

1 **ENROLLED**

2 COMMITTEE SUBSTITUTE

3 FOR

4 COMMITTEE SUBSTITUTE

5 FOR

6 **Senate Bill No. 426**

7 (SENATOR SNYDER, *original sponsor*)

8 _____
9 [Passed April 13, 2013; in effect ninety days from passage.]
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12
13 AN ACT to amend and reenact §46-4A-108 of the Code of West
14 Virginia, 1931, as amended; to amend and reenact §46-9-510,
15 §46-9-516, §46-9-521 and §46-9-525 of said code; and to amend
16 said code by adding thereto a new section, designated
17 §46-9-516a, all relating to amending the Uniform Commercial
18 Code; clarifying the relationship between article four-a of
19 the West Virginia code and the federal Electronic Fund
20 Transfer Act; resolving conflicts between federal and state
21 law; providing for the effectiveness of filed records;
22 creating additional authority to refuse to accept a record for
23 filing; creating circumstances under which a record filing is
24 false; providing criminal penalties for filing or attempting

1 to file a false record; providing civil penalties for filing
2 or attempting to file a false record; setting forth an
3 administrative procedure initiated by the Secretary of State
4 or a person identified as a debtor on a record; requiring
5 party to an adverse administrative decision by the Secretary
6 of State to file action in Kanawha County Circuit Court if the
7 party wishes to have the Secretary of State's decision
8 reversed; exempting the filing office and its employees from
9 liability; exempting filings by a regulated financial
10 institution or its representatives from certain provisions;
11 clarifying the applicability of provisions to records filed
12 prior to the effective date of this article; increasing fees
13 for filing financing statements or other records in secured
14 transactions; increasing fees for responding for requests for
15 information related to secured transactions; and requiring
16 that the increase in fees be deposited in the existing Fund
17 for Civil Legal Services for Low Income Persons.

18 *Be it enacted by the Legislature of West Virginia:*

19 That §46-4A-108 of the Code of West Virginia, 1931, as
20 amended, be amended and reenacted; that §46-9-510, §46-9-516,
21 §46-9-521 and §46-9-525 of said code, be amended and reenacted; and
22 that said code be amended by adding thereto a new section,
23 designated §46-9-516a, all to read as follows:

24 **ARTICLE 4A. FUNDS TRANSFERS.**

1 **§46-4A-108. Relationship to Electronic Fund Transfer Act.**

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

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

13 (c) In a funds transfer to which this article applies, in the
14 event of an inconsistency between an applicable provision of this
15 article and an applicable provision of the Electronic Fund Transfer
16 Act, the provision of the Electronic Fund Transfer Act governs to
17 the extent of the inconsistency.

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

20 **§46-9-510. Effectiveness of filed record.**

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

24 (b) *Authorization by one secured party of record.* -- A record

1 authorized by one secured party of record does not affect the
2 financing statement with respect to another secured party of
3 record.

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

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

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

10 (a) *What constitutes filing.* -- Except as otherwise provided
11 in subsection (b) of this section, communication of a record to a
12 filing office and tender of the filing fee or acceptance of the
13 record by the filing office constitutes filing.

14 (b) *Refusal to accept record; filing does not occur.* -- Filing
15 does not occur with respect to a record that a filing office
16 refuses to accept because:

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

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

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

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

24 (B) In the case of an amendment or information statement, the

1 record:

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

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

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

8 (C) In the case of an initial financing statement that
9 provides the name of a debtor identified as an individual or an
10 amendment that provides a name of a debtor identified as an
11 individual which was not previously provided in the financing
12 statement to which the record relates, the record does not identify
13 the debtor's surname;

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

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

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

1 (ii) If the record indicates that the transaction relating to
2 the record is a manufactured home transaction, the transaction does
3 not meet the definition of a manufactured home transaction as
4 described in section 9-102(a) (54); or

5 (iii) If the record indicates that the transaction relating to
6 the record is a public finance transaction, the transaction does
7 not meet the definition of a public finance transaction as
8 described in section 9-102(a) (70);

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

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

16 (6) In the case of an initial financing statement or an
17 amendment that provides a name of a debtor which was not previously
18 provided in the financing statement to which the amendment relates,
19 the record does not:

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

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

23 (7) In the case of an assignment reflected in an initial
24 financing statement under section 9-514(a) or an amendment filed

1 under section 9-514(b), the record does not provide a name and
2 mailing address for the assignee; or

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

5 (c) *Rules applicable to subsection (b)*. -- For purposes of
6 subsection (b):

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

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

13 (d) *Refusal to accept record; record effective as filed*
14 *record*. -- A record that is communicated to the filing office with
15 tender of the filing fee, but which the filing office refuses to
16 accept for a reason other than one set forth in subsection (b) of
17 this section, is effective as a filed record except as against a
18 purchaser of the collateral which gives value in reasonable
19 reliance upon the absence of the record from the files.

20

21 **§46-9-516a. Filing fraudulent records; civil and criminal**
22 **penalties; administrative proceedings; immunity from**
23 **liability.**

24 (a) No person may cause to be communicated to the filing

1 office for filing a false record the person knows or reasonably
2 should know:

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

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

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

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

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

20 (2) Reasonable attorney fees;

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

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

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

7 (e) Upon receipt of an affidavit filed under this section, or
8 upon administrative action by the Secretary of State, the Secretary
9 of State shall communicate to the secured party of record on the
10 record to which the affidavit or administrative action relates and
11 to the person who communicated the record to the filing office, if
12 different and known to the office, a request for additional
13 documentation supporting the effectiveness of the record. The
14 Secretary of State shall review all such documentation received
15 within thirty days after the first request for additional
16 documentation is sent if the Secretary of State has a reasonable
17 basis for concluding that the record was communicated to the filing
18 office in violation of subsection (a) of this section.

19 The Secretary of State may initiate an administrative action
20 under this subsection with regard to a filed record if the
21 Secretary of State has reason to believe, from information
22 contained in the record or obtained from the person who
23 communicated the record to the filing office, that the record was
24 communicated to the filing office in violation of subsection (a) of

1 this section. The Secretary of State may give heightened scrutiny
2 to a record that indicates the debtor is a transmitting utility or
3 that indicates the transaction to which the record relates is a
4 manufactured home transaction or a public finance transaction.

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

8 (g) The Secretary of State shall promptly communicate to the
9 secured party of record a notice of the termination of a record
10 under subsection (e) of this section. A secured party of record
11 who believes in good faith that the record was not communicated to
12 the filing office in violation of subsection (a) of this section
13 may file an action to require that the record be reinstated by the
14 filing office. A person who communicated a record to the filing
15 office that the filing office rejected in reliance on section 9-
16 516(b)(4), who believes in good faith that the record was not
17 communicated to the filing office in violation of section 9-
18 516(b)(4), may file an action to require that the record be
19 accepted by the filing office. The jurisdiction for the action is
20 the circuit court of Kanawha County.

21 (h) If the court determines that a record terminated under
22 this section or rejected in reliance on section 9-516(b)(4) should
23 be reinstated or accepted, the court shall provide a copy of an
24 order to that effect to the Secretary of State. On receipt of an

1 order reinstating a terminated record, the Secretary of State shall
2 refile the record along with a notice indicating that the record
3 was refiled pursuant to this section and its initial filing date.
4 On receipt of an order requiring that a rejected record be
5 accepted, the Secretary of State shall promptly file the record
6 along with a notice indicating that the record was filed pursuant
7 to this section and the date on which it was communicated for
8 filing. A rejected record that is filed pursuant to an order of a
9 court shall have the effect described in section 9-516(d) for a
10 record the filing office refuses to accept for a reason other than
11 one set forth in section 9-516(b).

12 (i) A terminated record that is refiled under subsection (h)
13 of this section is effective as a filed record from the initial
14 filing date. If the period of effectiveness of a refiled record
15 would have lapsed during the period of termination, the secured
16 party may file a continuation statement within thirty days after
17 the record is refiled and the continuation statement has the same
18 effect as if it had been filed during the six-month period
19 described in section 9-515(d). A refiled record is considered
20 never to have been ineffective against all persons and for all
21 purposes except that it is not effective as against a purchaser of
22 the collateral that gave value in reasonable reliance on the
23 absence of the record from the files.

