WEST VIRGINIA CODE CHAPTER 46 ARTICLE 9

WV Legislature

Part 1. General Provisions.

Subpart 1. Short Title, Definitions, And General Concepts.

§46-9-101. Short title.

This article may be cited as Uniform Commercial Code-Secured Transactions.

WV Legislature

§46-9-102. Definitions and index of definitions.

(a) Article 9 definitions. -- In this article:

(1) "Accession" means goods that are physically united with other goods in such a manner that the identity of the original goods is not lost.

(2) "Account", except as used in "account for", means a right to payment of a monetary obligation, whether or not earned by performance: (i) For property that has been or is to be sold, leased, licensed, assigned or otherwise disposed of; (ii) for services rendered or to be rendered; (iii) for a policy of insurance issued or to be issued; (iv) for a secondary obligation incurred or to be incurred; (v) for energy provided or to be provided; (vi) for the use or hire of a vessel under a charter or other contract; (vii) arising out of the use of a credit or charge card or information contained on or for use with the card; or (viii) as winnings in a lottery or other game of chance operated or sponsored by a state, governmental unit of a state or person licensed or authorized to operate the game by a state or governmental unit of a state. The term includes health-care-insurance receivables. The term does not include: (i) Rights to payment evidenced by chattel paper or an instrument; (ii) commercial tort claims; (iii) deposit accounts; (iv) investment property; (v) letter-of-credit rights or letters of credit; or (vi) rights to payment for money or funds advanced or sold, other than rights arising out of the use of a credit or charge card or information contained on or for use with the card.

(3) "Account debtor" means a person obligated on an account, chattel paper or general intangible. The term does not include persons obligated to pay a negotiable instrument, even if the instrument constitutes part of chattel paper.

(4) "Accounting", except as used in "accounting for", means a record:

(A) Authenticated by a secured party;

(B) Indicating the aggregate unpaid secured obligations as of a date not more than thirty-five days earlier or thirty-five days later than the date of the record; and

(C) Identifying the components of the obligations in reasonable detail.

(5) "Agricultural lien" means an interest, in farm products:

(A) Which secures payment or performance of an obligation for:

(i) Goods or services furnished in connection with a debtor's farming operation; or

(ii) Rent on real property leased by a debtor in connection with its farming operation;

(B) Which is created by statute in favor of a person that:

(i) In the ordinary course of its business furnished goods or services to a debtor in

WV Legislature

connection with a debtor's farming operation; or

(ii) Leased real property to a debtor in connection with the debtor's farming operation; and

(C) Whose effectiveness does not depend on the person's possession of the personal property.

(6) "As-extracted collateral" means:

(A) Oil, gas or other minerals that are subject to a security interest that:

(i) Is created by a debtor having an interest in the minerals before extraction; and

(ii) Attaches to the minerals as extracted; or

(B) Accounts arising out of the sale at the wellhead or minehead of oil, gas or other minerals in which the debtor had an interest before extraction.

(7) "Authenticate" means:

(A) To sign; or

(B), To attach to or logically associate with the record an electronic sound, symbol or process, with present intent to adopt or accept a record.

(8) "Bank" means an organization that is engaged in the business of banking. The term includes savings banks, savings and loan associations, credit unions and trust companies.

(9) "Cash proceeds" means proceeds that are money, checks, deposit accounts or the like.

(10) "Certificate of title" means a certificate of title with respect to which a statute provides for the security interest in question to be indicated on the certificate as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. The term includes another record maintained as an alternative to a certificate of title by the governmental unit that issues certificates of title if a statute permits the security interest in question to be indicated on the record as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral.

(11) "Chattel paper" means a record or records that evidence both a monetary obligation and a security interest in specific goods, a security interest in specific goods and software used in the goods, a security interest in specific goods and license of software used in the goods, a lease of specific goods or a lease of specific goods and license of software used in the goods. In this paragraph, "monetary obligation" means a monetary obligation secured by the goods or owed under a lease of the goods and includes a monetary obligation with respect to software used in the goods. The term does not include: (i) Charters or other contracts

WV Legislature

involving the use or hire of a vessel; or (ii) records that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card. If a transaction is evidenced by records that include an instrument or series of instruments, the group of records taken together constitutes chattel paper.

(12) "Collateral" means the property subject to a security interest or agricultural lien. The term includes:

(A) Proceeds to which a security interest attaches;

(B) Accounts, chattel paper, payment intangibles and promissory notes that have been sold; and

(C) Goods that are the subject of a consignment.

(13) "Commercial tort claim" means a claim arising in tort with respect to which:

(A) The claimant is an organization; or

(B) The claimant is an individual and the claim:

(i) Arose in the course of the claimant's business or profession; and

(ii) Does not include damages arising out of personal injury to or the death of an individual.

(14) "Commodity account" means an account maintained by a commodity intermediary in which a commodity contract is carried for a commodity customer.

(15) "Commodity contract" means a commodity futures contract, an option on a commodity futures contract, a commodity option or another contract if the contract or option is:

(A) Traded on or subject to the rules of a board of trade that has been designated as a contract market for such a contract pursuant to federal commodities laws; or

(B) Traded on a foreign commodity board of trade, exchange or market and is carried on the books of a commodity intermediary for a commodity customer.

(16) "Commodity customer" means a person for which a commodity intermediary carries a commodity contract on its books.

(17) "Commodity intermediary" means a person that:

(A) Is registered as a futures commission merchant under federal commodities law; or

(B) In the ordinary course of its business provides clearance or settlement services for a board of trade that has been designated as a contract market pursuant to federal commodities law.

WV Legislature

(18) "Communicate" means:

(A) To send a written or other tangible record;

(B) To transmit a record by any means agreed upon by the persons sending and receiving the record; or

(C) In the case of transmission of a record to or by a filing office, to transmit a record by any means prescribed by filing-office rule.

(19) "Consignee" means a merchant to which goods are delivered in a consignment.

(20) "Consignment" means a transaction, regardless of its form, in which a person delivers goods to a merchant for the purpose of sale and:

(A) The merchant:

(i) Deals in goods of that kind under a name other than the name of the person making delivery;

(ii) Is not an auctioneer; and

(iii) Is not generally known by its creditors to be substantially engaged in selling the goods of others;

(B) With respect to each delivery, the aggregate value of the goods is $1,000 or more at the time of delivery;

(C) The goods are not consumer goods immediately before delivery; and

(D) The transaction does not create a security interest that secures an obligation.

(21) "Consignor" means a person that delivers goods to a consignee in a consignment.

(22) "Consumer debtor" means a debtor in a consumer transaction.

(23) "Consumer goods" means goods that are used or bought for use primarily for personal, family or household purposes.

(24) "Consumer-goods transaction" means a consumer transaction in which:

(A) An individual incurs an obligation primarily for personal, family or household purposes; and

(B) A security interest in consumer goods secures the obligation.

(25) "Consumer obligor" means an obligor who is an individual and who incurred the

WV Legislature

obligation as part of a transaction entered into primarily for personal, family or household purposes.

(26) "Consumer transaction" means a transaction in which: (i) An individual incurs an obligation primarily for personal, family or household purposes; (ii) a security interest secures the obligation; and (iii) the collateral is held or acquired primarily for personal, family or household purposes. The term includes consumer-goods transactions.

(27) "Continuation statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates that it is a continuation statement for, or that it is filed to continue the effectiveness of, the identified financing statement.

(28) "Debtor" means:

(A) A person having an interest, other than a security interest or other lien, in the collateral, whether or not the person is an obligor;

(B) A seller of accounts, chattel paper, payment intangibles or promissory notes; or

(C) A consignee.

(29) "Deposit account" means a demand, time, savings, passbook or similar account maintained with a bank. The term does not include investment property or accounts evidenced by an instrument.

(30) "Document" means a document of title or a receipt of the type described in section 7-201(b).

(31) "Electronic chattel paper" means chattel paper evidenced by a record or records consisting of information stored in an electronic medium.

(32) "Encumbrance" means a right, other than an ownership interest, in real property. The term includes mortgages and other liens on real property.

(33) "Equipment" means goods other than inventory, farm products or consumer goods.

(34) "Farm products" means goods, other than standing timber, with respect to which the debtor is engaged in a farming operation and which are:

(A) Crops grown, growing or to be grown, including:

(i) Crops produced on trees, vines and bushes; and

(ii) Aquatic goods produced in aquacultural operations;

WV Legislature

(B) Livestock, born or unborn, including aquatic goods produced in aquacultural operations;

(C) Supplies used or produced in a farming operation; or

(D) Products of crops or livestock in their unmanufactured states.

(35) "Farming operation" means raising, cultivating, propagating, fattening, grazing or any other farming, livestock or aquacultural operation.

(36) "File number" means the number assigned to an initial financing statement pursuant to section 9-519(a).

(37) "Filing office" means an office designated in section 9-501 as the place to file a financing statement.

(38) "Filing-office rule" means a rule adopted pursuant to section 9-526.

(39) "Financing statement" means a record or records composed of an initial financing statement and any filed record relating to the initial financing statement.

(40) "Fixture filing" means the filing of a financing statement covering goods that are or are to become fixtures and satisfying section 9-502(a) and (b). The term includes the filing of a financing statement covering goods of a transmitting utility which are or are to become fixtures.

(41) "Fixtures" means goods that have become so related to particular real property that an interest in them arises under real property law.

(42) "General intangible" means any personal property, including things in action, other than accounts, chattel paper, commercial tort claims, deposit accounts, documents, goods, instruments, investment property, letter-of-credit rights, letters of credit, money and oil, gas or other minerals before extraction. The term includes payment intangibles and software.

(43) [reserved].

(44) "Goods" means all things that are movable when a security interest attaches. The term includes: (i) Fixtures; (ii) standing timber that is to be cut and removed under a conveyance or contract for sale; (iii) the unborn young of animals; (iv) crops grown, growing or to be grown, even if the crops are produced on trees, vines or bushes; and (v) manufactured homes. The term also includes a computer program embedded in goods and any supporting information provided in connection with a transaction relating to the program if: (i) The program is associated with the goods in such a manner that it customarily is considered part of the goods; or (ii) by becoming the owner of the goods, a person acquires a right to use the program in connection with the goods. The term does not include a computer program embedded in goods that consist solely of the medium in which the program is embedded. The term also does not include accounts, chattel paper, commercial tort claims, deposit

WV Legislature

accounts, documents, general intangibles, instruments, investment property, letter-of-credit rights, letters of credit, money or oil, gas, or other minerals before extraction.

(45) "Governmental unit" means a subdivision, agency, department, county, parish, municipality or other unit of the government of the United States, a state or a foreign country. The term includes an organization having a separate corporate existence if the organization is eligible to issue debt on which interest is exempt from income taxation under the laws of the United States.

(46) "Health-care-insurance receivable" means an interest in or claim under a policy of insurance which is a right to payment of a monetary obligation for health-care goods or services provided.

(47) "Instrument" means a negotiable instrument or any other writing that evidences a right to the payment of a monetary obligation, is not itself a security agreement or lease, and is of a type that in ordinary course of business is transferred by delivery with any necessary indorsement or assignment. The term does not include: (i) Investment property; (ii) letters of credit; or (iii) writings that evidence a right to payment arising out of the use of a credit or charge card or information contained on or for use with the card.

(48) "Inventory" means goods, other than farm products, which:

(A) Are leased by a person as lessor;

(B) Are held by a person for sale or lease or to be furnished under a contract of service;

(C) Are furnished by a person under a contract of service; or

(D) Consist of raw materials, work in process or materials used or consumed in a business.

(49) "Investment property" means a security, whether certificated or uncertificated, security entitlement, securities account, commodity contract or commodity account.

(50) "Jurisdiction of organization", with respect to a registered organization, means the jurisdiction under whose law the organization is formed or organized.

(51) "Letter-of-credit right" means a right to payment or performance under a letter of credit, whether or not the beneficiary has demanded or is at the time entitled to demand payment or performance. The term does not include the right of a beneficiary to demand payment or performance under a letter of credit.

(52) "Lien creditor" means:

(A) A creditor that has acquired a lien on the property involved by attachment, levy or the like;

WV Legislature

(B) An assignee for benefit of creditors from the time of assignment;

(C) A trustee in bankruptcy from the date of the filing of the petition; or

(D) A receiver in equity from the time of appointment.

(53) "Manufactured home" means a structure, transportable in one or more sections, which, in the traveling mode, is eight body feet or more in width or forty body feet or more in length, or, when erected on site, is three hundred twenty or more square feet, and which is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities, and includes the plumbing, heating, air-conditioning and electrical systems contained therein. The term includes any structure that meets all of the requirements of this paragraph except the size requirements and with respect to which the manufacturer voluntarily files a certification required by the United States secretary of housing and urban development and complies with the standards established under Title 42 of the United States Code.

(54) "Manufactured-home transaction" means a secured transaction:

(A) That creates a purchase-money security interest in a manufactured home, other than a manufactured home held as inventory; or

(B) In which a manufactured home, other than a manufactured home held as inventory, is the primary collateral.

(55) "Mortgage" means a consensual interest in real property, including fixtures, which secures payment or performance of an obligation.

(56) "New debtor" means a person that becomes bound as debtor under section 9-203(d) by a security agreement previously entered into by another person.

(57) "New value" means: (i) Money; (ii) money's worth in property, services or new credit; or (iii) release by a transferee of an interest in property previously transferred to the transferee. The term does not include an obligation substituted for another obligation.

(58) "Noncash proceeds" means proceeds other than cash proceeds.

(59) "Obligor" means a person that, with respect to an obligation secured by a security interest in or an agricultural lien on the collateral: (i) Owes payment or other performance of the obligation; (ii) has provided property other than the collateral to secure payment or other performance of the obligation; or (iii) is otherwise accountable, in whole or in part, for payment or other performance of the obligation. The term does not include issuers or nominated persons under a letter of credit.

(60) "Original debtor" except as used in section 9-310(c), means a person that, as debtor, entered into a security agreement to which a new debtor has become bound under section

WV Legislature

9-203(d).

(61) "Payment intangible" means a general intangible under which the account debtor's principal obligation is a monetary obligation.

(62) "Person related to", with respect to an individual, means:

(A) The spouse of the individual;

(B) A brother, brother-in-law, sister or sister-in-law of the individual;

(C) An ancestor or lineal descendant of the individual or the individual's spouse; or

(D) Any other relative, by blood or marriage, of the individual or the individual's spouse who shares the same home with the individual.

(63) "Person related to", with respect to an organization, means:

(A) A person directly or indirectly controlling, controlled by or under common control with the organization;

(B) An officer or director of, or a person performing similar functions with respect to, the organization;

(C) An officer or director of, or a person performing similar functions with respect to, a person described in subparagraph (A);

(D) The spouse of an individual described in subparagraph (A), (B) or (C); or

(E) An individual who is related by blood or marriage to an individual described in subparagraph (A), (B), (C) or (D) and shares the same home with the individual.

(64) "Proceeds", except as used in section 9-609(b), means the following property:

(A) Whatever is acquired upon the sale, lease, license, exchange or other disposition of collateral;

(B) Whatever is collected on, or distributed on account of, collateral;

(C) Rights arising out of collateral;

(D) To the extent of the value of collateral, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to, the collateral; or

(E) To the extent of the value of collateral and to the extent payable to the debtor or the secured party, insurance payable by reason of the loss or nonconformity of, defects or

WV Legislature

infringement of rights in, or damage to, the collateral.

(65) "Production-money crops" means crops that secure a production-money obligation incurred with respect to the production of those crops.

(66) "Production-money obligation" means an obligation of an obligor incurred for new value given to enable the debtor to produce crops if the value is in fact used for the production of the crops.

(67) "Production of crops" includes tilling and otherwise preparing land for growing, planting, cultivating, fertilizing, irrigating, harvesting and gathering crops and protecting them from damage or disease.

(68) "Promissory note" means an instrument that evidences a promise to pay a monetary obligation, does not evidence an order to pay, and does not contain an acknowledgment by a bank that the bank has received for deposit a sum of money or funds.

