September 25, 2013, Introduced by Senator BOOHER and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1962 PA 174, entitled "Uniform commercial code,"

SENATE BILL No. 551

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by amending sections 9625 and 9626 (MCL 440.9625 and 440.9626), as added by 2000 PA 348.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

- Sec. 9625. (1) If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.
 - (2) Subject to subsections (3), (4), and (6), a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or

- 1 increased costs of, alternative financing.
- 2 (3) Except as otherwise provided in section 9628, both of the
- **3** following apply:
- 4 (a) A person that, at the time of the failure, was a debtor,
- 5 was an obligor, or held a security interest in or other lien on the
- 6 collateral may recover damages under subsection (2) for its loss.
- 7 (b) If the collateral is consumer goods, a person that was a
- 8 debtor or a secondary obligor at the time a secured party failed to
- 9 comply with this part may recover for that failure in any event an
- 10 amount not less than the credit service charge PAID plus 10% of the
- 11 principal amount of the obligation or the time-price differential
- 12 PAID plus 10% of the cash price.
- 13 (4) A debtor whose deficiency is eliminated under section 9626
- 14 may recover damages for the loss of any surplus. However, a debtor
- 15 or secondary obligor whose deficiency is eliminated or reduced
- 16 under section 9626 may not otherwise recover under subsection (2)
- 17 for noncompliance with the provisions of this part relating to
- 18 collection, enforcement, disposition, or acceptance. REGARDLESS OF
- 19 WHETHER THE DEBTOR'S OR SECONDARY OBLIGOR'S DEFICIENCY IS
- 20 ELIMINATED OR REDUCED UNDER SECTION 9626 OR OTHER APPLICABLE LAW,
- 21 ANY DAMAGES RECOVERED BY THE DEBTOR OR SECONDARY OBLIGOR UNDER
- 22 SUBSECTION (3) SHALL BE REDUCED BY THE AMOUNT THAT THE SUM OF THE
- 23 SECURED OBLIGATION, EXPENSES, AND ATTORNEY'S FEES EXCEEDS THE
- 24 PROCEEDS OF COLLECTION, ENFORCEMENT, DISPOSITION, OR ACCEPTANCE.
- 25 (5) In addition to any damages recoverable under subsection
- 26 (2), the debtor, consumer obligor, or person named as a debtor in a
- 27 filed record, as applicable, may recover \$500.00 in each case from

- 1 a person that does 1 or more of the following:
- 2 (a) Fails to comply with section 9208.
- 3 (b) Fails to comply with section 9209.
- 4 (c) Files a record that the person is not entitled to file
- 5 under section 9509(1).
- 6 (d) Fails to cause the secured party of record to file or send
- 7 a termination statement as required by section 9513(1) or (3).
- 8 (e) Fails to comply with section 9616(2)(a) and whose failure
- 9 is part of a pattern, or consistent with a practice, of
- 10 noncompliance.
- 11 (f) Fails to comply with section 9616(2)(b).
- 12 (6) A debtor or consumer obligor may recover damages under
- 13 subsection (2) and, in addition, \$500.00 in each case from a person
- 14 that, without reasonable cause, fails to comply with a request
- 15 under section 9210. A recipient of a request under section 9210
- 16 that never claimed an interest in the collateral or obligations
- 17 that are the subject of a request under that section has a
- 18 reasonable excuse for failure to comply with the request within the
- 19 meaning of this subsection.
- 20 (7) If a secured party fails to comply with a request
- 21 regarding a list of collateral or a statement of account under
- 22 section 9210, the secured party may claim a security interest only
- 23 as shown in the list or statement included in the request as
- 24 against a person that is reasonably misled by the failure.
- 25 Sec. 9626. (1) In an action arising from a transaction other
- 26 than a consumer transaction, in which the amount of a deficiency or
- 27 surplus is in issue, the following rules apply:

- 1 (a) A secured party need not prove compliance with the
- 2 provisions of this part relating to collection, enforcement,
- 3 disposition, or acceptance unless the debtor or a secondary obligor
- 4 places the secured party's compliance in issue.
- 5 (b) If the secured party's compliance is placed in issue, the
- 6 secured party has the burden of establishing that the collection,
- 7 enforcement, disposition, or acceptance was conducted in accordance
- 8 with this part.
- 9 (c) Except as otherwise provided in section 9628, if a secured
- 10 party fails to prove that the collection, enforcement, disposition,
- 11 or acceptance was conducted in accordance with the provisions of
- 12 this part relating to collection, enforcement, disposition, or
- 13 acceptance, the liability of a debtor or a secondary obligor for a
- 14 deficiency is limited to an amount by which the sum of the secured
- 15 obligation, expenses, and attorney fees exceeds the greater of 1 of
- 16 the following:
- 17 (i) The proceeds of the collection, enforcement, disposition,
- 18 or acceptance.
- 19 (ii) The amount of proceeds that would have been realized had
- 20 the noncomplying secured party proceeded in accordance with the
- 21 provisions of this part relating to collection, enforcement,
- 22 disposition, or acceptance.
- 23 (d) For purposes of subdivision (c) (ii), the amount of proceeds
- 24 that would have been realized is equal to the sum of the secured
- 25 obligation, expenses, and attorney fees unless the secured party
- 26 proves that the amount is less than that sum.
- 27 (e) If a deficiency or surplus is calculated under section

- 1 9615(6), the debtor or obligor has the burden of establishing that
- 2 the amount of proceeds of the disposition is significantly below
- 3 the range of prices that a complying disposition to a person other
- 4 than the secured party, a person related to the secured party, or a
- 5 secondary obligor would have brought.
- 6 (2) The limitation of the rules in subsection (1) to
- 7 transactions other than consumer transactions is intended to leave
- 8 to the court the determination of the proper rules in consumer
- 9 transactions. The court may not infer from that limitation the
- 10 nature of the proper rule in consumer transactions and may continue
- 11 to apply established approaches.

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