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BILL ANALYSIS

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House Bill 4450 (Substitute H-1 as passed by the House)
House Bill 4451 (as passed by the House)
House Bill 4452 (Substitute H-1 as passed by the House)
House Bills 4453 and 4454 (as passed by the House)
Sponsor: Representative David Robertson (H.B. 4450)
Representative Kevin Green (H.B. 4451)
Representative Tupac Hunter (H.B. 4452)
Representative Andy Dillon (H.B. 4453)
Representative Joe Hune (H.B. 4454)

House Committee: Banking and Financial Services
Senate Committee: Banking and Financial Institutions

Date Completed: 5-5-05

CONTENT

House Bills 4450 (H-1) through 4454 would amend various statutes to provide that the Secretary of State's receipt of an application for a certificate of title on which a security interest in a vehicle, watercraft, or off-road vehicle (ORV) was indicated, would be a perfection of a security interest and equivalent to the filing of a financing statement under the Uniform Commercial Code (UCC); and the filing of an application under the Mobile Home Commission Act for a certificate of title indicating a security interest in a mobile home would be required to perfect the security interest and would be equivalent to the filing of a financing statement under the UCC.

House Bill 4450 (H-1) would amend Chapter II (Administration, Registration, Certificate of Title and Anti-Theft) of the Michigan Vehicle Code; House Bill 4451 would amend Part 803 (Watercraft Transfer and Certificate of Title) of the Natural Resources and Environmental Protection Act (NREPA); House Bill 4452 (H-1) would amend the Mobile Home Commission Act; House Bill 4453 would amend Part 811 (Off-Road Recreation Vehicles) of NREPA; and House Bill 4454 would amend Article 9 (Secured Transactions) of the UCC.

House Bill 4450 (H-1)

The bill specifies that receipt by the Secretary of State of a properly tendered application for a certificate of title on which a security interest in a vehicle was to be indicated would be a perfection of a security interest in the vehicle and would be equivalent to the filing of a financing statement under the UCC with respect to the vehicle. When a security interest in a vehicle was perfected, it would have priority over the rights of a lien creditor.

In addition, the Michigan Vehicle Code requires an owner of a vehicle subject to registration under the Code to apply to the Secretary of State for the registration of the vehicle and issuance of a certificate of title for the vehicle. An application for a certificate of title must bear the owner's signature. The bill would require that an application bear the signature or verification and certification of the owner.

House Bill 4451

The bill specifies that receipt by the Secretary of State of a properly tendered application for a certificate of title on which a security interest in a watercraft was to be indicated would be a perfection of a security interest in the watercraft and would be equivalent to the filing of a financing statement under the UCC with respect to the watercraft. When a security interest in a watercraft was perfected, it would have priority over the rights of a lien creditor.

Presently, Part 803 of NREPA provides that a security agreement covering a security interest in a watercraft is valid as against a debtor's creditors and against subsequent purchasers, secured parties, and other lien holders or claimants, if the instrument is accompanied by delivery of a manufacturer's or importer's certificate and followed by actual and continued possession of the certificate by the holder of the instrument or, in the case of a certificate of title, if a notation of the instrument is made by the Secretary of State on the certificate of title's face. Liens, mortgages, and encumbrances noted upon a certificate of title take priority according to the order of time in which they are noted on the certificate of title. Exposure for sale of a watercraft by the watercraft's owner, with knowledge and consent of the holder of the lien, mortgage, or encumbrance on the watercraft, does not render the lien, mortgage, or encumbrance ineffective as against the owner's creditors, or against holders of subsequent liens, mortgages, or encumbrances upon the watercraft. The bill would delete these provisions.

House Bill 4452 (H-1)

Under the Mobile Home Commission Act, the filing of an application for a certificate of title showing the name and address of the holder of a security interest in a mobile home is equivalent to the filing of a financing statement under Article 9 of the UCC with respect to the security interest. The bill specifies instead that the filing of an application indicating a security interest in a mobile home under the Act would be required to perfect the security interest and would be equivalent to the filing of a financing statement under the UCC. The bill also specifies that a security interest in a mobile home perfected under the Act would have priority rights over the rights of a lien creditor.

