204 would be subject to the following provision.

The bill would prohibit a person from publishing a notice under Section 3208 to foreclose a mortgage of agricultural property if the Farm Loan Mediation Act applied to the debt that was secured by the mortgage unless both of the following applied:

- The person had served a mediation notice on the mortgagor and a copy on the Director.
- Foreclosure of the mortgage was allowed under the Farm Loan Mediation Act.

(Section 3208 prescribe requirements for publishing a notice that a mortgage will be foreclosed. In addition to newspaper publication, a true copy of the notice must be posted conspicuously on the premises.)

A mediation notice would have to contain the same information as the bill would require for a notice under Chapter 31, without reference to a land contract or a land contract vendee.

Foreclosure by Writ

Under the bill, Sections 4001, 4011(1), 4011(3), and 6001 of the RJA would be subject to the provisions described below. (Under Section 4001, if a person against whom a claim is asserted is not subject to the judicial jurisdiction of the State or cannot be served with process, a circuit court has the power by attachment to apply certain personal property or an obligation to satisfy a claim evidenced by contract or judgment, whether or not the State has jurisdiction over the person against the claim is asserted. Section 4011(3) provides for service of a writ of garnishment, and, upon entry of a judgment, requires the property or obligation to be applied to the satisfaction of the judgment.

Under Section 6001, if a judgment is rendered in any court, execution to collect the judgment may be issued to the sheriff, bailiff, or other proper officer of any Michigan county, district, court district, or municipality.)

The bill would prohibit a person from applying for a writ of attachment, garnishment, or execution against agricultural property that was subject to the Farm Loan Mediation Act unless both of the following applied:

- The person had served a mediation notice on the judgment debtor and a copy on the Director.
- Application for the writ was allowed under the Farm Loan Mediation Act.

A mediation notice would have to contain language informing the judgment debtor of the following: that a judgment was entered against the debtor; that the judgment creditor intended to take action against the agricultural property to satisfy the unsatisfied judgment; that the judgment debtor had the right to have the debt reviewed for mediation under the Farm Loan Mediation act; that the Department Director would provide an orientation meeting and a financial analyst to help prepare financial information, if the judgment debtor participated in the mediation; and, to have the debt reviewed for mediation, the judgment debtor would have to file a mediation request with the Director within 14 days.

Forfeiture of an Executory Contract; Summary Proceedings

The bill would prohibit a person from declaring a forfeiture of an executory contract for the purchase of agricultural property or commencing a proceeding under Chapter 57 (Summary Proceedings to Recover Possession of Premises) of the Act to recover possession of the property if the Farm Loan Mediation Act applied to the contractual indebtedness unless both of the following applied:

- The person had served a mediation notice on the judgment debtor and a copy on the Director.
- Application for the writ was allowed under the Farm Loan Mediation Act.

A mediation notice would have to contain generally the same language as the bill would require for the notice to a land contract vendee under Chapter 31.

The RJA requires a notice of forfeiture under Chapter 57 to contain specific information, and to declare forfeiture of the land contract effective in 15 days or a specified longer time, after service of the notice, unless the money required to be paid under the contract is paid.

Under the bill, if the provisions concerning agricultural property applied, instead of declaring forfeiture after 15 days, the notice would have to state that if the parties did not reach a mediation agreement to continue the contract under the Farm Loan Mediation Act or if the

vendee did not pay the money required to be paid under the contract by the expiration of the 90-day period in which a creditor that received a mediation proceeding notice could not start or continue a proceeding to enforce a debt against agricultural property of a debtor under the Farm Loan Mediation Act, the forfeiture would be declared after expiration of the 90-day period.

Additionally, the person entitled to possession could not declare the contract forfeited until expiration of that 90-day period. If the parties reached a mediation agreement that included the continuation of the contract, with or without restructuring it, the person entitled to possession could not declare the contract forfeited or commence proceedings under Chapter 57 unless the vendee subsequently breached the continued contract. If a mediation agreement were not reached or if an agreement that did not include the continuation of the contract were reached, the person entitled to possession could declare the contract forfeited and commence proceeding under Chapter 57.

Senate Bill 518

Article 9 of the Uniform Commercial Code governs transactions that create security interests in personal property and fixtures. Article 9 also applies to an agricultural lien, which is an interest in farm products, other than a security interest, that meets certain requirements. The property subject to a security interest is "collateral".

The bill would prohibit a person from filing an action to enforce a security interest in collateral if the Farm Loan Mediation Act applied to the debt on which the security interest was based unless both of the following applied:

- The person had served a mediation notice on the debtor and a copy on the Department of Agriculture and Rural Development Director.
- Enforcement of the security interest was allowed under the Farm Loan Mediation Act.

A mediation notice would have to contain language informing the debtor of the following: that the debtor had defaulted on the debt secured by agricultural property; that the secured party intended to enforce the security agreement against the property by repossessing, foreclosing on, or obtaining a court judgment against it; that the debtor had the right to have the debt reviewed for mediation under the Farm Loan Mediation Act; that the Director of the Department of Agriculture and Rural Development would provide an orientation meeting and a financial analyst to help prepare financial information, if the debtor participated in mediation; and, to have the debt reviewed for mediation, the debtor would have to file a mediation request with the Director within 14 days.

Section 9601 of the UCC would be subject to the proposed provisions. Under that section, after default, a secured party has certain rights under Article 9 and, except as otherwise provided, those provided by agreement of the parties. A secured party may do one of more of the following:

- Reduce a claim to judgment, foreclose, or otherwise enforce the claim, security interest, or agricultural lien by any available judicial proceeding.
- If the collateral is documents, proceed either as to the documents or as the goods they cover.

MCL 600.3204 et al. (S.B. 516)
MCL 400.9601 (S.B. 518)

Legislative Analyst: Stephen Jackson

FISCAL IMPACT

Senate Bills 516 & 517

The bills could necessitate annual expenditures of up to \$200,000 for the Department of Agriculture and Rural Development, depending upon certain variables, according to the Department.

The bills would require the Department, if requested by a debtor or creditor associated with a foreclosure of agricultural property, the return of possession of agricultural property, an attachment or garnishment of agricultural property, or an enforcement of a security interest in agricultural property, to provide for a voluntary, systematic, mediation process. This would involve the Department's providing a method by which a mediation request could be made, an orientation meeting on the matters in question, a financial analyst to assist in preparing financial information, and mediators to assist in the resolution of disputes.

The proposed mediation process would be optional, so it is difficult to project the amount of activity the bills could generate, but given any significant activity, the Department would have to assume the costs of providing the services whether in-house or contracted of a financial analyst and a mediator and their associated costs. Since the bills do not identify any fund source for the costs of the duties the Department would have to assume, General Fund/General Purpose funds would likely have to be appropriated for those duties.

Additionally, the bills could have a positive fiscal impact on courts. The provisions of the bills could lead to a decrease in hearings related to security interests in agricultural property. Local courts still would be required to rule on certain matters related to arbitration, but one would expect a net reduction in court action if the provisions were enacted. A decrease in hearings could reduce incremental resource demands on court systems.

Senate Bill 518

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

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