

# **WEST VIRGINIA LEGISLATURE**

## **2026 REGULAR SESSION**

**Introduced**

### **House Bill 5229**

By Delegates Funkhouser and Ridenour

[By Request of the Office of the Secretary of State]

[Introduced February 05, 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 filing of a fraudulent financing statement; filing of an affidavit and notice to  
 3 secured parties; investigative powers of the Secretary of State; and removing outdated  
 4 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~~ §46-9-509, §46-9-  
 4 708, §46-9-808 of this code; and

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

7 (3) Contains a material false statement; or

8 (4) Is groundless.

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

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

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

19 (2) Reasonable attorney fees;

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

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

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

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

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

35 (1) The affidavit is incomplete; or

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

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

43 such documentation received within thirty days after the first request for additional documentation  
44 is sent if the Secretary of State has a reasonable basis for concluding that the record was  
45 communicated to the filing office in violation of subsection (a) of this section.

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

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

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

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

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

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

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

69 that the record be accepted by the filing office. The jurisdiction for the action is the circuit court of  
70 Kanawha County.

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

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

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

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

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

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

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

106 ~~(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.