In addition, the Act provides that a holder of a security interest in a mobile home may assign the security interest to a person other than the mobile home's owner, without affecting the owner's interest or the validity of the security interest. The assignee may have the certificate of title indorsed with the assignee named as the holder of the security interest by providing the Department of Labor and Economic Growth with a copy of the assignment instrument. The bill specifies instead that the assignee could have its interest as the holder of the security interest shown on the certificate of title by providing the Department with a copy of the assignment instrument.

The bill also would delete reference to a \$1 fee for application for a certificate of title.

House Bill 4453

The bill specifies that receipt by the Secretary of State of a properly tendered application for an ORV certificate of title that indicated the existence of a security interest in the ORV would be a perfection of a security interest in the ORV and would be equivalent to the filing of a financing statement under the UCC with respect to the ORV. When a security interest in an ORV was perfected, it would have priority over the rights of a lien creditor.

House Bill 4454

Under Article 9 of the UCC, as a rule, the filing of a financing statement is necessary to perfect a security interest. The filing of a financing statement, however, is not necessary or effective to perfect a security interest in property subject to one or more of the following:

- A U.S. statute, regulation, or treaty whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt the Article 9 requirement for filing a financing statement.
- Chapter II of the Michigan Vehicle Code; Part 803 or 811 of NREPA; or certain sections of the Mobile Home Commission Act.
- A certificate-of-title statute of another jurisdiction that provides for a security interest to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

Compliance with a statute, regulation, or treaty described above is equivalent to the filing of a financing statement under Article 9. Also, except as otherwise provided in Article 9, duration and renewal of perfection of a security interest perfected by compliance with such a statute, regulation, or treaty are governed by the statute, regulation, or treaty. The bill specifies that compliance with *the requirements of* a statute, regulation, or treaty described above *for obtaining priority over the rights of a lien creditor* would be equivalent to the filing of a financing statement under Article 9, and that duration and renewal of perfection of a security interest perfected by compliance with *the requirements prescribed by* such a statute, regulation, or treaty would be governed by the statute, regulation, or treaty.

MCL 257.217 (H.B. 4450)
324.80320 (H.B. 4451)
125.2330d (H.B. 4452)
324.81108 (H.B. 4453)
440.9311 (H.B. 4454)

BACKGROUND

Article 9 of the Uniform Commercial Code governs secured transactions, which involve the granting of credit coupled with a creditor's interest in the debtor's personal property. The creditor's interest is called a "security interest". A security interest must be "perfected" in order for the creditor to have priority over other creditors of the debtor who have an interest in the same property. Typically, perfection occurs when a financing statement is filed with the State, although a security interest may be perfected by other means. For example, if property is subject to State laws that require a certificate of title (such as motor vehicles or watercraft), a creditor perfects a security interest in the property by complying with the law governing the certificate of title.

In 1999, the American Law Institute and the National Conference of Commissioners on Uniform State Laws (NCCUSL) unanimously approved a revised version of Article 9 of the UCC, and recommended that every state adopt these revisions. Michigan did so with the enactment of Public Act 348 of 2000. Subsequently, representatives of the banking industry identified a concern about language that dealt with perfecting a security interest in titled property. The provisions of the revised Article 9 not only cited statutes that provide for certificates of title, but also required creditors to meet "the requirements" of those statutes "for obtaining priority over the rights of a lien creditor". The Michigan statutes in question, however, did not actually contain requirements for governing the priority of lien creditors. To address this concern, Public Act 145 of 2001 amended Article 9 to delete language referring to "the requirements of" a specified statute, regulation, or treaty "for obtaining priority over the rights of a lien creditor".

Legislative Analyst: Patrick Affholter

FISCAL IMPACT

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

Fiscal Analyst: Bill Bowerman
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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.