

WEST VIRGINIA LEGISLATURE
EIGHTY-FIRST LEGISLATURE
REGULAR SESSION, 2013



ENROLLED

COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 426

(SENATOR SNYDER, *ORIGINAL SPONSOR*)

[PASSED APRIL 13, 2013; IN EFFECT NINETY DAYS FROM PASSAGE.]

E N R O L L E D

COMMITTEE SUBSTITUTE

FOR

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 426

(SENATOR SNYDER, *original sponsor*)

[Passed April 13, 2013; in effect ninety days from passage.]

AN ACT to amend and reenact §46-4A-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code; and to amend said code by adding thereto a new section, designated §46-9-516a, all relating to amending the Uniform Commercial Code; clarifying the relationship between article four-a of the West Virginia code and the federal Electronic Fund Transfer Act; resolving conflicts between federal and state law; providing for the effectiveness of filed records; creating additional authority to refuse to accept a record for filing; creating circumstances under which a record filing is false; providing criminal penalties for filing or attempting to file a false record; providing civil penalties for filing or attempting to file a false record; setting forth an administrative procedure initiated by the Secretary of State or a person identified as a debtor on a record; requiring party to an adverse administrative decision by the Secretary of State to file action in Kanawha County Circuit Court if the party wishes to have the Secretary of State's decision reversed; exempting the filing office and its employees from liability; exempting filings by a regulated

financial institution or its representatives from certain provisions; clarifying the applicability of provisions to records filed prior to the effective date of this article; increasing fees for filing financing statements or other records in secured transactions; increasing fees for responding for requests for information related to secured transactions; and requiring that the increase in fees be deposited in the existing Fund for Civil Legal Services for Low Income Persons.

Be it enacted by the Legislature of West Virginia:

That §46-4A-108 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46-9-516a, all to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.

§46-4A-108. Relationship to Electronic Fund Transfer Act.

1 (a) Except as provided in subsection (b) of this section,
2 this article does not apply to a funds transfer any part of
3 which is governed by the Electronic Fund Transfer Act of
4 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U. S.
5 C. §1693, *et seq.*) as amended from time to time.

6 (b) This article applies to a funds transfer that is a
7 remittance transfer as defined in the Electronic Fund Transfer
8 Act (15 U. S. C. §1693o-1) as amended from time to time,
9 unless the remittance transfer is an electronic fund transfer as
10 defined in the Electronic Fund Transfer Act (15 U. S.
11 C. §1693a) as amended from time to time.

12 (c) In a funds transfer to which this article applies, in the
13 event of an inconsistency between an applicable provision of
14 this article and an applicable provision of the Electronic Fund

3 [Enr. Com. Sub. for Com. Sub. for S. B. No. 426

15 Transfer Act, the provision of the Electronic Fund Transfer
16 Act governs to the extent of the inconsistency.

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF
ACCOUNTS AND CHATTEL PAPER.**

§46-9-510. Effectiveness of filed record.

1 (a) *Filed record effective if authorized.* – A filed record
2 is effective only to the extent that it was filed by a person that
3 may file it under section 9-509.

4 (b) *Authorization by one secured party of record.* – A
5 record authorized by one secured party of record does not
6 affect the financing statement with respect to another secured
7 party of record.

8 (c) *Continuation statement not timely filed.* – A
9 continuation statement that is not filed within the six-month
10 period prescribed by section 9-515(d) is ineffective.

11 (d) A filed record ceases to be effective if the filing office
12 terminates the record pursuant to section 9-516(a).

§46-9-516. What constitutes filing; effectiveness of filing.

1 (a) *What constitutes filing.* – Except as otherwise
2 provided in subsection (b) of this section, communication of
3 a record to a filing office and tender of the filing fee or
4 acceptance of the record by the filing office constitutes filing.

