

**Testimony of Lorry S.C. Brown  
On Behalf of the Michigan Poverty Law Program (MPLP)**

**House Financial Services Committee  
Senate Bill 551**

Chairman Callton and members of the House Financial Services Committee, please accept my written testimony pertaining to SB 551. I am Lorry Brown, the statewide consumer law specialist at Michigan Poverty Law Program. Michigan Poverty Law Program is the statewide support office for legal services programs.

The Michigan Poverty Law Program (MPLP) opposes SB 551 as it will effectively eliminate any penalty for the creditor's failure to comply with the Uniform Commercial Code (UCC) Article 9 in consumer transactions, thereby protecting consumers. Article 9 sets out certain requirements that the creditor must take when repossessing the secured property. For example, Article 9 requires timely notice to the consumer, and that repossession is sold in a commercially reasonable manner.

Michigan law, MCL 440.9625, currently provides a penalty or disincentive to creditors who fail to comply with Article 9. The statute and current case law interpreting the statute prohibit the creditor from seeking the deficiency from the consumer if the creditor failed to comply with Article 9, such as giving notice of the sale to the consumer.

In *Honor State Bank v Timber Wolf Construction*, 391 NW2d 442 (Mich App 1986), the Michigan Court of Appeals, in interpreting this section of the UCC, stated:

The purpose of the reasonable notification requirement is threefold:  
1) to give the debtor the opportunity to exercise his redemption rights ... ;  
2) to afford the debtor an opportunity to bid at the sale or to encourage others to bid on the property so as to help assure a fair sale price; and  
3) to allow the debtor to oversee every aspect of the disposition so as to maximize the price obtained.

With proper notice, we can ensure that the creditor will sell the property in a commercially reasonable manner and for the fair market price. Without the notice, the creditor can sell the property for an amount well below the fair market value and then seek a deficiency against the consumer. So the current law prevents this from happening, thereby protecting consumers.

SB 551 eliminates this protection. SB 551 also in effect "overrules" Michigan case law that bars deficiencies in consumer cases when proper notice of sale is not given. In the process, it gets rid of the incentives for repossessing creditors of consumers to follow the Article 9 notice and sale rules. Under SB 551, creditors who ignore the law will simply testify that the amount they got at the sale would not have changed with notice to the consumer or whatever else they should have done, and they will get their deficiency. There is no reason to drop one of the few consumer-friendly rules in Michigan UCC case law. Accordingly, the Michigan Poverty Law Program opposes SB 551. Thank you.

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