(69) "Proposal" means a record authenticated by a secured party which includes the terms on which the secured party is willing to accept collateral in full or partial satisfaction of the obligation it secures pursuant to sections 9-620, 9-621 and 9-622.

(70) "Public-finance transaction" means a secured transaction in connection with which:

(A) Debt securities are issued;

(B) All or a portion of the securities issued have an initial stated maturity of at least twenty years; and

(C) The debtor, obligor, secured party, account debtor or other person obligated on collateral, assignor or assignee of a secured obligation, or assignor or assignee of a security interest is a state or a governmental unit of a state.

(71) "Public organic record" means a record that is available to the public for inspection and is:

(A) A record consisting of the record initially filed with or issued by a state or the United States to form or organize an organization and any record filed with or issued by the state or the United States which amends or restates the initial record;

(B) An organic record of a business trust consisting of the record initially filed with a state and any record filed with the state which amends or restates the initial record, if a statute of the state governing business trusts requires that the record be filed with the state; or

(C) A record consisting of legislation enacted by the Legislature of a state or the Congress of the United States which forms or organizes an organization, any record amending the legislation, and any record filed with or issued by the state or the United States which

WV Legislature

amends or restates the name of the organization.

(72) "Pursuant to commitment", with respect to an advance made or other value given by a secured party, means pursuant to the secured party's obligation, whether or not a subsequent event of default or other event not within the secured party's control has relieved or may relieve the secured party from its obligation.

(73) "Record", except as used in "for record", "of record", "record or legal title" and "record owner", means information that is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.

(74) "Registered organization" means an organization formed or organized solely under the law of a single state or the United States by the filing of a public organic record with, the issuance of a public organic record by, or the enactment of legislation by the state or the United States. The term includes a business trust that is formed or organized under the law of a single state if a statute of the state governing business trusts requires that the business trust's organic record be filed with the state.

(75) "Secondary obligor" means an obligor to the extent that:

(A) The obligor's obligation is secondary; or

(B) The obligor has a right of recourse with respect to an obligation secured by collateral against the debtor, another obligor or property of either.

(76) "Secured party" means:

(A) A person in whose favor a security interest is created or provided under a security agreement, whether or not any obligation to be secured is outstanding;

(B) A person that holds an agricultural lien;

(C) A consignor;

(D) A person to which accounts, chattel paper, payment intangibles or promissory notes have been sold;

(E) A trustee, indenture trustee, agent, collateral agent or other representative in whose favor a security interest or agricultural lien is created or provided for; or

(F) A person that holds a security interest arising under section 2-401, 2-505, 2-711(3), 2A-508(5), 4-210 or 5-118.

(77) "Security agreement" means an agreement that creates or provides for a security interest.

WV Legislature

(78) "Send," in connection with a record or notification, means:

(A) To deposit in the mail, deliver for transmission, or transmit by any other usual means of communication, with postage or cost of transmission provided for, addressed to any address reasonable under the circumstances; or

(B) To cause the record or notification to be received within the time that it would have been received if properly sent under paragraph (A).

(79) "Software" means a computer program and any supporting information provided in connection with a transaction relating to the program. The term does not include a computer program that is included in the definition of goods.

(80) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States.

(81) "Supporting obligation" means a letter-of-credit right or secondary obligation that supports the payment or performance of an account, chattel paper, a document, a general intangible, an instrument or investment property.

(82) "Tangible chattel paper" means chattel paper evidenced by a record or records consisting of information that is inscribed on a tangible medium.

(83) "Termination statement" means an amendment of a financing statement which:

(A) Identifies, by its file number, the initial financing statement to which it relates; and

(B) Indicates either that it is a termination statement or that the identified financing statement is no longer effective.

(84) "Transmitting utility" means a person primarily engaged in the business of:

(A) Operating a railroad, subway, street railway or trolley bus;

(B) Transmitting communications electrically, electromagnetically or by light;

(C) Transmitting goods by pipeline or sewer; or

(D) Transmitting or producing and transmitting electricity, steam, gas or water.

(b) Definitions in other articles. "Control" as provided in section 7-106 and the following definitions in other articles apply to this article:

"Applicant" Section 5-102.

"Beneficiary" Section 5-102.

WV Legislature

"Broker" Section 8-102.

"Certificated security" Section 8-102.

"Check" Section 3-104.

"Clearing corporation" Section 8-102.

"Contract for sale" Section 2-106.

"Customer" Section 4-104.

"Entitlement holder" Section 8-102.

"Financial asset" Section 8-102.

"Holder in due course" Section 3-302.

"Issuer" (with respect to a letter of credit or letter-of-credit right) Section 5-102.

"Issuer" (with respect to a security) Section 8-201.

"Issuer" (with respect to a document of title) Section 7-102.

"Lease" Section 2A-103.

"Lease agreement" Section 2A-103.

"Lease contract" Section 2A-103.

"Leasehold interest" Section 2A-103.

"Lessee" Section 2A-103.

"Lessee in ordinary course of business" Section 2A-103.

"Lessor" Section 2A-103.

"Lessor's residual interest" Section 2A-103.

"Letter of credit" Section 5-102.

"Merchant" Section 2-104.

"Negotiable instrument" Section 3-104.

"Nominated person" Section 5-102.

WV Legislature

"Note" Section 3-104.

"Proceeds of a letter of credit" Section 5-114.

"Prove" Section 3-103.

"Sale" Section 2-106.

"Securities account" Section 8-501.

"Securities intermediary" Section 8-102.

"Security" Section 8-102.

"Security certificate" Section 8-102.

"Security entitlement" Section 8-102.

"Uncertificated security" Section 8-102.

(c) Article 1 definitions and principles. Article 1 contains general definitions and principles of construction and interpretation applicable throughout this article.

WV Legislature

§46-9-103. Purchase-money security interest; application of payments; burden of establishing.

(a) Definitions. In this section:

(1) "Purchase-money collateral" means goods or software that secures a purchase-money obligation incurred with respect to that collateral; and

(2) "Purchase-money obligation" means an obligation of an obligor incurred as all or part of the price of the collateral or for value given to enable the debtor to acquire rights in or the use of the collateral if the value is in fact so used.

(b) Purchase-money security interest in goods. A security interest in goods is a purchase-money security interest:

(1) To the extent that the goods are purchase-money collateral with respect to that security interest;

(2) If the security interest is in inventory that is or was purchase-money collateral, also to the extent that the security interest secures a purchase-money obligation incurred with respect to other inventory in which the secured party holds or held a purchase-money security interest; and

(3) Also to the extent that the security interest secures a purchase-money obligation incurred with respect to software in which the secured party holds or held a purchase-money security interest.

(c) Purchase-money security interest in software. A security interest in software is a purchase-money security interest to the extent that the security interest also secures a purchase-money obligation incurred with respect to goods in which the secured party holds or held a purchase-money security interest if:

(1) The debtor acquired its interest in the software in an integrated transaction in which it acquired an interest in the goods; and

(2) The debtor acquired its interest in the software for the principal purpose of using the software in the goods.

(d) Consignor's inventory purchase-money security interest. The security interest of a consignor in goods that are the subject of a consignment is a purchase-money security interest in inventory.

(e) Application of payment in nonconsumer-goods transaction. In a transaction other than a consumer-goods transaction, if the extent to which a security interest is a purchase-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

WV Legislature

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by purchase-money security interests in the order in which those obligations were incurred.

(f) No loss of status of purchase-money security interest in nonconsumer-goods transaction. In a transaction other than a consumer-goods transaction, a purchase-money security interest does not lose its status as such, even if:

(1) The purchase-money collateral also secures an obligation that is not a purchase-money obligation;

(2) Collateral that is not purchase-money collateral also secures the purchase-money obligation; or

(3) The purchase-money obligation has been renewed, refinanced, consolidated or restructured.

(g) Burden of proof in nonconsumer-goods transaction. In a transaction other than a consumer-goods transaction, a secured party claiming a purchase-money security interest has the burden of establishing the extent to which the security interest is a purchase-money security interest.

(h) Non-consumer-goods transactions; no inference. The limitation of the rules in subsections (e), (f) and (g) of this section to transactions other than consumer-goods transactions is intended to leave to the court the determination of the proper rules in consumer-goods transactions. The court may not infer from that limitation the nature of the proper rule in consumer-goods transactions and may continue to apply established approaches.

WV Legislature

§46-9-103a. "Production-money crops"; "production-money obligation"; production-money security interest; burden of establishing.

(a) A security interest in crops is a production-money security interest to the extent that the crops are production-money crops.

(b) If the extent to which a security interest is a production-money security interest depends on the application of a payment to a particular obligation, the payment must be applied:

(1) In accordance with any reasonable method of application to which the parties agree;

(2) In the absence of the parties' agreement to a reasonable method, in accordance with any intention of the obligor manifested at or before the time of payment; or

(3) In the absence of an agreement to a reasonable method and a timely manifestation of the obligor's intention, in the following order:

(A) To obligations that are not secured; and

(B) If more than one obligation is secured, to obligations secured by production-money security interests in the order in which those obligations were incurred.

(c) A production-money security interest does not lose its status as such, even if:

(1) The production-money crops also secure an obligation that is not a production-money obligation;

(2) Collateral that is not production-money crops also secures the production-money obligation; or

(3) The production-money obligation has been renewed, refinanced, or restructured.

(d) A secured party claiming a production-money security interest has the burden of establishing the extent to which the security interest is a production-money security interest.

WV Legislature

§46-9-104. Control of deposit account.

(a) Requirements for control. A secured party has control of a deposit account if:

(1) The secured party is the bank with which the deposit account is maintained;

(2) The debtor, secured party and bank have agreed in an authenticated record that the bank will comply with instructions originated by the secured party directing disposition of the funds in the deposit account without further consent by the debtor; or

(3) The secured party becomes the bank's customer with respect to the deposit account.

(b) Debtor's right to direct disposition. A secured party that has satisfied subsection (a) has control, even if the debtor retains the right to direct the disposition of funds from the deposit account.

WV Legislature

§46-9-105. Control of electronic chattel paper.

(a) General rule: control of electronic chattel paper. A secured party has control of electronic chattel paper if a system employed for evidencing the transfer of interests in the chattel paper reliably establishes the secured party as the person to which the chattel paper was assigned.

(b) Specific facts giving control: a system satisfies subsection (a) of this section if the record or records comprising the chattel paper are created, stored, and assigned in such a manner that:

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

(2) The authoritative copy identifies the secured party as the assignee of the record or records;

(3) The authoritative copy is communicated to and maintained by the secured party or its designated custodian;

(4) Copies or amendments that add or change an identified assignee of the authoritative copy can be made only with the consent of the secured party;

(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 amendment of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

WV Legislature

§46-9-106. Control of investment property.

(a) Control under section 8-106. A person has control of a certificated security, uncertificated security, or security entitlement as provided in section 8-106.

(b) Control of commodity contract. A secured party has control of a commodity contract if:

(1) The secured party is the commodity intermediary with which the commodity contract is carried; or

(2) The commodity customer, secured party and commodity intermediary have agreed that the commodity intermediary will apply any value distributed on account of the commodity contract as directed by the secured party without further consent by the commodity customer.

(c) Effect of control of securities account or commodity account. A secured party having control of all security entitlements or commodity contracts carried in a securities account or commodity account has control over the securities account or commodity account.

WV Legislature

§46-9-107. Control of letter-of-credit right.

A secured party has control of a letter-of-credit right to the extent of any right to payment or performance by the issuer or any nominated person if the issuer or nominated person has consented to an assignment of proceeds of the letter of credit under section 5-114(c) or otherwise applicable law or practice.

WV Legislature

§46-9-108. Sufficiency of description.

(a) Sufficiency of description. Except as otherwise provided in subsections (c), (d) and (e) of this section, a description of personal or real property is sufficient, whether or not it is specific, if it reasonably identifies what is described.

(b) Examples of reasonable identification. Except as otherwise provided in subsection (d), a description of collateral reasonably identifies the collateral if it identifies the collateral by:

(1) Specific listing;

(2) Category;

(3) Except as otherwise provided in subsection (e) of this section, a type of collateral defined in the Uniform Commercial Code;

(4) Quantity;

(5) Computational or allocational formula or procedure; or

(6) Except as otherwise provided in subsection (c), any other method, if the identity of the collateral is objectively determinable.

(c) Supergeneric description not sufficient. A description of collateral as "all the debtor's assets" or "all the debtor's personal property" or using words of similar import does not reasonably identify the collateral.

(d) Investment property. Except as otherwise provided in subsection (e), a description of a security entitlement, securities account or commodity account is sufficient if it describes:

(1) The collateral by those terms or as investment property; or

(2) The underlying financial asset or commodity contract.

(e) When description by type insufficient. A description only by type of collateral defined in the Uniform Commercial Code is an insufficient description of:

(1) A commercial tort claim; or

(2) In a consumer transaction, consumer goods, a security entitlement, a securities account or a commodity account.

WV Legislature

Subpart 2. Applicability of Article.

§46-9-109. Scope.

(a) General scope of article. -- Except as otherwise provided in subsections (c) and (d) of this section, this article applies to:

(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) A consignment;

(5) A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5) as provided in section 9-110; and

(6) A security interest arising under section 4-210 or 5-118.

(b) Security interest in secured obligation. -- The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

(c) Extent to which article does not apply. -- This article does not apply to the extent that:

(1) A statute, regulation or treaty of the United States preempts this article; or

(2) The rights of a transferee beneficiary or nominated person under a letter of credit are independent and superior under section 5-114.

(d) Inapplicability of article. -- This article does not apply to:

(1) A landlord's lien, other than an agricultural lien;

(2) A lien, other than an agricultural lien, given by statute or other rule of law for services or materials, but section 9-333 applies with respect to priority of the lien;

(3) An assignment of a claim for wages, salary or other compensation of an employee;

(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

(5) An assignment of accounts, chattel paper, payment intangibles or promissory notes which is for the purpose of collection only;

WV Legislature

(6) An assignment of a right to payment under a contract to an assignee that is also obligated to perform under the contract;

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

(8) A transfer of an interest in or an assignment of a claim under a policy of insurance, other than an assignment by or to a health care provider of a health care-insurance receivable and any subsequent assignment of the right to payment, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(9) An assignment of a right represented by a judgment, other than a judgment taken on a right to payment that was collateral;

(10) A right of recoupment or set-off, but:

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

(B) Section 9-404 applies with respect to defenses or claims of an account debtor;

(11) The creation or transfer of an interest in or lien on real property, including a lease or rents thereunder, except to the extent that provision is made for:

(A) Liens on real property in sections 9-203 and 9-308;

(B) Fixtures in section 9-334;

(C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516, and 9-519; and

(D) Security agreements covering personal and real property in section 9-604;

(12) An assignment of a claim arising in tort, other than a commercial tort claim, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(13) An assignment of a deposit account in a consumer transaction, but sections 9-315 and 9-322 apply with respect to proceeds and priorities in proceeds;

(14) A transfer by a government or a governmental unit; or

(15) A transfer of security interest in any interest or right, or any portion or any interest or right in any environmental control property, environmental control charge or financing order as each term is defined in section four-e, article two, chapter twenty-four of this code.

WV Legislature

§46-9-110. Security interests arising under article two or two-a.

A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5) is subject to this article. However, until the debtor obtains possession of the goods:

(1) The security interest is enforceable, even if section 9-203(b)(3) has not been satisfied;

(2) Filing is not required to perfect the security interest;

(3) The rights of the secured party after default by the debtor are governed by article two or two-a; and

(4) The security interest has priority over a conflicting security interest created by the debtor.

WV Legislature

Part 2. Effectiveness Of Security Agreement; Attachment Of Security Interest; Rights Of Parties To Security Agreement.

Subpart 1. Effectiveness And Attachment.

§46-9-201. General effectiveness of security agreement.

(a) General effectiveness. Except as otherwise provided in the Uniform Commercial Code, a security agreement is effective according to its terms between the parties, against purchasers of the collateral, and against creditors.

