



Senate Fiscal Agency
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BILL ANALYSIS



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Senate Bill 551 (as reported without amendment)
Sponsor: Senator Darwin L. Booher
Committee: Banking and Financial Institutions

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.

Under Section 9625, a person is liable for damages for loss caused by failure to comply with Article 9 to 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. 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 under 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 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 applies to an action arising out of a transaction, other than a consumer transaction, in which a deficiency or surplus is at issue. Under Section 9626, 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, the deficiency liability of a debtor or a secondary obligor 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 (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 Section 9626, and a related statement regarding interpretation of the exemption in courts.

MCL 440.9625 & 440.9626

Legislative Analyst: Glenn Steffens

FISCAL IMPACT

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

Date Completed: 10-15-13

Fiscal Analyst: Dan O'Connor