

SENATE BILL No. 551

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," 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:

1 Sec. 9625. (1) If it is established that a secured party is
2 not proceeding in accordance with this article, a court may order
3 or restrain collection, enforcement, or disposition of collateral
4 on appropriate terms and conditions.

5 (2) Subject to subsections (3), (4), and (6), a person is
6 liable for damages in the amount of any loss caused by a failure to
7 comply with this article. Loss caused by a failure to comply may
8 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.~~