(b) Applicable consumer laws and other law. A transaction subject to this article is subject to any applicable rule of law which establishes a different rule for consumers, to any other statute or regulation of this state that regulates the rates, charges, agreements, and practices for loans, credit sales or other extensions of credit, and to any consumer-protection statute or regulation of this state.

(c) Other applicable law controls. In case of conflict between this article and a rule of law, statute or regulation described in subsection (b) of this section, the rule of law, statute or regulation controls. Failure to comply with a statute or regulation described in subsection (b) of this section has only the effect the statute or regulation specifies.

(d) Further deference to other applicable law. This article does not:

(1) Validate any rate, charge, agreement or practice that violates a rule of law, statute or regulation described in subsection (b) of this section; or

(2) Extend the application of the rule of law, statute, or regulation to a transaction not otherwise subject to it.

WV Legislature

§46-9-202. Title to collateral immaterial.

Except as otherwise provided with respect to consignments or sales of accounts, chattel paper, payment intangibles or promissory notes, the provisions of this article with regard to rights and obligations apply whether title to collateral is in the secured party or the debtor.

WV Legislature

§46-9-203. Attachment and enforceability of security interest; proceeds; supporting obligations; formal requisites.

(a) Attachment. A security interest attaches to collateral when it becomes enforceable against the debtor with respect to the collateral, unless an agreement expressly postpones the time of attachment.

(b) Enforceability. Except as otherwise provided in subsections (c) through (i), inclusive, of this section, a security interest is enforceable against the debtor and third parties with respect to the collateral only if:

(1) Value has been given;

(2) The debtor has rights in the collateral or the power to transfer rights in the collateral to a secured party; and

(3) One of the following conditions is met:

(A) The debtor has authenticated a security agreement that provides a description of the collateral and, if the security interest covers timber to be cut, a description of the land concerned;

(B) The collateral is not a certificated security and is in the possession of the secured party under section 9-313 pursuant to the debtor's security agreement;

(C) The collateral is a certificated security in registered form and the security certificate has been delivered to the secured party under section 8-301 pursuant to the debtor's security agreement; or

(D) The collateral is deposit accounts, electronic chattel paper, investment property letter-of-credit rights, or electronic documents, and the secured party has control under section 7-106, 9-104, 9-105, 9-106 or 9-107 pursuant to the debtor's security agreement.

(c) Other UCC provisions. Subsection (b) of this section is subject to section 4-210 on the security interest of a collecting bank, section 5-118 on the security interest of a letter-of-credit issuer or nominated person, section 9-110 on a security interest arising under article two or two-a of this chapter and section 9-206 on security interests in investment property.

(d) When person becomes bound by another person's security. A person becomes bound as debtor by a security agreement entered into by another person if, by operation of law other than this article or by contract:

(1) The security agreement becomes effective to create a security interest in the person's property; or

(2) The person becomes generally obligated for the obligations of the other person, including

WV Legislature

the obligation secured under the security agreement, and acquires or succeeds to all or substantially all of the assets of the other person.

(e) Effect of new debtor becoming bound. If a new debtor becomes bound as debtor by a security agreement entered into by another person:

(1) The agreement satisfies subsection (b)(3) of this section with respect to existing or after-acquired property of the new debtor to the extent the property is described in the agreement; and

(2) Another agreement is not necessary to make a security interest in the property enforceable.

(f) Proceeds and supporting obligations. The attachment of a security interest in collateral gives the secured party the rights to proceeds provided by section 9-315 and is also attachment of a security interest in a supporting obligation for the collateral.

(g) Lien securing right to payment. The attachment of a security interest in a right to payment or performance secured by a security interest or other lien on personal or real property is also attachment of a security interest in the security interest, mortgage or other lien.

(h) Security entitlement carried in securities account. The attachment of a security interest in a securities account is also attachment of a security interest in the security entitlements carried in the securities account.

(i) Commodity contracts carried in commodity account. The attachment of a security interest in a commodity account is also attachment of a security interest in the commodity contracts carried in the commodity account.

WV Legislature

§46-9-204. After-acquired property; future advances.

(a) After-acquired collateral. Except as otherwise provided in subsection (b), a security agreement may create or provide for a security interest in after-acquired collateral.

(b) When after-acquired property clause not effective. A security interest does not attach under a term constituting an after-acquired property clause to:

(1) Consumer goods, other than an accession when given as additional security, unless the debtor acquires rights in them within ten days after the secured party gives value; or

(2) A commercial tort claim.

(c) Future advances and other value. A security agreement may provide that collateral secures, or that accounts, chattel paper, payment intangibles or promissory notes are sold in connection with, future advances or other value, whether or not the advances or value are given pursuant to commitment.

WV Legislature

§46-9-205. Use or disposition of collateral permissible.

(a) When security interest not invalid or fraudulent. A security interest is not invalid or fraudulent against creditors solely because:

(1) The debtor has the right or ability to:

(A) Use, commingle or dispose of all or part of the collateral, including returned or repossessed goods;

(B) Collect, compromise, enforce or otherwise deal with collateral;

(C) Accept the return of collateral or make repossessions; or

(D) Use, commingle or dispose of proceeds; or

(2) The secured party fails to require the debtor to account for proceeds or replace collateral.

(b) Requirements of possession not relaxed. This section does not relax the requirements of possession if attachment, perfection or enforcement of a security interest depends upon possession of the collateral by the secured party.

WV Legislature

§46-9-206. Security interest arising in purchase or delivery of financial asset.

(a) Security interest when person buys through securities intermediary. A security interest in favor of a securities intermediary attaches to a person's security entitlement if:

(1) The person buys a financial asset through the securities intermediary in a transaction in which the person is obligated to pay the purchase price to the securities intermediary at the time of the purchase; and

(2) The securities intermediary credits the financial asset to the buyer's securities account before the buyer pays the securities intermediary.

(b) Security interest secures obligation to pay for financial asset. The security interest described in subsection (a) secures the person's obligation to pay for the financial asset.

(c) Security interest in payment against delivery transaction. A security interest in favor of a person that delivers a certificated security or other financial asset represented by a writing attaches to the security or other financial asset if:

(1) The security or other financial asset:

(A) In the ordinary course of business is transferred by delivery with any necessary indorsement or assignment; and

(B) Is delivered under an agreement between persons in the business of dealing with such securities or financial assets; and

(2) The agreement calls for delivery against payment.

(d) Security interest secures obligation to pay for delivery. The security interest described in subsection (c) of this section secures the obligation to make payment for the delivery.

WV Legislature

§46-9-207. Rights and duties of secured party having possession or control of collateral.

(a) Duty of care when secured party in possession. Except as otherwise provided in subsection (d), a secured party shall use reasonable care in the custody and preservation of collateral in the secured party's possession. In the case of chattel paper or an instrument, reasonable care includes taking necessary steps to preserve rights against prior parties unless otherwise agreed.

(b) Expenses, risks, duties and rights when secured party in possession. Except as otherwise provided in subsection (d), if a secured party has possession of collateral:

(1) Reasonable expenses, including the cost of insurance and payment of taxes or other charges, incurred in the custody, preservation, use or operation of the collateral are chargeable to the debtor and are secured by the collateral;

(2) The risk of accidental loss or damage is on the debtor to the extent of a deficiency in any effective insurance coverage;

(3) The secured party shall keep the collateral identifiable, but fungible collateral may be commingled; and

(4) The secured party may use or operate the collateral:

(A) For the purpose of preserving the collateral or its value;

(B) As permitted by an order of a court having competent jurisdiction; or

(C) Except in the case of consumer goods, in the manner and to the extent agreed by the debtor.

(c) Duties and rights when secured party in possession or control. Except as otherwise provided in subsection (d) of this section, a secured party having possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107:

(1) May hold as additional security any proceeds, except money or funds, received from the collateral;

(2) Shall apply money or funds received from the collateral to reduce the secured obligation, unless remitted to the debtor; and

(3) May create a security interest in the collateral.

(d) Buyer of certain rights to payment. If the secured party is a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor:

WV Legislature

(1) Subsection (a) of this section does not apply unless the secured party is entitled under an agreement:

(A) To charge back uncollected collateral; or

(B) Otherwise to full or limited recourse against the debtor or a secondary obligor based on the nonpayment or other default of an account debtor or other obligor on the collateral; and

(2) Subsections (b) and (c) of this section do not apply.

WV Legislature

§46-9-208. Additional duties of secured party having control of collateral.

(a) Applicability of section. This section applies to cases in which there is no outstanding secured obligation and the secured party is not committed to make advances, incur obligations, or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ten days after receiving an authenticated demand by the debtor:

(1) A secured party having control of a deposit account under section 9-104(a)(2) shall send to the bank with which the deposit account is maintained an authenticated statement that releases the bank from any further obligation to comply with instructions originated by the secured party;

(2) A secured party having control of a deposit account under section 9-104(a)(3) shall:

(A) Pay the debtor the balance on deposit in the deposit account; or

(B) Transfer the balance on deposit into a deposit account in the debtor's name;

(3) A secured party, other than a buyer, having control of electronic chattel paper under section 9-105 shall:

(A) Communicate the authoritative copy of the electronic chattel paper to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic chattel paper is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party;

(4) A secured party having control of investment property under section 8-106(d)(2) or 9-106(b) shall send to the securities intermediary or commodity intermediary with which the security entitlement or commodity contract is maintained an authenticated record that releases the securities intermediary or commodity intermediary from any further obligation to comply with entitlement orders or directions originated by the secured party;

(5) A secured party having control of a letter-of-credit right under section 9-107 shall send to each person having an unfulfilled obligation to pay or deliver proceeds of the letter of credit to the secured party an authenticated release from any further obligation to pay or deliver proceeds of the letter of credit to the secured party; and

WV Legislature

(6) A secured party having control of an electronic document shall:

(A) Give control of the electronic document to the debtor or its designated custodian;

(B) If the debtor designates a custodian that is the designated custodian with which the authoritative copy of the electronic document is maintained for the secured party, communicate to the custodian an authenticated record releasing the designated custodian from any further obligation to comply with instructions originated by the secured party and instructing the custodian to comply with instructions originated by the debtor; and

(C) Take appropriate action to enable the debtor or its designated custodian to make copies of or revisions to the authoritative copy which add or change an identified assignee of the authoritative copy without the consent of the secured party.

WV Legislature

§46-9-209. Duties of secured party if account debtor has been notified of assignment.

(a) Applicability of section. Except as otherwise provided in subsection (c), this section applies if:

(1) There is no outstanding secured obligation; and

(2) The secured party is not committed to make advances, incur obligations or otherwise give value.

(b) Duties of secured party after receiving demand from debtor. Within ten days after receiving an authenticated demand by the debtor, a secured party shall send to an account debtor that has received notification of an assignment to the secured party as assignee under section 9-406(a) an authenticated record that releases the account debtor from any further obligation to the secured party.

(c) Inapplicability to sales. This section does not apply to an assignment constituting the sale of an account, chattel paper or payment intangible.

WV Legislature

§46-9-210. Request for accounting; request regarding list of collateral or statement of account.

(a) Definitions. In this section:

(1) "Request" means a record of a type described in paragraph (2), (3) or (4) of this subsection.

(2) "Request for an accounting" means a record authenticated by a debtor requesting that the recipient provide an accounting of the unpaid obligations secured by collateral and reasonably identifying the transaction or relationship that is the subject of the request.

(3) "Request regarding a list of collateral" means a record authenticated by a debtor requesting that the recipient approve or correct a list of what the debtor believes to be the collateral securing an obligation and reasonably identifying the transaction or relationship that is the subject of the request.

(4) "Request regarding a statement of account" means a record authenticated by a debtor requesting that the recipient approve or correct a statement indicating what the debtor believes to be the aggregate amount of unpaid obligations secured by collateral as of a specified date and reasonably identifying the transaction or relationship that is the subject of the request.

(b) Duty to respond to requests. Subject to subsections (c), (d), (e) and (f) of this section, a secured party, other than a buyer of accounts, chattel paper, payment intangibles, or promissory notes or a consignor, shall comply with a request within fourteen days after receipt:

(1) In the case of a request for an accounting, by authenticating and sending to the debtor an accounting; and

(2) In the case of a request regarding a list of collateral or a request regarding a statement of account, by authenticating and sending to the debtor an approval or correction.

(c) Request regarding list of collateral; statement concerning type of collateral. A secured party that claims a security interest in all of a particular type of collateral owned by the debtor may comply with a request regarding a list of collateral by sending to the debtor an authenticated record including a statement to that effect within fourteen days after receipt.

(d) Request regarding list of collateral; no interest claimed. A person that receives a request regarding a list of collateral, claims no interest in the collateral when it receives the request and claimed an interest in the collateral at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the collateral; and

WV Legislature

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the collateral.

(e) Request for accounting or regarding statement of account; no interest in obligation claimed. A person that receives a request for an accounting or a request regarding a statement of account, claims no interest in the obligations when it receives the request and claimed an interest in the obligations at an earlier time shall comply with the request within fourteen days after receipt by sending to the debtor an authenticated record:

(1) Disclaiming any interest in the obligations; and

(2) If known to the recipient, providing the name and mailing address of any assignee of or successor to the recipient's interest in the obligations.

(f) Charges for responses. A debtor is entitled without charge to one response to a request under this section during any six-month period. The secured party may require payment of a charge not exceeding twenty-five dollars for each additional response.

WV Legislature

Part 3. Perfection and Priority

Subpart 1. Law Governing Perfection and Priority

§46-9-301. Law governing perfection and priority of security interests.

Except as otherwise provided in sections 9-303 through 9-306, the following rules determine the law governing perfection, the effect of perfection or nonperfection and the priority of a security interest in collateral:

(1) Except as otherwise provided in this section, while a debtor is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in collateral.

(2) While collateral is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a possessory security interest in that collateral.

(3) Except as otherwise provided in paragraph (4) of this section, while tangible negotiable documents, goods, instruments, money or tangible chattel paper is located in a jurisdiction, the local law of that jurisdiction governs:

(A) Perfection of a security interest in the goods by filing a fixture filing;

(B) Perfection of a security interest in timber to be cut; and

(C) The effect of perfection or nonperfection and the priority of a nonpossessory security interest in the collateral.

(4) The local law of the jurisdiction in which the wellhead or minehead is located governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in as-extracted collateral.

WV Legislature

§46-9-302. Law governing perfection and priority of agricultural liens.

While farm products are located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of an agricultural lien on the farm products.

WV Legislature

§46-9-303. Law governing perfection and priority of security interests in goods covered by a certificate of title.

(a) Applicability of section. This section applies to goods covered by a certificate of title, even if there is no other relationship between the jurisdiction under whose certificate of title the goods are covered and the goods or the debtor.

(b) When goods covered by certificate of title. Goods become covered by a certificate of title when a valid application for the certificate of title and the applicable fee are delivered to the appropriate authority. Goods cease to be covered by a certificate of title at the earlier of the time the certificate of title ceases to be effective under the law of the issuing jurisdiction or the time the goods become covered subsequently by a certificate of title issued by another jurisdiction.

(c) Applicable law. The local law of the jurisdiction under whose certificate of title the goods are covered governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in goods covered by a certificate of title from the time the goods become covered by the certificate of title until the goods cease to be covered by the certificate of title.

WV Legislature

§46-9-304. Law governing perfection and priority of security interests in deposit accounts.

(a) The local law of a bank's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a deposit account maintained with that bank.

(b) Bank's jurisdiction. The following rules determine a bank's jurisdiction for purposes of this part:

(1) If an agreement between the bank and the debtor governing the deposit account expressly provides that a particular jurisdiction is the bank's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the bank's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the bank and its customer governing the deposit account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the bank and its customer governing the deposit account expressly provides that the deposit account is maintained at an office in a particular jurisdiction, that jurisdiction is the bank's jurisdiction.

(4) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the customer's account is located.

(5) If none of the preceding paragraphs applies, the bank's jurisdiction is the jurisdiction in which the chief executive office of the bank is located.