5 (b) *Refusal to accept record; filing does not occur.* –
6 Filing does not occur with respect to a record that a filing
7 office refuses to accept because:

8 (1) The record is not communicated by a method or
9 medium of communication authorized by the filing office;

10 (2) An amount equal to or greater than the applicable
11 filing fee is not tendered;

12 (3) The filing office is unable to index the record
13 because:

14 (A) In the case of an initial financing statement, the
15 record does not provide a name for the debtor;

16 (B) In the case of an amendment or information
17 statement, the record:

18 (i) Does not identify the initial financing statement as
19 required by 9-512 or 9-518, as applicable;

20 (ii) Identifies an initial financing statement whose
21 effectiveness has lapsed under section 9-515; or

22 (iii) Identifies an initial financing statement which was
23 terminated pursuant to section 9-516(a);

24 (C) In the case of an initial financing statement that
25 provides the name of a debtor identified as an individual or
26 an amendment that provides a name of a debtor identified as
27 an individual which was not previously provided in the
28 financing statement to which the record relates, the record
29 does not identify the debtor's surname;

30 (D) In the case of a record filed or recorded in the filing
31 office described in section 9-501(a)(1), the record does not
32 provide a sufficient description of the real property to which
33 it relates; or

34 (E) In the case of a record submitted to the filing office
35 described in section 9-501(a)(1), the filing office has reason
36 to believe, from information contained in the record or from
37 the person that communicated the record to the office, that:

38 (i) If the record indicates that the debtor is a transmitting
39 utility, the debtor does not meet the definition of a
40 transmitting utility as described in section 9-102(a)(81);

41 (ii) If the record indicates that the transaction relating to
42 the record is a manufactured home transaction, the
43 transaction does not meet the definition of a manufactured
44 home transaction as described in section 9-102(a)(54); or

45 (iii) If the record indicates that the transaction relating to
46 the record is a public finance transaction, the transaction does
47 not meet the definition of a public finance transaction as
48 described in section 9-102(a)(70);

49 (4) In the case of an initial financing statement or an
50 amendment, if the filing office believes in good faith that the
51 record was communicated to the filing office in violation of
52 section 9-516(a);

53 (5) In the case of an initial financing statement or an
54 amendment that adds a secured party of record, the record
55 does not provide a name and mailing address for the secured
56 party of record;

57 (6) In the case of an initial financing statement or an
58 amendment that provides a name of a debtor which was not
59 previously provided in the financing statement to which the
60 amendment relates, the record does not:

61 (A) Provide a mailing address for the debtor;

62 (B) Indicate whether the name provided as the name of
63 the debtor is the name of an individual or an organization;

64 (7) In the case of an assignment reflected in an initial
65 financing statement under section 9-514(a) or an amendment
66 filed under section 9-514(b), the record does not provide a
67 name and mailing address for the assignee; or

68 (8) In the case of a continuation statement, the record is
69 not filed within the six-month period prescribed by section
70 9-515(d).

71 (c) *Rules applicable to subsection (b).* – For purposes of
72 subsection (b):

73 (1) A record does not provide information if the filing
74 office is unable to read or decipher the information; and

75 (2) A record that does not indicate that it is an
76 amendment or identify an initial financing statement to which
77 it relates, as required by section 9-512, 9-514 or 9-518, is an
78 initial financing statement.

79 (d) *Refusal to accept record; record effective as filed*
80 *record.* – A record that is communicated to the filing office
81 with tender of the filing fee, but which the filing office
82 refuses to accept for a reason other than one set forth in
83 subsection (b) of this section, is effective as a filed record
84 except as against a purchaser of the collateral which gives
85 value in reasonable reliance upon the absence of the record
86 from the files.

**§46-9-516a. Filing fraudulent records; civil and criminal
penalties; administrative proceedings;
immunity from liability.**

1 (a) No person may cause to be communicated to the filing
2 office for filing a false record the person knows or reasonably
3 should know:

4 (1) Is not authorized or permitted under sections 9-509,
5 9-708 or 9-808; and

6 (2) Is filed with the intent to harass or defraud the person
7 identified as debtor in the record or any other person.

7

[Enr. Com. Sub. for Com. Sub. for S. B. No. 426

8 (b) Any person who violates subsection (a) of this section
9 shall, for a first offense, be guilty of a misdemeanor and,
10 upon conviction thereof, shall be fined not less than \$100 nor
11 more than \$1000 or, in the discretion of the court, be
12 confined in jail not more than twelve months, or both fined
13 and confined. Any person who violates subsection (a) of this
14 section shall, for a second or subsequent offense, be guilty of
15 a felony and, upon conviction thereof, shall be imprisoned in
16 a state correctional facility not less than one nor more than
17 five years.

18 (c) Any person who violates subsection (a) of this section
19 is liable in a civil action to each injured person for:

20 (1) The greater of the actual damages caused by the
21 violation or up to \$10,000 in lieu of actual damages;

22 (2) Reasonable attorney fees;

23 (3) Court costs and other related expenses of bringing an
24 action including reasonable investigative expenses; and

25 (4) In the discretion of the court, punitive damages in an
26 amount determined by the court or jury.