24 (j) Neither the filing office nor any of its employees incur

1 liability for the termination or failure to accept a record for
2 filing in the lawful performance of the duties of the office or
3 employee.

4 (k) This section does not apply to a record communicated to
5 the filing office by a regulated financial institution or by a
6 representative of a regulated financial institution, except that
7 the Secretary of State may request from the secured party of record
8 on the record or from the person that communicated the record to
9 the filing office, if different and known to the office, additional
10 documentation supporting that the record was communicated to the
11 filing office by a regulated financial institution or by a
12 representative of a regulated financial institution. For the
13 purposes of this section the term "regulated financial institution"
14 means a financial institution subject to regulatory oversight or
15 examination by a state or federal agency and includes banks,
16 savings banks, savings associations, building and loan
17 associations, credit unions, consumer finance companies, industrial
18 banks, industrial loan companies, investment funds, installment
19 sellers, mortgage servicers, sales finance companies and leasing
20 companies.

21 (l) If a record was communicated to the filing office for
22 filing before the effective date of this section, and its
23 communication would have constituted a violation of subsection (a)
24 of this section if it had occurred on or after the effective date

1 of this section:

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

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

4 **§46-9-521. Written financing statement and amendment thereto.**

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

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

17 **§46-9-525. Fees.**

18 (a) *Initial financing statement or other record: general rule.*
19 -- Except as otherwise provided in subsection (e) of this section,
20 the fee for filing and indexing a record under this part, other
21 than an initial financing statement of the kind described in
22 subsection (b) of this section, is the amount specified in
23 subsection (c) of this section, if applicable, plus:

24 (1) \$20 dollars if the record is communicated in writing and

1 consists of one or two pages; and

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

4 (3) \$20 dollars if the record is communicated by another
5 medium authorized by filing-office rule.

6 (b) *Initial financing statement: Public-finance and*
7 *manufactured housing transactions.* -- Except as otherwise provided
8 in subsection (e) of this section, the fee for filing and indexing
9 an initial financing statement of the following kind is the amount
10 specified in subsection (c) of this section, if applicable, plus:

11 (1) \$20 if the financing statement indicates that it is filed
12 in connection with a public-finance transaction;

13 (2) \$20 if the financing statement indicates that it is filed
14 in connection with a manufactured-home transaction.

15 (c) *Number of names.* -- The number of names required to be
16 indexed does not affect the amount of the fee in subsections (a)
17 and (b) of this section.

18 (d) *Response to information request.* -- The fee for responding
19 to a request for information from the filing office, including for
20 issuing a certificate showing whether there is on file any
21 financing statement naming a particular debtor, is:

22 (1) \$10 if the request is communicated in writing;

23 (2) \$10 if the request is communicated by another medium
24 authorized by filing-office rule; and

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

2 (e) *Record of mortgage.* -- This section does not require a fee
3 with respect to a record of a mortgage which is effective as a
4 financing statement filed as a fixture filing or as a financing
5 statement covering as-extracted collateral or timber to be cut
6 under section 9-502(c). However, the recording and satisfaction
7 fees that otherwise would be applicable to the record of the
8 mortgage apply.

9 (f) *Deposit of funds.* -- All fees and moneys collected by the
10 Secretary of State pursuant to the provisions of this article shall
11 be deposited by the Secretary of State as follows: One-half shall
12 be deposited in the special revenue account created by section 59-
13 1-59(c)(4)(B), to provide civil legal services for low income
14 persons, one-fourth shall be deposited in the state fund, general
15 revenue, and one-fourth shall be deposited in the service fees and
16 collections account established by section 59-1-2 for the operation
17 of the office of the Secretary of State. Any balance remaining on
18 June 30, 2001, in the existing special revenue account entitled
19 "uniform commercial code" as established by chapter two hundred
20 four, acts of the Legislature, 1989 regular session, shall be
21 transferred to the service fees and collections account established
22 by section 59-1-2 for the operation of the office of the Secretary
23 of State. The Secretary of State shall dedicate sufficient
24 resources from that fund or other funds to provide the services

1 required in this article, unless otherwise provided by
2 appropriation or other action by the Legislature.