WV Legislature

§46-9-305. Law governing perfection and priority of security interests in investment property.

(a) Governing law: general rules. Except as otherwise provided in subsection (c) of this section, the following rules apply:

(1) While a security certificate is located in a jurisdiction, the local law of that jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in the certificated security represented thereby.

(2) The local law of the issuer's jurisdiction as specified in section 8-110(d) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in an uncertificated security.

(3) The local law of the securities intermediary's jurisdiction as specified in section 8-110(e) governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a security entitlement or securities account.

(4) The local law of the commodity intermediary's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a commodity contract or commodity account.

(b) Commodity intermediary's jurisdiction. The following rules determine a commodity intermediary's jurisdiction for purposes of this part:

(1) If an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that a particular jurisdiction is the commodity intermediary's jurisdiction for purposes of this part, this article, or the Uniform Commercial Code, that jurisdiction is the commodity intermediary's jurisdiction.

(2) If paragraph (1) of this subsection does not apply and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the agreement is governed by the law of a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(3) If neither paragraph (1) nor paragraph (2) of this subsection applies and an agreement between the commodity intermediary and commodity customer governing the commodity account expressly provides that the commodity account is maintained at an office in a particular jurisdiction, that jurisdiction is the commodity intermediary's jurisdiction.

(4) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the office identified in an account statement as the office serving the commodity customer's account is located.

(5) If none of the preceding paragraphs applies, the commodity intermediary's jurisdiction is the jurisdiction in which the chief executive office of the commodity intermediary is located.

WV Legislature

(c) When perfection governed by law of jurisdiction when debtor located. The local law of the jurisdiction in which the debtor is located governs:

(1) Perfection of a security interest in investment property by filing;

(2) Automatic perfection of a security interest in investment property created by a broker or securities intermediary; and

(3) Automatic perfection of a security interest in a commodity contract or commodity account created by a commodity intermediary.

WV Legislature

§46-9-306. Law governing perfection and priority of security interests in letter-of-credit rights.

(a) Governing law: issuer's or nominated person's jurisdiction. Subject to subsection (c) of this section, the local law of the issuer's jurisdiction or a nominated person's jurisdiction governs perfection, the effect of perfection or nonperfection, and the priority of a security interest in a letter-of-credit right if the issuer's jurisdiction or nominated person's jurisdiction is a state.

(b) Issuer's or nominated person's jurisdiction. For purposes of this part, an issuer's jurisdiction or nominated person's jurisdiction is the jurisdiction whose law governs the liability of the issuer or nominated person with respect to the letter-of-credit right as provided in section 5-116.

(c) When section not applicable. This section does not apply to a security interest that is perfected only under section 9-308(d).

WV Legislature

§46-9-307. Location of debtor.

(a) "Place of business." -- In this section, "place of business" means a place where a debtor conducts its affairs.

(b) Debtor's location: general rules. -- Except as otherwise provided in this section, the following rules determine a debtor's location:

(1) A debtor who is an individual is located at the individual's principal residence.

(2) A debtor that is an organization and has only one place of business is located at its place of business.

(3) A debtor that is an organization and has more than one place of business is located at its chief executive office.

(c) Limitation of applicability of subsection (b). -- Subsection (b) of this section applies only if a debtor's residence, place of business or chief executive office, as applicable, is located in a jurisdiction whose law generally requires information concerning the existence of a nonpossessory security interest to be made generally available in a filing, recording or registration system as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the collateral. If subsection (b) does not apply, the debtor is located in the District of Columbia.

(d) Continuation of location: cessation of existence, etc.-- A person that ceases to exist, have a residence or have a place of business continues to be located in the jurisdiction specified by subsections (b) and (c) of this section.

(e) Location of registered organization organized under state law. -- A registered organization that is organized under the law of a state is located in that state.

(f) Location of registered organization organized under federal law; bank branches and agencies. -- Except as otherwise provided in subsection (i) of this section, a registered organization that is organized under the law of the United States and a branch or agency of a bank that is not organized under the law of the United States or a state are located:

(1) In the state that the law of the United States designates, if the law designates a state of location;

(2) In the state that the registered organization, branch or agency designates, if the law of the United States authorizes the registered organization, branch, or agency to designate its state of location, including by designating its main office, home office or other comparable office; or

(3) In the District of Columbia, if neither subdivision (1) nor subdivision (2) of this subsection applies.

WV Legislature

(g) Continuation of location: changed in status of registered organization. -- A registered organization continues to be located in the jurisdiction specified by subsection (e) or (f) notwithstanding:

(1) The suspension, revocation, forfeiture or lapse of the registered organization's status as such in its jurisdiction of organization; or

(2) The dissolution, winding up or cancellation of the existence of the registered organization.

(h) Location of United States. -- The United States is located in the District of Columbia.

(i) Location of foreign bank branch or agency if licensed in only one state. -- A branch or agency of a bank that is not organized under the law of the United States or a state is located in the state in which the branch or agency is licensed, if all branches and agencies of the bank are licensed in only one state.

(j) Location of foreign air carrier. -- A foreign air carrier under the Federal Aviation Act of 1958, as amended, is located at the designated office of the agent upon which service of process may be made on behalf of the carrier.

(k) Section applies only to this part. -- This section applies only for purposes of this part.

WV Legislature

Subpart 2. Perfection.

§46-9-308. When security interest or agricultural lien is perfected; continuity of perfection.

(a) Perfection of security interest. Except as otherwise provided in this section and section 9-309, a security interest is perfected if it has attached and all of the applicable requirements for perfection in sections 9-310 through 9-316 have been satisfied. A security interest is perfected when it attaches if the applicable requirements are satisfied before the security interest attaches.

(b) Perfection of agricultural lien. An agricultural lien is perfected if it has become effective and all of the applicable requirements for perfection in section 9-310 have been satisfied. An agricultural lien is perfected when it becomes effective if the applicable requirements are satisfied before the agricultural lien becomes effective.

(c) Continuous perfection; perfection by different methods. A security interest or agricultural lien is perfected continuously if it is originally perfected by one method under this article and is later perfected by another method under this article, without an intermediate period when it was unperfected.

(d) Supporting obligation. Perfection of a security interest in collateral also perfects a security interest in a supporting obligation for the collateral.

(e) Lien securing right to payment. Perfection of a security interest in a right to payment or performance also perfects a security interest in a security interest, mortgage or other lien on personal or real property securing the right.

(f) Security entitlement carried in securities account. Perfection of a security interest in a securities account also perfects a security interest in the security entitlements carried in the securities account.

(g) Commodity contract carried in commodity account. Perfection of a security interest in a commodity account also perfects a security interest in the commodity contracts carried in the commodity account.

WV Legislature

§46-9-309. Security interest perfected upon attachment.

The following security interests are perfected when they attach:

(1) A purchase-money security interest in consumer goods, except as otherwise provided in section 9-311(b) with respect to consumer goods that are subject to a statute or treaty described in section 9-311(a);

(2) An assignment of accounts or payment intangibles which does not by itself or in conjunction with other assignments to the same assignee transfer a significant part of the assignor's outstanding accounts or payment intangibles;

(3) A sale of a payment intangible;

(4) A sale of a promissory note;

(5) A security interest created by the assignment of a health-careinsurance receivable to the provider of the health-care goods or services;

(6) A security interest arising under section 2-401, 2-505, 2-711(3) or 2A-508(5), until the debtor obtains possession of the collateral;

(7) A security interest of a collecting bank arising under section 4-210;

(8) A security interest of an issuer or nominated person arising under section 5-118;

(9) A security interest arising in the delivery of a financial asset under section 9-206(c);

(10) A security interest in investment property created by a broker or securities intermediary;

(11) A security interest in a commodity contract or a commodity account created by a commodity intermediary;

(12) An assignment for the benefit of all creditors of the transferor and subsequent transfers by the assignee thereunder; and

(13) A security interest created by an assignment of a beneficial interest in a decedent's estate.

WV Legislature

§46-9-310. When filing required to perfect security interest or agricultural lien; security interests and agricultural liens to which filing provisions do not apply.

(a) General rule: Perfection by filing. Except as otherwise provided in subsection (b) of this section and section 9-312(b), a financing statement must be filed to perfect all security interests and agricultural liens.

(b) Exceptions: Filing not necessary. The filing of a financing statement is not necessary to perfect a security interest:

(1) That is perfected under section 9-308(d), (e), (f) or (g);

(2) That is perfected under section 9-309 when it attaches;

(3) In property subject to a statute, regulation or treaty described in section 9-311(a);

(4) In goods in possession of a bailee which is perfected under section 9-312(d)(1) or (2);

(5) In certificated securities, documents, goods or instruments which is perfected without filing, control, or possession under section 9-312(e), (f) or (g);

(6) In collateral in the secured party's possession under section 9-313;

(7) In a certificated security which is perfected by delivery of the security certificate to the secured party under section 9-313;

(8) In deposit accounts, electronic chattel paper, electronic documents, investment property or letter-of-credit rights which is perfected by control under section 9-314;

(9) In proceeds which is perfected under section 9-315; or

(10) That is perfected under section 9-316.

(c) Assignment of perfected security interest. If a secured party assigns a perfected security interest or agricultural lien, a filing under this article is not required to continue the perfected status of the security interest against creditors of and transferees from the original debtor.

WV Legislature

§46-9-311. Perfection of security interests in property subject to certain statutes, regulations and treaties.

(a) Security interest subject to other law. -- Except as otherwise provided in subsection (d) of this section, the filing of a financing statement is not necessary or effective to perfect a security interest in property subject to:

(1) A statute, regulation or treaty of the United States whose requirements for a security interest's obtaining priority over the rights of a lien creditor with respect to the property preempt section 9-310(a);

(2) The following statute of this state: Chapter seventeen-a of this code: Provided, That during any period in which collateral is inventory: (i) Held for sale by a person who is in the business of selling goods of that kind; or (ii) held for lease by a vehicle rental agency or similar person engaged solely in the business of leasing vehicles, the filing provision of this article apply to a security interest in that collateral created by such person as a debtor or obligor, as appropriate; or

(3) A statute of another jurisdiction which provides for a security interest to be indicated on a certificate of title as a condition or result of the security interest's obtaining priority over the rights of a lien creditor with respect to the property.

(b) Compliance with other law. -- Compliance with the requirements of a statute, regulation or treaty described in subsection (a) of this section for obtaining priority over the rights of a lien creditor is equivalent to the filing of a financing statement under this article. Except as otherwise provided in subsection (d) of this section and sections 9-313 and 9-316(d) and (e) for goods covered by a certificate of title, a security interest in property subject to a statute, regulation or treaty described in subsection (a) may be perfected only by compliance with those requirements, and a security interest so perfected remains perfected notwithstanding a change in the use or transfer of possession of the collateral.

(c) Duration and renewal of perfection. -- Except as otherwise provided in subsection (d) of this section and section 9-316(d) and (e), duration and renewal of perfection of a security interest perfected by compliance with the requirements prescribed by a statute, regulation or treaty described in subsection (a) are governed by the statute, regulation or treaty. In other respects, the security interest is subject to this article.

(d) Inapplicability to certain inventory. -- During any period in which collateral subject to a statute specified in subsection (a)(2) of this section is inventory held for sale or lease by a person or leased by that person as lessor and that person is in the business of selling goods of that kind, this section does not apply to a security interest in that collateral created by that person.

WV Legislature

§46-9-312. Perfection of security interests in chattel paper, deposit accounts, documents, goods covered by documents, instruments, investment property, letter-of-credit rights and money; perfection by permissive filing; temporary perfection without filing or transfer of possession.

(a) Perfection by filing permitted. A security interest in chattel paper, negotiable documents, instruments or investment property may be perfected by filing.

(b) Control or possession of certain collateral. Except as otherwise provided in section 9-315(c) and (d) for proceeds:

(1) A security interest in a deposit account may be perfected only by control under section 9-314; and

(2) Except as otherwise provided in section 9-308(d), a security interest in a letter-of-credit right may be perfected only by control under section 9-314; and

(3) A security interest in money may be perfected only by the secured party's taking possession under section 9-313.

(c) Goods covered by negotiable document. While goods are in the possession of a bailee that has issued a negotiable document covering the goods:

(1) A security interest in the goods may be perfected by perfecting a security interest in the document; and

(2) A security interest perfected in the document has priority over any security interest that becomes perfected in the goods by another method during that time.

(d) Goods covered by nonnegotiable document. While goods are in the possession of a bailee that has issued a nonnegotiable document covering the goods, a security interest in the goods may be perfected by:

(1) Issuance of a document in the name of the secured party;

(2) The bailee's receipt of notification of the secured party's interest; or

(3) Filing as to the goods.

(e) Temporary perfection: New value. A security interest in certificated securities, negotiable documents or instruments is perfected without filing or the taking of possession or control for a period of twenty days from the time it attaches to the extent that it arises for new value given under an authenticated security agreement.

(f) Temporary perfection: Goods or documents made available to debtor. A perfected security interest in a negotiable document or goods in possession of a bailee, other than one that has

WV Legislature

issued a negotiable document for the goods, remains perfected for twenty days without filing if the secured party makes available to the debtor the goods or documents representing the goods for the purpose of:

(1) Ultimate sale or exchange; or

(2) Loading, unloading, storing, shipping, transshipping, manufacturing, processing or otherwise dealing with them in a manner preliminary to their sale or exchange.

(g) Temporary perfection: Delivery of security certificate or instrument to debtor. A perfected security interest in a certificated security or instrument remains perfected for twenty days without filing if the secured party delivers the security certificate or instrument to the debtor for the purpose of:

(1) Ultimate sale or exchange; or

(2) Presentation, collection, enforcement, renewal or registration of transfer.

(h) Expiration of temporary perfection. After the twenty-day period specified in subsection (e), (f) or (g) of this section expires, perfection depends upon compliance with this article.

WV Legislature

§46-9-313. When possession by or delivery to secured party perfects security interest without filing.

(a) Perfection by possession or delivery. Except as otherwise provided in subsection (b) of this section, a secured party may perfect a security interest in tangible negotiable documents, goods, instruments, money or tangible chattel paper by taking possession of the collateral. A secured party may perfect a security interest in certificated securities by taking delivery of the certificated securities under section 8-301.

(b) Goods covered by certificate of title. With respect to goods covered by a certificate of title issued by this state, a secured party may perfect a security interest in the goods by taking possession of the goods only in the circumstances described in section 9-316(d).

(c) Collateral in possession of person other than debtor. With respect to collateral other than certificated securities and goods covered by a document, a secured party takes possession of collateral in the possession of a person other than the debtor, the secured party or a lessee of the collateral from the debtor in the ordinary course of the debtor's business, when:

(1) The person in possession authenticates a record acknowledging that it holds possession of the collateral for the secured party's benefit; or

(2) The person takes possession of the collateral after having authenticated a record acknowledging that it will hold possession of collateral for the secured party's benefit.

(d) Time of perfection by possession; continuation of perfection. If perfection of a security interest depends upon possession of the collateral by a secured party, perfection occurs no earlier than the time the secured party takes possession and continues only while the secured party retains possession.

(e) Time of perfection by delivery; continuation of perfection. A security interest in a certificated security in registered form is perfected by delivery when delivery of the certificated security occurs under section 8-301 and remains perfected by delivery until the debtor obtains possession of the security certificate.

(f) Acknowledgment not required. A person in possession of collateral is not required to acknowledge that it holds possession for a secured party's benefit.

(g) Effectiveness of acknowledgment; no duties or confirmation. If a person acknowledges that it holds possession for the secured party's benefit:

(1) The acknowledgment is effective under subsection (c) of this section or section 8-301(a), even if the acknowledgment violates the rights of a debtor; and

(2) Unless the person otherwise agrees or law other than this article otherwise provides, the person does not owe any duty to the secured party and is not required to confirm the acknowledgment to another person.

