

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **Senate Bill 837**

By Senator Morris

[Introduced February 9, 2026; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §46-9-516a of the Code of West Virginia, 1931, as amended,  
 2 relating to the filing of a fraudulent financing statement; providing for filing of an affidavit  
 3 and notice to secured parties; updating investigative powers of the Secretary of State; and  
 4 removing outdated provisions of code.

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

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

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

- 3 (1) Is not authorized or permitted under sections 9-509, 9-708 or 9-808; and
- 4 (2) Is filed with the intent to harass or defraud the person identified as debtor in the record  
 5 or any other person;
- 6 (3) Contains a material false statement; or
- 7 (4) Is groundless.

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

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

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

17 actual damages;

18 (2) Reasonable attorney fees;

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

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

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

27 (e) A person who files an affidavit under subsection (d) shall send each secured party of  
28 record a written notice of the person's intention to file the affidavit, together with a copy of the  
29 financing statement. The notice must be sent to the mailing office provided for each secured party  
30 of record in the financing statement to which the affidavit relates by certified mail, return receipt  
31 requested, not earlier than the 30<sup>th</sup> day before and not later than the 5<sup>th</sup> day before the date the  
32 affidavit is filed.

33 (f) The Secretary of State shall reject an affidavit filed under subsection (d) if:

34 (1) The affidavit is incomplete; or

35 (2) The affiant did not file the affidavit together with the proof of notice required by  
36 subsection (e).

37 (g) Upon receipt of an affidavit filed under this section, or upon administrative action by  
38 the Secretary of State, the Secretary of State shall communicate to the secured party of record on  
39 the record to which the affidavit or administrative action relates and to the person who  
40 communicated the record to the filing office, if different and known to the office, a request for  
41 additional documentation supporting the effectiveness of the record. The Secretary of State shall  
42 review all such documentation received within thirty days after the first request for additional

43 documentation is sent if the Secretary of State has a reasonable basis for concluding that the  
44 record was communicated to the filing office in violation of subsection (a) of this section.

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

52 (1) In addition to the powers and duties contained in this article, the Secretary of State may:

53 (A) Administer oaths and affirmations, issue subpoenas for the attendance of witnesses,  
54 issue subpoenas duces tecum to compel the production of books, papers, records and all other  
55 evidence necessary to any investigation.

56 (B) Involve the aid of any circuit court in the execution of its subpoena power.

57 (C) The Attorney General shall, when requested, provide legal and investigative  
58 assistance to the Secretary of State.

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

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

69 Kanawha County.

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

80 ~~(i)~~ (l) A terminated record that is refiled under subsection ~~(h)~~ (k) of this section is effective  
81 as a filed record from the initial filing date. If the period of effectiveness of a refiled record would  
82 have lapsed during the period of termination, the secured party may file a continuation statement  
83 within thirty days after the record is refiled and the continuation statement has the same effect as if  
84 it had been filed during the six-month period described in section 9-515(d). A refiled record is  
85 considered never to have been ineffective against all persons and for all purposes except that it is  
86 not effective as against a purchaser of the collateral that gave value in reasonable reliance on the  
87 absence of the record from the files.

88 ~~(j)~~ (m) Neither the filing office nor any of its employees incur liability for the termination or  
89 failure to accept a record for filing in the lawful performance of the duties of the office or employee.

90 ~~(k)~~ (n) This section does not apply to a record communicated to the filing office by a  
91 regulated financial institution or by a representative of a regulated financial institution, except that  
92 the Secretary of State may request from the secured party of record on the record or from the  
93 person that communicated the record to the filing office, if different and known to the office,  
94 additional documentation supporting that the record was communicated to the filing office by a

95 regulated financial institution or by a representative of a regulated financial institution. For the  
96 purposes of this section the term "regulated financial institution" means a financial institution  
97 subject to regulatory oversight or examination by a state or federal agency and includes banks,  
98 savings banks, savings associations, building and loan associations, credit unions, consumer  
99 finance companies, industrial banks, industrial loan companies, investment funds, installment  
100 sellers, mortgage servicers, sales finance companies and leasing companies.

101 ~~(f) If a record was communicated to the filing office for filing before the effective date of this~~  
102 ~~section, and its communication would have constituted a violation of subsection (a) of this section~~  
103 ~~if it had occurred on or after the effective date of this section:~~

104 ~~(i) Subsections (b) and (c) are not applicable; and~~

105 ~~(ii) The remaining subsections of this section are applicable~~

NOTE: The purpose of this bill is to update acts constituting the filing of a fraudulent financing statement; filing of an affidavit and notice to secured parties; investigative powers of the Secretary of State; removing outdated provisions of code.

Strike-throughs indicate language that would be stricken from a heading, or the present law and underscoring indicates new language that would be added.