WEST VIRGINIA CODE: §39A-1-16

§39A-1-16. Transferable records.

(a) In this section, "transferable record" means an electronic record that:

(1) Would be a note under article three, chapter forty-six of this code or a document under article seven of said chapter if the electronic record were in writing; and

(2) The issuer of the electronic record expressly has agreed is a transferable record.

(b) A person has control of a transferable record if a system employed for evidencing the transfer of interests in the transferable record reliably establishes that person as the person to which the transferable record was issued or transferred.

(c) A system satisfies subsection (b) of this section and a person is deemed to have control of a transferable record if the transferable record is created, stored and assigned in such a manner that:

(1) A single authoritative copy of the transferable record exists which is unique, identifiable and, except as otherwise provided in subdivisions (4), (5) and (6) of this subsection, unalterable;

(2) The authoritative copy identifies the person asserting control as:

(A) The person to which the transferable record was issued; or

(B) If the authoritative copy indicates that the transferable record has been transferred, the person to which the transferable record was most recently transferred;

(3) The authoritative copy is communicated to and maintained by the person asserting control or its designated custodian;

(4) Copies or revisions that add or change an identified assignee of the authoritative copy can be made only with the consent of the person asserting control;

(5) Each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy; and

(6) Any revision of the authoritative copy is readily identifiable as authorized or unauthorized.

(d) Except as otherwise agreed, a person having control of a transferable record is the holder, as defined in section two hundred one, article one, chapter forty-six of this code, of the transferable record and has the same rights and defenses as a holder of an equivalent

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record or writing under said chapter, including, if the applicable statutory requirements under section three hundred two, article three of said chapter, section five hundred one, article seven of said chapter or section three hundred eight, article nine of said chapter are satisfied, the rights and defenses of a holder in due course, a holder to which a negotiable document of title has been duly negotiated or a purchaser, respectively. Delivery, possession and indorsement are not required to obtain or exercise any of the rights under this subsection.

(e) Except as otherwise agreed, an obligor under a transferable record has the same rights and defenses as an equivalent obligor under equivalent records or writings under chapter forty-six of this code.

(f) If requested by a person against which enforcement is sought, the person seeking to enforce the transferable record shall provide reasonable proof that the person is in control of the transferable record. Proof may include access to the authoritative copy of the transferable record and related business records sufficient to review the terms of the transferable record and to establish the identity of the person having control of the transferable record.

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