WEST VIRGINIA CODE: §46-9-516A

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

(a) No person may cause to be communicated to the filing office for filing a false record the person knows or reasonably should know:

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

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

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

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

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

(2) Reasonable attorney fees;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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