WEST VIRGINIA CODE: §46-9-408

§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

(a) Term restricting assignment generally ineffective.-- Except as otherwise provided in subsection (b) of this section, a term in a promissory note or in an agreement between an account debtor and a debtor which relates to a health-care-insurance receivable or a general intangible, including a contract, permit, license or franchise, and which term prohibits, restricts or requires the consent of the person obligated on the promissory note or the account debtor to, the assignment or transfer of or creation, attachment or perfection of a security interest in, the promissory note, health-care-insurance receivable or general intangible, is ineffective to the extent that the term:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(b) Applicability of subsection (a) to sales of certain rights to payment. Subsection (a) of this section applies to a security interest in a payment intangible or promissory note only if the security interest arises out of a sale of the payment intangible or promissory note other than a sale pursuant to a disposition under section 9-610 or an acceptance of collateral under section 9-620.

(c) Legal restrictions on assignment generally ineffective.-- A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

(1) Would impair the creation, attachment or perfection of a security interest; or

(2) Provides that the assignment or transfer or the creation, attachment or perfection of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the promissory note, health-care-insurance receivable or general intangible.

(d) Limitation on ineffectiveness under subsections (a) and (c). -- To the extent that a term in a promissory note or in an agreement between an account debtor and a debtor which relates

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to a health-care-insurance receivable or general intangible or a rule of law, statute or regulation described in subsection (c) of this section would be effective under law other than this article but is ineffective under subsection (a) or (c) of this section, the creation, attachment or perfection of a security interest in the promissory note, health-care-insurance receivable or general intangible:

(1) Is not enforceable against the person obligated on the promissory note or the account debtor;

(2) Does not impose a duty or obligation on the person obligated on the promissory note or the account debtor;

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;

(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;

(5) Does not entitle the secured party to use, assign, possess or have access to any trade secrets or confidential information of the person obligated on the promissory note or the account debtor; and

(6) Does not entitle the secured party to enforce the security interest in the promissory note, health-care-insurance receivable or general intangible.

(e) Section prevails over specified inconsistent law. -- This section prevails over any inconsistent provisions of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state, refers expressly to this section and states that the provision prevails over this section.

(f) Inapplicability. -- Subsection (c) of this section does not apply to an assignment or transfer of or the creation, attachment, perfection, or enforcement of a security interest in, a right the transfer of which is prohibited or restricted by any of the following statutes, to the extent that the statute is inconsistent with said subsection: Chapter twenty-three, article four, section eighteen; chapter forty-six-a, article six-h; and a claim or right to receive benefits under a special needs trust as described in 42 U.S.C. §1396(d)(4).

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