WV Legislature

(h) Secured party's delivery to person other than debtor. A secured party having possession of collateral does not relinquish possession by delivering the collateral to a person other than the debtor or a lessee of the collateral from the debtor in the ordinary course of the debtor's business if the person was instructed before the delivery or is instructed contemporaneously with the delivery:

(1) Effect of delivery under subsection (h); no duties or confirmation. To hold possession of the collateral for the secured party's benefit; or

(2) To redeliver the collateral to the secured party.

(i) A secured party does not relinquish possession, even if a delivery under subsection (h) of this section violates the rights of a debtor. A person to which collateral is delivered under subsection (h) of this section does not owe any duty to the secured party and is not required to confirm the delivery to another person unless the person otherwise agrees or law other than this article otherwise provides.

WV Legislature

§46-9-314. Perfection by control.

(a) Perfection by control. A security interest in investment property, deposit accounts, letter-of-credit rights, electronic chattel paper, or electronic documents may be perfected by control of the collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107.

(b) Specified collateral: Time of perfection by control; continuation of perfection. A security interest in deposit accounts, electronic chattel paper, letter-of-credit rights, or electronic documents is perfected by control under section 7-106, 9-104, 9-105 or 9-107 when the secured party obtains control and remains perfected by control only while the secured party retains control.

(c) Investment property: Time of perfection by control; continuation of perfection. A security interest in investment property is perfected by control under section 9-106 from the time the secured party obtains control and remains perfected by control until:

(1) The secured party does not have control; and

(2) One of the following occurs:

(A) If the collateral is a certificated security, the debtor has or acquires possession of the security certificate;

(B) If the collateral is an uncertificated security, the issuer has registered or registers the debtor as the registered owner; or

(C) If the collateral is a security entitlement, the debtor is or becomes the entitlement holder.

WV Legislature

§46-9-315. Secured party's rights on disposition of collateral and in proceeds.

(a) Disposition of collateral: continuation of security interest or agricultural lien; proceeds. Except as otherwise provided in this article and in section 2-403(2):

(1) A security interest or agricultural lien continues in collateral notwithstanding sale, lease, license, exchange or other disposition thereof unless the secured party authorized the disposition free of the security interest or agricultural lien; and

(2) A security interest attaches to any identifiable proceeds of collateral.

(b) When commingled proceeds identifiable. Proceeds that are commingled with other property are identifiable proceeds:

(1) If the proceeds are goods, to the extent provided by section 9-336; and

(2) If the proceeds are not goods, to the extent that the secured party identifies the proceeds by a method of tracing, including application of equitable principles, that is permitted under law other than this article with respect to commingled property of the type involved.

(c) Perfection of security interest in proceeds. A security interest in proceeds is a perfected security interest if the security interest in the original collateral was perfected.

(d) Continuation of perfection. A perfected security interest in proceeds becomes unperfected on the twenty-first day after the security interest attaches to the proceeds unless:

(1) The following conditions are satisfied:

(A) A filed financing statement covers the original collateral;

(B) The proceeds are collateral in which a security interest may be perfected by filing in the office in which the financing statement has been filed; and

(C) The proceeds are not acquired with cash proceeds;

(2) The proceeds are identifiable cash proceeds; or

(3) The security interest in the proceeds is perfected other than under subsection (c) of this section when the security interest attaches to the proceeds or within twenty days thereafter.

(e) When perfected security interest in proceeds becomes unperfected. If a filed financing statement covers the original collateral, a security interest in proceeds which remains perfected under subsection (d)(1) of this section becomes unperfected at the later of:

(1) When the effectiveness of the filed financing statement lapses under section 9-515 or is terminated under section 9-513; or

WV Legislature

(2) The twenty-first day after the security interest attaches to the proceeds.

WV Legislature

§46-9-316. Effect of change in governing law.

(a) General rule: effect on perfection of change in governing law. -- A security interest perfected pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) remains perfected until the earliest of:

(1) The time perfection would have ceased under the law of that jurisdiction;

(2) The expiration of four months after a change of the debtor's location to another jurisdiction; or

(3) The expiration of one year after a transfer of collateral to a person that thereby becomes a debtor and is located in another jurisdiction.

(b) Security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (a) of this section becomes perfected under the law of the other jurisdiction before the earliest time or event described in said subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earliest time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(c) Possessory security interest in collateral moved to new jurisdiction. -- A possessory security interest in collateral, other than goods covered by a certificate of title and as-extracted collateral consisting of goods, remains continuously perfected if:

(1) The collateral is located in one jurisdiction and subject to a security interest perfected under the law of that jurisdiction;

(2) Thereafter the collateral is brought into another jurisdiction; and

(3) Upon entry into the other jurisdiction, the security interest is perfected under the law of the other jurisdiction.

(d) Goods covered by certificate of title from this state.-- Except as otherwise provided in subsection (e) of this section, a security interest in goods covered by a certificate of title which is perfected by any method under the law of another jurisdiction when the goods become covered by a certificate of title from this state remains perfected until the security interest would have become unperfected under the law of the other jurisdiction had the goods not become so covered.

(e) When subsection (d) security interest becomes unperfected against purchasers. -- A security interest described in subsection (d) of this section becomes unperfected as against a purchaser of the goods for value and is deemed never to have been perfected as against a purchaser of the goods for value if the applicable requirements for perfection under section 9-311(b) or 9-313 are not satisfied before the earlier of:

wv Legislature

(1) The time the security interest would have become unperfected under the law of the other jurisdiction had the goods not become covered by a certificate of title from this state; or

(2) The expiration of four months after the goods had become so covered.

(f) Change in jurisdiction of bank, issuer, nominated person, securities intermediary or commodity intermediary.-- A security interest in deposit accounts, letter-of-credit rights, or investment property which is perfected under the law of the bank's jurisdiction, the issuer's jurisdiction, a nominated person's jurisdiction, the securities intermediary's jurisdiction or the commodity intermediary's jurisdiction, as applicable, remains perfected until the earlier of:

(1) The time the security interest would have become unperfected under the law of that jurisdiction; or

(2) The expiration of four months after a change of the applicable jurisdiction to another jurisdiction.

(g) Subsection (f) security interest perfected or unperfected under law of new jurisdiction. -- If a security interest described in subsection (f) of this section becomes perfected under the law of the other jurisdiction before the earlier of the time or the end of the period described in that subsection, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier of that time or the end of that period, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(h) Effect on filed financing statement of change in governing law.-- The following rules apply to collateral to which a security interest attaches within four months after the debtor changes its location to another jurisdiction:

(1) A financing statement filed before the change pursuant to the law of the jurisdiction designated in section 9-301(1) or 9-305(c) is effective to perfect a security interest in the collateral if the financing statement would have been effective to perfect a security interest in the collateral had the debtor not changed its location.

(2) If a security interest perfected by a financing statement that is effective under paragraph (1) becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in section 9-301(1) or 9-305(c) or the expiration of the four-month period, it remains perfected thereafter. If the security interest does not become perfected under the law of the other jurisdiction before the earlier time or event, it becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

(i) Effect of change in governing law on financing statement filed against original debtor. If a financing statement naming an original debtor is filed pursuant to the law of the jurisdiction

WV Legislature

designated in Section 9-301(1) or 9-305(c) and the new debtor is located in another jurisdiction, the following rules apply:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under Section 9-203(d), if the financing statement would have been effective to perfect a security interest in the collateral had the collateral been acquired by the original debtor.

(2) A security interest perfected by the financing statement and which becomes perfected under the law of the other jurisdiction before the earlier of the time the financing statement would have become ineffective under the law of the jurisdiction designated in Section 9-301(1) or 9-305(c) or the expiration of the four-month period remains perfected thereafter. A security interest that is perfected by the financing statement but which does not become perfected under the law of the other jurisdiction before the earlier time or event becomes unperfected and is deemed never to have been perfected as against a purchaser of the collateral for value.

WV Legislature

§46-9-317. Interests that take priority over or take free of security interest or agricultural lien.

(a) Conflicting security interests and rights of lien creditors. -- A security interest or agricultural lien is subordinate to the rights of:

(1) A person entitled to priority under section 9-322; and

(2) Except as otherwise provided in subsection (e) of this section, a person that becomes a lien creditor before the earlier of the time: (A) The security interest or agricultural lien is perfected; or (B) one of the conditions specified in section 9-203(b)(3) is met and a financing statement covering the collateral is filed.

(b) Buyers that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a buyer, other than a secured party, of tangible chattel paper, tangible documents, goods, instruments or a certificated security takes free of a security interest or agricultural lien if the buyer gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(c) Lessees that receive delivery. -- Except as otherwise provided in subsection (e) of this section, a lessee of goods takes free of a security interest or agricultural lien if the lessee gives value and receives delivery of the collateral without knowledge of the security interest or agricultural lien and before it is perfected.

(d) Licensees and buyers of certain collateral. -- A licensee of a general intangible or a buyer, other than a secured party, of collateral other than tangible chattel paper, tangible documents, goods, instruments, or a certificated security takes free of a security interest if the licensee or buyer gives value without knowledge of the security interest and before it is perfected.

(e) Purchase-money security interest. -- Except as otherwise provided in sections 9-320 and 9-321, if a person files a financing statement with respect to a purchase-money security interest before or within twenty days after the debtor receives delivery of the collateral, the security interest takes priority over the rights of a buyer, lessee or lien creditor which arise between the time the security interest attaches and the time of filing.

WV Legislature

§46-9-318. No interest retained in right to payment that is sold; rights and title of seller of account or chattel paper with respect to creditors and purchasers.

(a) Seller retains no interest. A debtor that has sold an account, chattel paper, payment intangible, or promissory note does not retain a legal or equitable interest in the collateral sold.

(b) Deemed rights of debtor if buyer's security interest unperfected. For purposes of determining the rights of creditors of, and purchasers for, value of an account or chattel paper from, a debtor that has sold an account or chattel paper, while the buyer's security interest is unperfected, the debtor is deemed to have rights and title to the account or chattel paper identical to those the debtor sold.

WV Legislature

§46-9-319. Rights and title of consignee with respect to creditors and purchasers.

(a) Consignee has consignor's rights. Except as otherwise provided in subsection (b) of this section, for purposes of determining the rights of creditors of, and purchasers for value of goods from, a consignee, while the goods are in the possession of the consignee, the consignee is deemed to have rights and title to the goods identical to those the consignor had or had power to transfer.

(b) Applicability of other law. For purposes of determining the rights of a creditor of a consignee, law other than this article determines the rights and title of a consignee while goods are in the consignee's possession if, under this part, a perfected security interest held by the consignor would have priority over the rights of the creditor.

WV Legislature

§46-9-320. Buyer of goods.

(a) Buyer in ordinary course of business. Except as otherwise provided in subsection (e) of this section, a buyer in ordinary course of business, other than a person buying farm products from a person engaged in farming operations, takes free of a security interest created by the buyer's seller, even if the security interest is perfected and the buyer knows of its existence.

(b) Buyer of consumer goods. Except as otherwise provided in subsection (e) of this section, a buyer of goods from a person who used or bought the goods for use primarily for personal, family or household purposes takes free of a security interest, even if perfected, if the buyer buys:

(1) Without knowledge of the security interest;

(2) For value;

(3) Primarily for the buyer's personal, family or household purposes; and

(4) Before the filing of a financing statement covering the goods.

(c) Effectiveness of filing for subsection (b). To the extent that it affects the priority of a security interest over a buyer of goods under subsection (b) of this section, the period of effectiveness of a filing made in the jurisdiction in which the seller is located is governed by section 9-316(a) and (b).

(d) Buyer in ordinary course of business at wellhead or minehead. A buyer in ordinary course of business buying oil, gas or other minerals at the wellhead or minehead or after extraction takes free of an interest arising out of an encumbrance.

(e) Possessory security interest not affected. Subsections (a) and (b) do not affect a security interest in goods in the possession of the secured party under section 9-313.

WV Legislature

§46-9-321. Licensee of general intangible and lessee of goods in ordinary course of business.

(a) "Licensee in ordinary course of business." In this section, "licensee in ordinary course of business" means a person that becomes a licensee of a general intangible in good faith, without knowledge that the license violates the rights of another person in the general intangible, and in the ordinary course from a person in the business of licensing general intangibles of that kind. A person becomes a licensee in the ordinary course if the license to the person comports with the usual or customary practices in the kind of business in which the licensor is engaged or with the licensor's own usual or customary practices.

(b) Rights of licensee in ordinary course of business. A licensee in ordinary course of business takes its rights under a nonexclusive license free of a security interest in the general intangible created by the licensor, even if the security interest is perfected and the licensee knows of its existence.

(c) Rights of lessee in ordinary course of business. A lessee in ordinary course of business takes its leasehold interest free of a security interest in the goods created by the lessor, even if the security interest is perfected and the lessee knows of its existence.

WV Legislature

§46-9-322. Priorities among conflicting security interests in and agricultural liens on same collateral.

(a) General priority rules. Except as otherwise provided in this section, priority among conflicting security interests and agricultural liens in the same collateral is determined according to the following rules:

(1) Conflicting perfected security interests and agricultural liens rank according to priority in time of filing or perfection. Priority dates from the earlier of the time a filing covering the collateral is first made or the security interest or agricultural lien is first perfected, if there is no period thereafter when there is neither filing nor perfection.

(2) A perfected security interest or agricultural lien has priority over a conflicting unperfected security interest or agricultural lien.

(3) The first security interest or agricultural lien to attach or become effective has priority if conflicting security interests and agricultural liens are unperfected.

(b) Time of perfection: proceeds and supporting obligations. For the purposes of subsection (a)(1) of this section:

(1) The time of filing or perfection as to a security interest in collateral is also the time of filing or perfection as to a security interest in proceeds; and

(2) The time of filing or perfection as to a security interest in collateral supported by a supporting obligation is also the time of filing or perfection as to a security interest in the supporting obligation.

(c) Special priority rules: proceeds and supporting obligations. Except as otherwise provided in subsection (f) of this section, a security interest in collateral which qualifies for priority over a conflicting security interest under section 9-327, 9-328, 9-329, 9-330 or 9-331 also has priority over a conflicting security interest in:

(1) Any supporting obligation for the collateral; and

(2) Proceeds of the collateral if:

(A) The security interest in proceeds is perfected;

(B) The proceeds are cash proceeds or of the same type as the collateral; and

(C) In the case of proceeds that are proceeds of proceeds, all intervening proceeds are cash proceeds, proceeds of the same type as the collateral or an account relating to the collateral.

(d) First-to-file priority rule for certain collateral. Subject to subsection (e) of this section and except as otherwise provided in subsection (f) of this section, if a security interest in

WV Legislature

chattel paper, deposit accounts, negotiable documents, instruments, investment property or letter-of-credit rights is perfected by a method other than filing, conflicting perfected security interests in proceeds of the collateral rank according to priority in time of filing.

(e) Applicability of subsection (d). Subsection (d) of this section applies only if the proceeds of the collateral are not cash proceeds, chattel paper, negotiable documents, instruments, investment property or letter-of-credit rights.

(f) Limitations on subsections (a) through (e). Subsections (a) through (e), inclusive, of this section are subject to:

(1) Subsection (g) of this section and the other provisions of this part;

(2) Section 4-210 with respect to a security interest of a collecting bank;

(3) Section 5-118 with respect to a security interest of an issuer or nominated person; and

(4) Section 9-110 with respect to a security interest arising under article two or two-a.

(g) Priority under agricultural lien statute. A perfected agricultural lien on collateral has priority over a conflicting security interest in or agricultural lien on the same collateral if the statute creating the agricultural lien so provides.

WV Legislature

§46-9-323. Future advances.

(a) When priority based on time of advance. Except as otherwise provided in subsection (c) of this section, for purposes of determining the priority of a perfected security interest under section 9-322(a)(1), perfection of the security interest dates from the time an advance is made to the extent that the security interest secures an advance that:

(1) Is made while the security interest is perfected only:

(A) Under section 9-309 when it attaches; or

(B) Temporarily under section 9-312(e), (f) or (g); and

(2) Is not made pursuant to a commitment entered into before or while the security interest is perfected by a method other than under section 9-309 or 9-312(e), (f) or (g).