27 (d) A person identified as a debtor in a filed record the
28 person believes was caused to be communicated to the filing
29 office in violation of subsection (a) of this section may, under
30 penalty of perjury, file with the Secretary of State an affidavit
31 to that effect. The Secretary of State shall adopt and make
32 available a form affidavit for use under this section.

33 (e) Upon receipt of an affidavit filed under this section,
34 or upon administrative action by the Secretary of State, the
35 Secretary of State shall communicate to the secured party of
36 record on the record to which the affidavit or administrative
37 action relates and to the person who communicated the record

38 to the filing office, if different and known to the office, a
39 request for additional documentation supporting the
40 effectiveness of the record. The Secretary of State shall
41 review all such documentation received within thirty days
42 after the first request for additional documentation is sent if
43 the Secretary of State has a reasonable basis for concluding
44 that the record was communicated to the filing office in
45 violation of subsection (a) of this section.

46 The Secretary of State may initiate an administrative
47 action under this subsection with regard to a filed record if
48 the Secretary of State has reason to believe, from information
49 contained in the record or obtained from the person who
50 communicated the record to the filing office, that the record
51 was communicated to the filing office in violation of
52 subsection (a) of this section. The Secretary of State may
53 give heightened scrutiny to a record that indicates the debtor
54 is a transmitting utility or that indicates the transaction to
55 which the record relates is a manufactured home transaction
56 or a public finance transaction.

57 (f) The Secretary of State may not charge a fee to file an
58 affidavit under this section and may not return a fee paid for
59 filing a record terminated under this section.

60 (g) The Secretary of State shall promptly communicate to
61 the secured party of record a notice of the termination of a
62 record under subsection (e) of this section. A secured party
63 of record who believes in good faith that the record was not
64 communicated to the filing office in violation of subsection
65 (a) of this section may file an action to require that the record
66 be reinstated by the filing office. A person who
67 communicated a record to the filing office that the filing
68 office rejected in reliance on section 9-516(b)(4), who
69 believes in good faith that the record was not communicated
70 to the filing office in violation of section 9-516(b)(4), may
71 file an action to require that the record be accepted by the

72 filing office. The jurisdiction for the action is the circuit
73 court of Kanawha County.

74 (h) If the court determines that a record terminated under
75 this section or rejected in reliance on section 9-516(b)(4)
76 should be reinstated or accepted, the court shall provide a
77 copy of an order to that effect to the Secretary of State. On
78 receipt of an order reinstating a terminated record, the
79 Secretary of State shall refile the record along with a notice
80 indicating that the record was refiled pursuant to this section
81 and its initial filing date. On receipt of an order requiring that
82 a rejected record be accepted, the Secretary of State shall
83 promptly file the record along with a notice indicating that
84 the record was filed pursuant to this section and the date on
85 which it was communicated for filing. A rejected record that
86 is filed pursuant to an order of a court shall have the effect
87 described in section 9-516(d) for a record the filing office
88 refuses to accept for a reason other than one set forth in
89 section 9-516(b).

90 (i) A terminated record that is refiled under subsection (h)
91 of this section is effective as a filed record from the initial
92 filing date. If the period of effectiveness of a refiled record
93 would have lapsed during the period of termination, the
94 secured party may file a continuation statement within thirty
95 days after the record is refiled and the continuation statement
96 has the same effect as if it had been filed during the six-
97 month period described in section 9-515(d). A refiled record
98 is considered never to have been ineffective against all
99 persons and for all purposes except that it is not effective as
100 against a purchaser of the collateral that gave value in
101 reasonable reliance on the absence of the record from the
102 files.

103 (j) Neither the filing office nor any of its employees incur
104 liability for the termination or failure to accept a record for
105 filing in the lawful performance of the duties of the office or
106 employee.

107 (k) This section does not apply to a record communicated
108 to the filing office by a regulated financial institution or by a
109 representative of a regulated financial institution, except that
110 the Secretary of State may request from the secured party of
111 record on the record or from the person that communicated
112 the record to the filing office, if different and known to the
113 office, additional documentation supporting that the record
114 was communicated to the filing office by a regulated financial
115 institution or by a representative of a regulated financial
116 institution. For the purposes of this section the term
117 “regulated financial institution” means a financial institution
118 subject to regulatory oversight or examination by a state or
119 federal agency and includes banks, savings banks, savings
120 associations, building and loan associations, credit unions,
121 consumer finance companies, industrial banks, industrial loan
122 companies, investment funds, installment sellers, mortgage
123 servicers, sales finance companies and leasing companies.

124 (l) If a record was communicated to the filing office for
125 filing before the effective date of this section, and its
126 communication would have constituted a violation of
127 subsection (a) of this section if it had occurred on or after the
128 effective date of this section:

129 (i) Subsections (b) and (c) are not applicable; and

130 (ii) The remaining subsections of this section are
131 applicable.

§46-9-521. Written financing statement and amendment thereto.

1 (a) *Initial financing statement.* – A filing office that
2 accepts written records may not refuse to accept a written
3 initial financing statement except for a reason set forth in
4 section 9-516(b): *Provided*, That the written record must be
5 on the most recent revision of the appropriate form as

6 approved by the International Association of Commercial
7 Administrators.

8 (b) *Amended financing statement.* – A filing office that
9 accepts written records may not refuse to accept an amended
10 written record except for a reason set forth in section
11 9-516(b): *Provided*, That the written record must be on the
12 most recent revision of the appropriate form as approved by
13 the International Association of Commercial Administrators.

§46-9-525. Fees.

1 (a) *Initial financing statement or other record: general*
2 *rule.* – Except as otherwise provided in subsection (e) of this
3 section, the fee for filing and indexing a record under this
4 part, other than an initial financing statement of the kind
5 described in subsection (b) of this section, is the amount
6 specified in subsection (c) of this section, if applicable, plus:

7 (1) \$20 if the record is communicated in writing and
8 consists of one or two pages; and

9 (2) \$20 if the record is communicated in writing and
10 consists of more than two pages; and

11 (3) \$20 if the record is communicated by another medium
12 authorized by filing-office rule.

13 (b) *Initial financing statement: Public-finance and*
14 *manufactured housing transactions.* – Except as otherwise
15 provided in subsection (e) of this section, the fee for filing
16 and indexing an initial financing statement of the
17 following kind is the amount specified in subsection (c) of
18 this section, if applicable, plus:

19 (1) \$20 if the financing statement indicates that it is filed
20 in connection with a public-finance transaction;

21 (2) \$20 if the financing statement indicates that it is filed
22 in connection with a manufactured-home transaction.

23 (c) *Number of names.* – The number of names required to
24 be indexed does not affect the amount of the fee in
25 subsections (a) and (b) of this section.

26 (d) *Response to information request.* – The fee for
27 responding to a request for information from the filing office,
28 including for issuing a certificate showing whether there is on
29 file any financing statement naming a particular debtor, is:

30 (1) \$10 if the request is communicated in writing;

31 (2) \$10 if the request is communicated by another
32 medium authorized by filing-office rule; and

33 (3) \$1 per page for each active lien.

34 (e) *Record of mortgage.* – This section does not require
35 a fee with respect to a record of a mortgage which is effective
36 as a financing statement filed as a fixture filing or as a
37 financing statement covering as-extracted collateral or timber
38 to be cut under section 9-502(c). However, the recording and
39 satisfaction fees that otherwise would be applicable to the
40 record of the mortgage apply.

41 (f) *Deposit of funds.* -- All fees and moneys collected by
42 the Secretary of State pursuant to the provisions of this article
43 shall be deposited by the Secretary of State as follows: One-
44 half shall be deposited in the special revenue account created
45 by section 59-1-59(c)(4)(B), to provide civil legal services for
46 low income persons, one-fourth shall be deposited in the state
47 fund, general revenue, and one-fourth shall be deposited in
48 the service fees and collections account established by
49 section 59-1-2 for the operation of the office of the Secretary
50 of State. Any balance remaining on June 30, 2001, in the

51 existing special revenue account entitled “uniform
52 commercial code” as established by chapter two hundred
53 four, acts of the Legislature, 1989 regular session, shall be
54 transferred to the service fees and collections account
55 established by section 59-1-2 for the operation of the office
56 of the Secretary of State. The Secretary of State shall
57 dedicate sufficient resources from that fund or other funds to
58 provide the services required in this article, unless otherwise
59 provided by appropriation or other action by the Legislature.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the
Day of, 2013.

.....
Governor