(b) Lien creditor. Except as otherwise provided in subsection (c) of this section, a security interest is subordinate to the rights of a person that becomes a lien creditor to the extent that the security interest secures an advance made more than forty-five days after the person becomes a lien creditor unless the advance is made:

(1) Without knowledge of the lien; or

(2) Pursuant to a commitment entered into without knowledge of the lien.

(c) Buyer of receivables. Subsections (a) and (b) of this section do not apply to a security interest held by a secured party that is a buyer of accounts, chattel paper, payment intangibles or promissory notes or a consignor.

(d) Buyer of goods. Except as otherwise provided in subsection (e) of this section, a buyer of goods other than a buyer in ordinary course of business takes free of a security interest to the extent that it secures advances made after the earlier of:

(1) The time the secured party acquires knowledge of the buyer's purchase; or

(2) Forty-five days after the purchase.

(e) Advances made pursuant to commitment: priority of buyer of goods. Subsection (d) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the buyer's purchase and before the expiration of the forty-five-day period.

(f) Lessee of goods. Except as otherwise provided in subsection (g) of this section, a lessee of goods, other than a lessee in ordinary course of business, takes the leasehold interest free of a security interest to the extent that it secures advances made after the earlier of:

WV Legislature

(1) The time the secured party acquires knowledge of the lease; or

(2) Forty-five days after the lease contract becomes enforceable.

(g) Advances made pursuant to commitment: priority of lessee of goods. Subsection (f) of this section does not apply if the advance is made pursuant to a commitment entered into without knowledge of the lease and before the expiration of the forty-five-day period.

WV Legislature

§46-9-324. Priority of purchase-money security interests.

(a) General rule: purchase-money priority. Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in goods other than inventory or livestock has priority over a conflicting security interest in the same goods, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, if the purchase-money security interest is perfected when the debtor receives possession of the collateral or within twenty days thereafter.

(b) Inventory purchase-money priority. Subject to subsection (c) and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in inventory has priority over a conflicting security interest in the same inventory, has priority over a conflicting security interest in chattel paper or an instrument constituting proceeds of the inventory and in proceeds of the chattel paper, if so provided in section 9-330, and, except as otherwise provided in section 9-327, also has priority in identifiable cash proceeds of the inventory to the extent the identifiable cash proceeds are received on or before the delivery of the inventory to a buyer, if:

(1) The purchase-money security interest is perfected when the debtor receives possession of the inventory;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within five years before the debtor receives possession of the inventory; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in inventory of the debtor and describes the inventory.

(c) Holders of conflicting inventory security interests to be notified. Subsection (b)(2) through (4), inclusive, of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of inventory:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(d) Livestock purchase-money priority. Subject to subsection (e) of this section and except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in livestock that are farm products has priority over a conflicting security interest in the same livestock, and, except as otherwise provided in section 9-327, a perfected security interest in their identifiable proceeds and identifiable products in their unmanufactured states also has priority, if:

WV Legislature

(1) The purchase-money security interest is perfected when the debtor receives possession of the livestock;

(2) The purchase-money secured party sends an authenticated notification to the holder of the conflicting security interest;

(3) The holder of the conflicting security interest receives the notification within six months before the debtor receives possession of the livestock; and

(4) The notification states that the person sending the notification has or expects to acquire a purchase-money security interest in livestock of the debtor and describes the livestock.

(e) Holders of conflicting livestock security interests to be notified. Subsection (d)(2) through (4), inclusive, of this section apply only if the holder of the conflicting security interest had filed a financing statement covering the same types of livestock:

(1) If the purchase-money security interest is perfected by filing, before the date of the filing; or

(2) If the purchase-money security interest is temporarily perfected without filing or possession under section 9-312(f), before the beginning of the twenty-day period thereunder.

(f) Software purchase-money priority. Except as otherwise provided in subsection (g) of this section, a perfected purchase-money security interest in software has priority over a conflicting security interest in the same collateral, and, except as otherwise provided in section 9-327, a perfected security interest in its identifiable proceeds also has priority, to the extent that the purchase-money security interest in the goods in which the software was acquired for use has priority in the goods and proceeds of the goods under this section.

(g) Conflicting purchase-money security interests. If more than one security interest qualifies for priority in the same collateral under subsection (a), (b), (d) or (f) of this section:

(1) A security interest securing an obligation incurred as all or part of the price of the collateral has priority over a security interest securing an obligation incurred for value given to enable the debtor to acquire rights in or the use of collateral; and

(2) In all other cases, section 9-322(a) applies to the qualifying security interests.

WV Legislature

§46-9-324a. Priority of production-money security interests and agricultural liens.

(a) Except as otherwise provided in subsections (c), (d), and (e) of this section, if the requirements of subsection (b) of this section are satisfied, a perfected production-money security interest in production-money crops has priority over a conflicting security interest in the same crops and, except as otherwise provided in section 9-327, also has priority in their identifiable proceeds.

(b) A production-money security interest has priority under subsection (a) of this section if:

(1) The production-money security interest is perfected by filing when the production-money secured party first gives new value to enable the debtor to produce the crops;

(2) The production-money secured party sends an authenticated notification to the holder of the conflicting security interest not less than ten or more than thirty days before the production-money secured party first gives new value to enable the debtor to produce the crops if the holder had filed a financing statement covering the crops before the date of the filing made by the production-money secured party; and

(3) The notification states that the production-money secured party has or expects to acquire a production-money security interest in the debtor's crops and provides a description of the crops.

(c) Except as otherwise provided in subsection (d) or (e) of this section, if more than one security interest qualifies for priority in the same collateral under subsection (a) of this section, the security interests rank according to priority in time of filing under section 9-322(a).

(d) To the extent that a person holding a perfected security interest in production-money crops that are the subject of a production-money security interest gives new value to enable the debtor to produce the production-money crops and the value is in fact used for the production of the production-money crops, the security interests rank according to priority in time of filing under section 9-322(a).

(e) To the extent that a person holds both an agricultural lien and a production-money security interest in the same collateral securing the same obligations, the rules of priority applicable to agricultural liens govern priority.

WV Legislature

§46-9-325. Priority of security interests in transferred collateral.

(a) Subordination of security interest in transferred collateral. Except as otherwise provided in subsection (b) of this section, a security interest created by a debtor is subordinate to a security interest in the same collateral created by another person if:

(1) The debtor acquired the collateral subject to the security interest created by the other person;

(2) The security interest created by the other person was perfected when the debtor acquired the collateral; and

(3) There is no period thereafter when the security interest is unperfected.

(b) Limitation of subsection (a) subordination. Subsection (a) of this section subordinates a security interest only if the security interest:

(1) Otherwise would have priority solely under section 9-322(a) or 9-324; or

(2) Arose solely under section 2-711(3) or 2A-508(5).

WV Legislature

§46-9-326. Priority of security interests created by new debtor.

(a) Subordination of security interest created by new debtor.-- Subject to subsection (b) of this section, a security interest that is created by a new debtor in collateral in which the new debtor has or acquires rights and is perfected solely by a filed financing statement that would be ineffective to perfect the security interest but for the application of Section 9-316(i)(1) or 9-508 is subordinate to a security interest in the same collateral which is perfected other than by such a filed financing statement.

(b) Priority under other provisions; multiple original debtors. -- The other provisions of this part determine the priority among conflicting security interests in the same collateral perfected by filed financing statements described in subsection (a) of this section. However, if the security agreements to which a new debtor became bound as debtor were not entered into by the same original debtor, the conflicting security interests rank according to priority in time of the new debtor's having become bound.

WV Legislature

§46-9-327. Priority of security interests in deposit account.

The following rules govern priority among conflicting security interests in the same deposit account:

(1) A security interest held by a secured party having control of the deposit account under section 9-104 has priority over a conflicting security interest held by a secured party that does not have control.

(2) Except as otherwise provided in paragraphs (3) and (4) of this section, security interests perfected by control under section 9-314 rank according to priority in time of obtaining control.

(3) Except as otherwise provided in paragraph (4) of this section, a security interest held by the bank with which the deposit account is maintained has priority over a conflicting security interest held by another secured party.

(4) A security interest perfected by control under section 9-104(a)(3) has priority over a security interest held by the bank with which the deposit account is maintained.

WV Legislature

§46-9-328. Priority of security interests in investment property.

The following rules govern priority among conflicting security interests in the same investment property:

(1) A security interest held by a secured party having control of investment property under section 9-106 has priority over a security interest held by a secured party that does not have control of the investment property.

(2) Except as otherwise provided in paragraphs (3) and (4) of this section, conflicting security interests held by secured parties each of which has control under section 9-106 rank according to priority in time of:

(A) If the collateral is a security, obtaining control;

(B) If the collateral is a security entitlement carried in a securities account and:

(i) If the secured party obtained control under section 8-106(d)(1), the secured party's becoming the person for which the securities account is maintained;

(ii) If the secured party obtained control under section 8-106(d)(2), the securities intermediary's agreement to comply with the secured party's entitlement orders with respect to security entitlements carried or to be carried in the securities account; or

(iii) If the secured party obtained control through another person under section 8-106(d)(3), the time on which priority would be based under this paragraph if the other person were the secured party; or

(C) If the collateral is a commodity contract carried with a commodity intermediary, the satisfaction of the requirement for control specified in section 9-106(b)(2) with respect to commodity contracts carried or to be carried with the commodity intermediary.

(3) A security interest held by a securities intermediary in a security entitlement or a securities account maintained with the securities intermediary has priority over a conflicting security interest held by another secured party.

(4) A security interest held by a commodity intermediary in a commodity contract or a commodity account maintained with the commodity intermediary has priority over a conflicting security interest held by another secured party.

(5) A security interest in a certificated security in registered form which is perfected by taking delivery under section 9-313(a) and not by control under section 9-314 has priority over a conflicting security interest perfected by a method other than control.

(6) Conflicting security interests created by a broker, securities intermediary or commodity intermediary which are perfected without control under section 9-106 rank equally.

WV Legislature

(7) In all other cases, priority among conflicting security interests in investment property is governed by sections 9-322 and 9-323.

WV Legislature

§46-9-329. Priority of security interests in letter-of-credit right.

The following rules govern priority among conflicting security interests in the same letter-of-credit right:

(1) A security interest held by a secured party having control of the letter-of-credit right under section 9-107 has priority to the extent of its control over a conflicting security interest held by a secured party that does not have control.

(2) Security interests perfected by control under section 9-314 rank according to priority in time of obtaining control.

WV Legislature

§46-9-330. Priority of purchaser of chattel paper or instrument.

(a) Purchaser's priority: security interest claimed merely as proceeds. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed merely as proceeds of inventory subject to a security interest if:

(1) In good faith and in the ordinary course of the purchaser's business, the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9-105; and

(2) The chattel paper does not indicate that it has been assigned to an identified assignee other than the purchaser.

(b) Purchaser's priority: other security interests. A purchaser of chattel paper has priority over a security interest in the chattel paper which is claimed other than merely as proceeds of inventory subject to a security interest if the purchaser gives new value and takes possession of the chattel paper or obtains control of the chattel paper under section 9-105 in good faith, in the ordinary course of the purchaser's business, and without knowledge that the purchase violates the rights of the secured party.

(c) Chattel paper purchaser's priority in proceeds. Except as otherwise provided in section 9-327, a purchaser having priority in chattel paper under subsection (a) or (b) of this section also has priority in proceeds of the chattel paper to the extent that:

(1) Section 9-322 provides for priority in the proceeds; or

(2) The proceeds consist of the specific goods covered by the chattel paper or cash proceeds of the specific goods, even if the purchaser's security interest in the proceeds is unperfected.

(d) Instrument purchaser's priority. Except as otherwise provided in section 9-331(a), a purchaser of an instrument has priority over a security interest in the instrument perfected by a method other than possession if the purchaser gives value and takes possession of the instrument in good faith and without knowledge that the purchase violates the rights of the secured party.

(e) Holder of purchase-money security interest gives new value. For purposes of subsections (a) and (b) of this section, the holder of a purchase-money security interest in inventory gives new value for chattel paper constituting proceeds of the inventory.

(f) Indication of assignment gives knowledge. For purposes of subsections (b) and (d) of this section, if chattel paper or an instrument indicates that it has been assigned to an identified secured party other than the purchaser, a purchaser of the chattel paper or instrument has knowledge that the purchase violates the rights of the secured party.

WV Legislature

PART 3. PERFECTION AND PRIORITY.

§46-9-331. Priority of rights of purchasers of instruments, documents, and securities under other articles; priority of interests in financial assets and security entitlements under article eight.

(a) Rights under articles three, seven and eight not limited. This article does not limit the rights of a holder in due course of a negotiable instrument, a holder to which a negotiable document of title has been duly negotiated or a protected purchaser of a security. These holders or purchasers take priority over an earlier security interest, even if perfected, to the extent provided in articles three, seven and eight.

(b) Protection under article eight. This article does not limit the rights of or impose liability on a person to the extent that the person is protected against the assertion of a claim under article eight.

(c) Filing not notice. Filing under this article does not constitute notice of a claim or defense to the holders, or purchasers, or persons described in subsections (a) and (b) of this section.

WV Legislature

§46-9-332. Transfer of money; transfer of funds from deposit account.

(a) Transferee of money. A transferee of money takes the money free of a security interest unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

(b) Transferee of funds from deposit account. A transferee of funds from a deposit account takes the funds free of a security interest in the deposit account unless the transferee acts in collusion with the debtor in violating the rights of the secured party.

WV Legislature

§46-9-333. Priority of certain liens arising by operation of law.

(a) "Possessory lien." In this section, "possessory lien" means an interest, other than a security interest or an agricultural lien:

(1) Which secures payment or performance of an obligation for services or materials furnished with respect to goods by a person in the ordinary course of the person's business;

(2) Which is created by statute or rule of law in favor of the person; and

(3) Whose effectiveness depends on the person's possession of the goods.

(b) Priority of possessory lien. A possessory lien on goods has priority over a security interest in the goods unless the lien is created by a statute that expressly provides otherwise.

WV Legislature

§46-9-334. Priority of security interests in fixtures and crops.

(a) Security interest in fixtures under this article. A security interest under this article may be created in goods that are fixtures or may continue in goods that become fixtures. A security interest does not exist under this article in ordinary building materials incorporated into an improvement on land.

(b) Security interest in fixtures under real-property law. This article does not prevent creation of an encumbrance upon fixtures under real property law.

(c) General rule: subordination of security interest in fixtures. In cases not governed by subsections (d) through (h), inclusive, of this section, a security interest in fixtures is subordinate to a conflicting interest of an encumbrancer or owner of the related real property other than the debtor.

(d) Fixtures purchase-money priority. Except as otherwise provided in subsection (h) of this section, a perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property and:

(1) The security interest is a purchase-money security interest;

(2) The interest of the encumbrancer or owner arises before the goods become fixtures; and

(3) The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) Priority of security interest in fixtures over interests in real property. A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

(A) Is perfected by a fixture filing before the interest of the encumbrancer or owner is of record; and

(B) Has priority over any conflicting interest of a predecessor in title of the encumbrancer or owner;

(2) Before the goods become fixtures, the security interest is perfected by any method permitted by this article and the fixtures are readily removable:

(A) Factory or office machines;

(B) Equipment that is not primarily used or leased for use in the operation of the real

WV Legislature

property; or

(C) Replacements of domestic appliances that are consumer goods;

(3) The conflicting interest is a lien on the real property obtained by legal or equitable proceedings after the security interest was perfected by any method permitted by this article; or

(4) The security interest is:

(A) Created in a manufactured home in a manufactured-home transaction; and

(B) Perfected pursuant to a statute described in section 9-311(a)(2).

(f) Priority based on consent, disclaimer or right to remove. A security interest in fixtures, whether or not perfected, has priority over a conflicting interest of an encumbrancer or owner of the real property if:

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or

(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

(g) Continuation of subsection (f)(2) priority. The priority of the security interest under subsection (f)(2) of this section continues for a reasonable time if the debtor's right to remove the goods as against the encumbrancer or owner terminates.

(h) Priority of construction mortgage. A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

(i) Priority of security interest in crops. A perfected security interest in crops growing on real property has priority over a conflicting interest of an encumbrancer or owner of the real property if the debtor has an interest of record in or is in possession of the real property.

(j) Subsection (i) prevails. Subsection (i) of this section prevails over any inconsistent provision 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.

WV Legislature

§46-9-335. Accessions.

(a) Creation of security interest in accession. A security interest may be created in an accession and continues in collateral that becomes an accession.

(b) Perfection of security interest. If a security interest is perfected when the collateral becomes an accession, the security interest remains perfected in the collateral.

(c) Priority of security interest. Except as otherwise provided in subsection (d) of this section, the other provisions of this part determine the priority of a security interest in an accession.

(d) Compliance with certificate-of-title statute. A security interest in an accession is subordinate to a security interest in the whole which is perfected by compliance with the requirements of a certificate-of-title statute under section 9-311(b).

(e) Removal of accession after default. After default, subject to part 6, a secured party may remove an accession from other goods if the security interest in the accession has priority over the claims of every person having an interest in the whole.

(f) Reimbursement following removal. A secured party that removes an accession from other goods under subsection (e) of this section shall promptly reimburse any holder of a security interest or other lien on, or owner of, the whole or of the other goods, other than the debtor, for the cost of repair of any physical injury to the whole or the other goods. The secured party need not reimburse the holder or owner for any diminution in value of the whole or the other goods caused by the absence of the accession removed or by any necessity for replacing it. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

WV Legislature

§46-9-336. Commingled goods.

(a) "Commingled goods." In this section, "commingled goods" means goods that are physically united with other goods in such a manner that their identity is lost in a product or mass.

(b) No security interest in commingled goods as such. A security interest does not exist in commingled goods as such. However, a security interest may attach to a product or mass that results when goods become commingled goods.

(c) Attachment of security interest to product or mass. If collateral becomes commingled goods, a security interest attaches to the product or mass.

(d) Perfection of security interest. If a security interest in collateral is perfected before the collateral becomes commingled goods, the security interest that attaches to the product or mass under subsection (c) of this section is perfected.

(e) Priority of security interest. Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

(f) Conflicting security interests in product or mass. If more than one security interest attaches to the product or mass under subsection (c) of this section, the following rules determine priority:

(1) A security interest that is perfected under subsection (d) has priority over a security interest that is unperfected at the time the collateral becomes commingled goods.

(2) If more than one security interest is perfected under subsection (d) of this section, the security interests rank equally in proportion to the value of the collateral at the time it became commingled goods.

WV Legislature

§46-9-337. Priority of security interests in goods covered by certificate of title.

If, while a security interest in goods is perfected by any method under the law of another jurisdiction, this state issues a certificate of title that does not show that the goods are subject to the security interest or contain a statement that they may be subject to security interests not shown on the certificate:

(1) A buyer of the goods, other than a person in the business of selling goods of that kind, takes free of the security interest if the buyer gives value and receives delivery of the goods after issuance of the certificate and without knowledge of the security interest; and

(2) The security interest is subordinate to a conflicting security interest in the goods that attaches, and is perfected under section 9-311(b), after issuance of the certificate and without the conflicting secured party's knowledge of the security interest.

WV Legislature

§46-9-338. Priority of security interest or agricultural lien perfected by filed financing statement providing certain incorrect information.

If a security interest or agricultural lien is perfected by a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed:

(1) The security interest or agricultural lien is subordinate to a conflicting perfected security interest in the collateral to the extent that the holder of the conflicting security interest gives value in reasonable reliance upon the incorrect information; and

(2) A purchaser, other than a secured party, of the collateral takes free of the security interest or agricultural lien to the extent that, in reasonable reliance upon the incorrect information, the purchaser gives value and, in the case of tangible chattel paper, tangible documents, goods, instruments, or a security certificate, receives delivery of the collateral.

WV Legislature

§46-9-339. Priority subject to subordination.

This article does not preclude subordination by agreement by a person entitled to priority.

WV Legislature

Subpart 4. Rights Of Bank.

§46-9-340. Effectiveness of right of recoupment or set-off against deposit account.

(a) Exercise of recoupment or set-off. Except as otherwise provided in subsection (c) of this section, a bank with which a deposit account is maintained may exercise any right of recoupment or set-off against a secured party that holds a security interest in the deposit account.

(b) Recoupment or set-off not affected by security interest. Except as otherwise provided in subsection (c) of this section, the application of this article to a security interest in a deposit account does not affect a right of recoupment or set-off of the secured party as to a deposit account maintained with the secured party.

(c) When set-off ineffective. The exercise by a bank of a set-off against a deposit account is ineffective against a secured party that holds a security interest in the deposit account which is perfected by control under section 9-104(a)(3), if the set-off is based on a claim against the debtor.

WV Legislature

§46-9-341. Bank's rights and duties with respect to deposit account.

Except as otherwise provided in section 9-340(c), and unless the bank otherwise agrees in an authenticated record, a bank's rights and duties with respect to a deposit account maintained with the bank are not terminated, suspended or modified by:

(1) The creation, attachment or perfection of a security interest in the deposit account;

(2) The bank's knowledge of the security interest; or

(3) The bank's receipt of instructions from the secured party.

WV Legislature

§46-9-342. Bank's right to refuse to enter into or disclose existence of control agreement.

This article does not require a bank to enter into an agreement of the kind described in section 9-104(a)(2), even if its customer so requests or directs. A bank that has entered into such an agreement is not required to confirm the existence of the agreement to another person unless requested to do so by its customer.

WV Legislature

Part 4. Rights Of Third Parties.

§46-9-401. Alienability of debtor's rights.

(a) Other law governs alienability; exceptions. Except as otherwise provided in subsection (b) of this section and sections 9-406, 9-407, 9-408 and 9-409, whether a debtor's rights in collateral may be voluntarily or involuntarily transferred is governed by law other than this article.

(b) Agreement does not prevent transfer. An agreement between the debtor and secured party which prohibits a transfer of the debtor's rights in collateral or makes the transfer a default does not prevent the transfer from taking effect.

WV Legislature

§46-9-402. Secured party not obligated on contract of debtor or in tort.

The existence of a security interest, agricultural lien, or authority given to a debtor to dispose of or use collateral, without more, does not subject a secured party to liability in contract or tort for the debtor's acts or omissions.

WV Legislature

§46-9-403. Agreement not to assert defenses against assignee.

(a) "Value." In this section, "value" has the meaning provided in section 3-303(a).

(b) Agreement not to assert claim or defense. Except as otherwise provided in this section, an agreement between an account debtor and an assignor not to assert against an assignee any claim or defense that the account debtor may have against the assignor is enforceable by an assignee that takes an assignment:

(1) For value;

(2) In good faith;

(3) Without notice of a claim of a property or possessory right to the property assigned; and

(4) Without notice of a defense or claim in recoupment of the type that may be asserted against a person entitled to enforce a negotiable instrument under section 3-305(a).

(c) When subsection (b) not applicable. Subsection (b) of this section does not apply to defenses of a type that may be asserted against a holder in due course of a negotiable instrument under section 3-305(b).

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the rights of an assignee are subject to claims or defenses that the account debtor could assert against the original obligee and the record does not include such a statement:

(1) The record has the same effect as if the record included such a statement; and

(2) The account debtor may assert against an assignee those claims and defenses that would have been available if the record included such a statement.

(e) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family, or household purposes.

(f) Other law not displaced. Except as otherwise provided in subsection (d) of this section, this section does not displace law other than this article which gives effect to an agreement by an account debtor not to assert a claim or defense against an assignee.

WV Legislature

§46-9-404. Rights acquired by assignee; claims and defenses against assignee.

(a) Assignee's rights subject to terms, claims and defenses; exceptions. Unless an account debtor has made an enforceable agreement not to assert defenses or claims, and subject to subsections (b) through (e), inclusive, of this section, the rights of an assignee are subject to:

(1) All terms of the agreement between the account debtor and assignor and any defense or claim in recoupment arising from the transaction that gave rise to the contract; and

(2) Any other defense or claim of the account debtor against the assignor which accrues before the account debtor receives a notification of the assignment authenticated by the assignor or the assignee.

(b) Account debtor's claim reduces amount owed to assignee. Subject to subsection (c) of this section and except as otherwise provided in subsection (d) of this section, the claim of an account debtor against an assignor may be asserted against an assignee under subsection (a) of this section only to reduce the amount the account debtor owes.

(c) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) Omission of required statement in consumer transaction. In a consumer transaction, if a record evidences the account debtor's obligation, law other than this article requires that the record include a statement to the effect that the account debtor's recovery against an assignee with respect to claims and defenses against the assignor may not exceed amounts paid by the account debtor under the record, and the record does not include such a statement, the extent to which a claim of an account debtor against the assignor may be asserted against an assignee is determined as if the record included such a statement.

(e) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

WV Legislature

§46-9-405. Modification of assigned contract.

(a) Effect of modification on assignee. A modification of or substitution for an assigned contract is effective against an assignee if made in good faith. The assignee acquires corresponding rights under the modified or substituted contract. The assignment may provide that the modification or substitution is a breach of contract by the assignor. This subsection is subject to subsections (b) through (d), inclusive, of this section.

(b) Applicability of subsection (a). Subsection (a) applies to the extent that:

(1) The right to payment or a part thereof under an assigned contract has not been fully earned by performance; or

(2) The right to payment or a part thereof has been fully earned by performance and the account debtor has not received notification of the assignment under section 9-406(a).

(c) Rule for individual under other law. This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(d) Inapplicability to health-care-insurance receivable. This section does not apply to an assignment of a health-care-insurance receivable.

WV Legislature

Part 4. Rights Of Third Parties.

§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

(a) Discharge of account debtor; effect of notification. -- Subject to subsections (b) through (i), an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) When notification ineffective. -- Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

(1) If it does not reasonably identify the rights assigned;

(2) To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor's duty to pay a person other than the seller and the limitation is effective under law other than this article; or

(3) At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:

(A) Only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;

(B) A portion has been assigned to another assignee; or

(C) The account debtor knows that the assignment to that assignee is limited.

(c) Proof of assignment. Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

(d) Term restricting assignment generally ineffective. -- Except as otherwise provided in subsection (e) of this section and sections 2A-303 and 9-407, and subject to subsection (h) of this section, a term in an agreement between an account debtor and an assignor or in a promissory note is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of the account debtor or person obligated on

WV Legislature

the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

(e) Inapplicability of subsection (d) to certain sales.-- Subsection (d) of this section does not apply to the sale of a 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.

(f) Legal restrictions on assignment generally ineffective.-- Except as otherwise provided in sections 2A-303 and 9-407 and subject to subsections (h) and (i) of this section, a rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, or account debtor to the assignment or transfer of, or creation of a security interest in, an account or chattel paper is ineffective to the extent that the rule of law, statute or regulation:

(1) Prohibits, restricts or requires the consent of the government, governmental body or official, or account debtor to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in the account or chattel paper; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account or chattel paper.

(g) Subsection (b)(3) not waivable. -- Subject to subsection (h) of this section, an account debtor may not waive or vary its option under subsection (b)(3) of this section.

(h) Rule for individual under other law. -- This section is subject to law other than this article which establishes a different rule for an account debtor who is an individual and who incurred the obligation primarily for personal, family or household purposes.

(i) Inapplicability. -- This section does not apply to an assignment of a health-care-insurance receivable. Subsection (f) 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 subsection (f): 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. §1396p(d)(4).

(j) Section prevails over specified inconsistent law. -- This section prevails over any

WV Legislature

inconsistent provision 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.

WV Legislature

§46-9-407. Restrictions on creation or enforcement of security interest in leasehold interest or in lessor's residual interest.

(a) Term restricting assignment generally ineffective. Except as otherwise provided in subsection (b) of this section, a term in a lease agreement is ineffective to the extent that it:

(1) Prohibits, restricts or requires the consent of a party to the lease to the assignment or transfer of, or the creation, attachment, perfection, or enforcement of a security interest in, an interest of a party under the lease contract or in the lessor's residual interest in the goods; or

(2) Provides that the assignment or transfer or the creation, attachment, perfection, or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the lease.

(b) Effectiveness of certain terms. Except as otherwise provided in section 2A-303(7), a term described in subsection (a)(2) is effective to the extent that there is:

(1) A transfer by the lessee of the lessee's right of possession or use of the goods in violation of the term; or

(2) A delegation of a material performance of either party to the lease contract in violation of the term.

(c) Security interest not material impairment. The creation, attachment, perfection or enforcement of a security interest in the lessor's interest under the lease contract or the lessor's residual interest in the goods is not a transfer that materially impairs the lessee's prospect of obtaining return performance or materially changes the duty of or materially increases the burden or risk imposed on the lessee within the purview of section 2A-303(4) unless, and then only to the extent that, enforcement actually results in a delegation of material performance of the lessor.

WV Legislature

§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 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,

WV Legislature

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).

WV Legislature

§46-9-409. Restrictions on assignment of letter-of-credit rights ineffective.

(a) Term or law restricting assignment generally ineffective. A term in a letter of credit or a rule of law, statute, regulation, custom or practice applicable to the letter of credit which prohibits, restricts or requires the consent of an applicant, issuer or nominated person to a beneficiary's assignment of or creation of a security interest in a letter-of-credit right is ineffective to the extent that the term or rule of law, statute, regulation, custom or practice:

(1) Would impair the creation, attachment or perfection of a security interest in the letter-of-credit right; or

(2) Provides that the assignment 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 letter-of-credit right.

(b) Limitation on ineffectiveness under subsection (a). To the extent that a term in a letter of credit is ineffective under subsection (a) of this section but would be effective under law other than this article or a custom or practice applicable to the letter of credit, to the transfer of a right to draw or otherwise demand performance under the letter of credit, or to the assignment of a right to proceeds of the letter of credit, the creation, attachment, or perfection of a security interest in the letter-of-credit right:

(1) Is not enforceable against the applicant, issuer, nominated person or transferee beneficiary;

(2) Imposes no duties or obligations on the applicant, issuer, nominated person or transferee beneficiary; and

(3) Does not require the applicant, issuer, nominated person or transferee beneficiary to recognize the security interest, pay or render performance to the secured party, or accept payment or other performance from the secured party.

WV Legislature

Part 5. Filing.

SUBPART 1. FILING OFFICE; CONTENTS AND EFFECTIVENESS OF FINANCING STATEMENT.

§46-9-501. Filing office.

(a) Filing offices. Except as otherwise provided in subsection (b) of this section, if the local law of this state governs perfection of a security interest or agricultural lien, the office in which to file a financing statement to perfect the security interest or agricultural lien is:

(1) The office designated for the filing or recording of a record of a mortgage on the related real property, if:

(A) The collateral is as-extracted collateral or timber to be cut; or

(B) The financing statement is filed as a fixture filing and the collateral is goods that are or are to become fixtures; or

(2) The office of the Secretary of State, in all other cases, including a case in which the collateral is goods that are or are to become fixtures and the financing statement is not filed as a fixture filing.

(b) Filing office for transmitting utilities. The office in which to file a financing statement to perfect a security interest in collateral, including fixtures, of a transmitting utility is the office of Secretary of State. The financing statement also constitutes a fixture filing as to the collateral indicated in the financing statement which is or is to become fixtures.

WV Legislature

§46-9-502. Contents of financing statement; record of mortgage as financing statement; time of filing financing statement.

(a) Sufficiency of financing statement. -- Subject to subsection (b), a financing statement is sufficient only if it:

(1) Provides the name of the debtor;

(2) Provides the name of the secured party or a representative of the secured party; and

(3) Indicates the collateral covered by the financing statement.

(b) Real-property-related financing statements. -- Except as otherwise provided in section 9-501(b), to be sufficient, a financing statement that covers as-extracted collateral or timber to be cut, or which is filed as a fixture filing and covers goods that are or are to become fixtures, must satisfy subsection (a) of this section and also:

(1) Indicate that it covers this type of collateral;

(2) Indicate that it is to be filed for record in the real property records;

(3) Provide a description of the real property to which the collateral is related sufficient to give constructive notice of a mortgage under the law of this state if the description were contained in a record of the mortgage of the real property; and

(4) If the debtor does not have an interest of record in the real property, provide the name of a record owner.

(c) Record of mortgage as financing statement. -- A record of a mortgage is effective, from the date of recording, as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut only if:

(1) The record indicates the goods or accounts that it covers;

(2) The goods are or are to become fixtures relate to the real property described in the record or the collateral is related to the real property described in the record and is as-extracted collateral or timber to be cut;

(3) The record satisfies the requirements for a financing statement in this section: Provided, That

(A) The record need not indicate that it is to be filed in the real property records; and

(B) The record sufficiently provides the name of a debtor who is an individual if it provides the individual name of the debtor or the surname and first personal name of the debtor, even if the debtor is an individual to whom section 9-503(a)(4) applies; and

WV Legislature

(4) The record is duly recorded.

(d) Filing before security agreement or attachment. -- A financing statement may be filed before a security agreement is made or a security interest otherwise attaches.

WV Legislature

§46-9-503. Name of debtor and secured party.

(a) Sufficiency of debtor's name. -- A financing statement sufficiently provides the name of the debtor:

(1) Except as otherwise provided in paragraph (3) of this section, if the debtor is a registered organization or the collateral is held in a trust that is a registered organization, only if the financing statement provides the name that is stated to be the registered organization's name on the public organic record most recently filed with or issued or enacted by the debtor's jurisdiction of organization which purports to state, amend or restate the registered organization's name;

(2) Subject to subsection (f) of this section, if the collateral is being administered by the personal representative of a decedent, only if the financing statement provides, as the name of the debtor, the name of the decedent and indicates that collateral is being administered by a personal representative;

(3) If the collateral is held in a trust that is not a registered organization, only if the financing statement:

(A) Provides, as the name of the debtor:

(i) If the organic record of the trust specifies a name for the trust, the name specified; or

(ii) If the organic record of the trust does not specify a name for the trust, the name of the settlor or testator; and

(B) In a separate part of the financing statement:

(i) If the name is provided in accordance with subparagraph (A)(i), indicates that the collateral is held in a trust; or

(ii) If the name is provided in accordance with subparagraph (A)(ii), provides additional information sufficient to distinguish the trust from other trusts having one or more of the same settlors or the same testator and indicates that the collateral is held in a trust, unless the additional information so indicates;

(4) Subject to subsection (g), if the debtor is an individual to whom this state has issued a driver's license that has not expired, only if the financing statement provides the name of the individual which is indicated on the driver's license;

(5) If the debtor is an individual to whom subdivision (4) does not apply, only if the financing statement provides the individual name of the debtor or the surname and first personal name of the debtor; and

(6) In other cases:

WV Legislature

(A) If the debtor has a name, only if the financing statement provides the organizational name of the debtor; and

(B) If the debtor does not have a name, only if it provides the names of the partners, members, associates or other persons comprising the debtor, in a manner that each name provided would be sufficient if the person named were the debtor.

(b) Additional debtor-related information. -- A financing statement that provides the name of the debtor in accordance with subsection (a) of this section is not rendered ineffective by the absence of:

(1) A trade name or other name of the debtor; or

(2) Unless required under subsection (a)(6)(B) of this section, names of partners, members, associates or other persons comprising the debtor.

(c) Debtor's trade name insufficient. -- A financing statement that provides only the debtor's trade name does not sufficiently provide the name of the debtor.

(d) Representative capacity.-- Failure to indicate the representative capacity of a secured party or representative of a secured party does not affect the sufficiency of a financing statement.

(e) Multiple debtors and secured parties. -- A financing statement may provide the name of more than one debtor and the name of more than one secured party.

(f) Name of decedent. -- The name of the decedent indicated on the order appointing the personal representative of the decedent issued by the court having jurisdiction over the collateral is sufficient as the "name of the decedent" under subdivision (a)(2) of this section.

(g) Multiple driver's licenses. -- If this state has issued to an individual more than one driver's license of a kind described in subdivision (a)(4) of this section, the one that was issued most recently is the one to which subdivision (a)(4) refers.

(h) Definition. -- In this section, the "name of the settlor or testator" means:

(1) If the settlor is a registered organization, the name that is stated to be the settlor's name on the public organic record most recently filed with or issued or enacted by the settlor's jurisdiction of organization which purports to state, amend, or restate the settlor's name; or

(2) In other cases, the name of the settlor or testator indicated in the trust's organic record.

WV Legislature

§46-9-504. Indication of collateral.

A financing statement sufficiently indicates the collateral that it covers if the financing statement provides:

(1) A description of the collateral pursuant to section 9-108; or

(2) An indication that the financing statement covers all assets or all personal property.

WV Legislature

§46-9-505. Filing and compliance with other statutes and treaties for consignments, leases, other bailments and other transactions.

(a) Use of terms other than "debtor" and "secured party." A consignor, lessor, or other bailor of goods, a licensor or a buyer of a payment intangible or promissory note may file a financing statement, or may comply with a statute or treaty described in section 9-311(a), using the terms "consignor," "consignee," "lessor," "lessee," "bailor," "bailee," "licensor," "licensee," "owner," "registered owner," "buyer," "seller" or words of similar import, instead of the terms "secured party" and "debtor."

(b) Effect of financing statement under subsection (a). This part applies to the filing of a financing statement under subsection (a) of this section and, as appropriate, to compliance that is equivalent to filing a financing statement under section 9-311(b), but the filing or compliance is not of itself a factor in determining whether the collateral secures an obligation. If it is determined for another reason that the collateral secures an obligation, a security interest held by the consignor, lessor, bailor, licensor, owner or buyer which attaches to the collateral is perfected by the filing or compliance.

WV Legislature

§46-9-506. Effect of errors or omissions.

(a) Minor errors and omissions. A financing statement substantially satisfying the requirements of this part is effective, even if it has minor errors or omissions, unless the errors or omissions make the financing statement seriously misleading.

(b) Financing statement seriously misleading. Except as otherwise provided in subsection (c) of this section, a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a) is seriously misleading.

(c) Financing statement not seriously misleading. If a search of the records of the filing office under the debtor's correct name, using the filing office's standard search logic, if any, would disclose a financing statement that fails sufficiently to provide the name of the debtor in accordance with section 9-503(a), the name provided does not make the financing statement seriously misleading.

(d) "Debtor's correct name." For purposes of section 9-508(b), the "debtor's correct name" in subsection (c) of this section means the correct name of the new debtor.

WV Legislature

§46-9-507. Effect of certain events on effectiveness of financing statement.

(a) Disposition. -- A filed financing statement remains effective with respect to collateral that is sold, exchanged, leased, licensed or otherwise disposed of and in which a security interest or agricultural lien continues, even if the secured party knows of or consents to the disposition.

(b) Information becoming seriously misleading. -- Except as otherwise provided in subsection (c) of this section and section 9-508, a financing statement is not rendered ineffective if, after the financing statement is filed, the information provided in the financing statement becomes seriously misleading under section 9-506.

(c) Change in debtor's name. -- If the name that a filed financing statement provides for a debtor becomes insufficient as the name of the debtor under section 9-503(a) so that the financing statement becomes seriously misleading under section 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the debtor before, or within four months after, the filed financing statement becomes seriously misleading; and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the debtor more than four months after the filed financing statement becomes seriously misleading, unless an amendment to the financing statement which renders the financing statement not seriously misleading is filed within four months after the financing statement became seriously misleading.

WV Legislature

§46-9-508. Effectiveness of financing statement if new debtor becomes bound by security agreement.

(a) Financing statement naming original debtor. Except as otherwise provided in this section, a filed financing statement naming an original debtor is effective to perfect a security interest in collateral in which a new debtor has or acquires rights to the extent that the financing statement would have been effective had the original debtor acquired rights in the collateral.

(b) Financing statement becoming seriously misleading. If the difference between the name of the original debtor and that of the new debtor causes a filed financing statement that is effective under subsection (a) of this section to be seriously misleading under section 9-506:

(1) The financing statement is effective to perfect a security interest in collateral acquired by the new debtor before, and within four months after, the new debtor becomes bound under section 9-203(d); and

(2) The financing statement is not effective to perfect a security interest in collateral acquired by the new debtor more than four months after the new debtor becomes bound under section 9-203(d) unless an initial financing statement providing the name of the new debtor is filed before the expiration of that time.

(c) When section not applicable. This section does not apply to collateral as to which a filed financing statement remains effective against the new debtor under section 9-507(a).

WV Legislature

§46-9-509. Persons entitled to file a record.

(a) Person entitled to file record. A person may file an initial financing statement, amendment that adds collateral covered by a financing statement, or amendment that adds a debtor to a financing statement only if:

(1) The debtor authorizes the filing in an authenticated record or pursuant to subsection (b) or (c) of this section; or

(2) The person holds an agricultural lien that has become effective at the time of filing and the financing statement covers only collateral in which the person holds an agricultural lien.

(b) Security agreement as authorization. By authenticating or becoming bound as debtor by a security agreement, a debtor or new debtor authorizes the filing of an initial financing statement, and an amendment, covering:

(1) The collateral described in the security agreement; and

(2) Property that becomes collateral under section 9-315(a)(2), whether or not the security agreement expressly covers proceeds.

(c) Acquisition of collateral as authorization. By acquiring collateral in which a security interest or agricultural lien continues under section 9-315(a)(1), a debtor authorizes the filing of an initial financing statement, and an amendment, covering the collateral and property that becomes collateral under section 9-315(a)(2).

(d) Person entitled to file certain amendments. A person may file an amendment other than an amendment that adds collateral covered by a financing statement or an amendment that adds a debtor to a financing statement only if:

(1) The secured party of record authorizes the filing; or

(2) The amendment is a termination statement for a financing statement as to which the secured party of record has failed to file or send a termination statement as required by section 9-513(a) or (c), the debtor authorizes the filing and the termination statement indicates that the debtor authorized it to be filed.

(e) Multiple secured parties of record. If there is more than one secured party of record for a financing statement, each secured party of record may authorize the filing of an amendment under subsection (d) of this section.

WV Legislature

§46-9-510. Effectiveness of filed record.

(a) Filed record effective if authorized. -- A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509.

(b) Authorization by one secured party of record. -- A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. -- A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

(d) A filed record ceases to be effective if the filing office terminates the record pursuant to section 9-516(a).

WV Legislature

§46-9-511. Secured party of record.

(a) Secured party of record. A secured party of record with respect to a financing statement is a person whose name is provided as the name of the secured party or a representative of the secured party in an initial financing statement that has been filed. If an initial financing statement is filed under section 9-514(a), the assignee named in the initial financing statement is the secured party of record with respect to the financing statement.

(b) Amendment naming secured party of record. If an amendment of a financing statement which provides the name of a person as a secured party or a representative of a secured party is filed, the person named in the amendment is a secured party of record. If an amendment is filed under section 9-514(b), the assignee named in the amendment is a secured party of record.

(c) Amendment deleting secured party of record. A person remains a secured party of record until the filing of an amendment of the financing statement which deletes the person.

WV Legislature

§46-9-512. Amendment of financing statement.

(a) Amendment of information in financing statement. Subject to section 9-509, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or, subject to subsection (e) of this section, otherwise amend the information provided in, a financing statement by filing an amendment that:

(1) Identifies, by its file number, the initial financing statement to which the amendment relates; and

(2) If the amendment relates to an initial financing statement filed or recorded in a filing office described in section 9-501(a)(1), provides the date and time that the initial financing statement was filed or recorded and the information specified in section 9-502(b).

(b) Period of effectiveness not affected. Except as otherwise provided in section 9-515, the filing of an amendment does not extend the period of effectiveness of the financing statement.

(c) Effectiveness of amendment adding collateral. A financing statement that is amended by an amendment that adds collateral is effective as to the added collateral only from the date of the filing of the amendment.

(d) Effectiveness of amendment adding debtor. A financing statement that is amended by an amendment that adds a debtor is effective as to the added debtor only from the date of the filing of the amendment.

(e) Certain amendments ineffective. An amendment is ineffective to the extent it:

(1) Purports to delete all debtors and fails to provide the name of a debtor to be covered by the financing statement; or

(2) Purports to delete all secured parties of record and fails to provide the name of a new secured party of record.

WV Legislature

§46-9-513. Termination statement.

(a) Consumer goods. A secured party shall cause the secured party of record for a financing statement to file a termination statement for the financing statement if the financing statement covers consumer goods and:

(1) There is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) The debtor did not authorize the filing of the initial financing statement.

(b) Time for compliance with subsection (a). To comply with subsection (a) of this section, a secured party shall cause the secured party of record to file the termination statement:

(1) Within one month after there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation or otherwise give value; or

(2) If earlier, within twenty days after the secured party receives an authenticated demand from a debtor.

(c) Other collateral. In cases not governed by subsection (a), within twenty days after a secured party receives an authenticated demand from a debtor, the secured party shall cause the secured party of record for a financing statement to send to the debtor a termination statement for the financing statement or file the termination statement in the filing office if:

(1) Except in the case of a financing statement covering accounts or chattel paper that has been sold or goods that are the subject of a consignment, there is no obligation secured by the collateral covered by the financing statement and no commitment to make an advance, incur an obligation, or otherwise give value;

(2) The financing statement covers accounts or chattel paper that has been sold but as to which the account debtor or other person obligated has discharged its obligation;

(3) The financing statement covers goods that were the subject of a consignment to the debtor but are not in the debtor's possession; or

(4) The debtor did not authorize the filing of the initial financing statement.

(d) Effect of filing termination statement. Except as otherwise provided in section 9-510, upon the filing of a termination statement with the filing office, the financing statement to which the termination statement relates ceases to be effective. Except as otherwise provided in section 9-510, for purposes of section 9-519 (g), 9-522 (a), and 9-523 (c), the filing with the filing office of a termination statement relating to a financing statement that indicates that the debtor is a transmitting utility also causes the effectiveness of the financing

WV Legislature

statement to lapse.

WV Legislature

§46-9-514. Assignment of powers of secured party of record.

(a) Assignment reflected on initial financing statement. Except as otherwise provided in subsection (c) of this section, an initial financing statement may reflect an assignment of all of the secured party's power to authorize an amendment to the financing statement by providing the name and mailing address of the assignee as the name and address of the secured party.

(b) Assignment of filed financing statement. Except as otherwise provided in subsection (c) of this section, a secured party of record may assign of record all or part of its power to authorize an amendment to a financing statement by filing in the filing office an amendment of the financing statement which:

(1) Identifies, by its file number, the initial financing statement to which it relates;

(2) Provides the name of the assignor; and

(3) Provides the name and mailing address of the assignee.

(c) Assignment of record of mortgage. An assignment of record of a security interest in a fixture covered by a record of a mortgage which is effective as a financing statement filed as a fixture filing under section 9-502(c) may be made only by an assignment of record of the mortgage in the manner provided by law of this state other than the Uniform Commercial Code.

WV Legislature

§46-9-515. Duration and effectiveness of financing statement; effect of lapsed financing statement.

(a) Five-year effectiveness. -- Except as otherwise provided in subsections (b), (e), (f) and (g) of this section, a filed financing statement is effective for a period of five years after the date of filing.

(b) Public-finance or manufactured-home transaction. -- Except as otherwise provided in subsections (e), (f) and (g) of this section, an initial financing statement filed in connection with a public-finance transaction or manufactured-home transaction is effective for a period of forty years after the date of filing if it indicates that it is filed in connection with a public-finance transaction or manufactured-home transaction.

(c) Lapse and continuation of financing statement. -- The effectiveness of a filed financing statement lapses on the expiration of the period of its effectiveness unless before the lapse a continuation statement is filed pursuant to subsection (d) of this section. Upon lapse, a financing statement ceases to be effective and any security interest or agricultural lien that was perfected by the financing statement becomes unperfected, unless the security interest is perfected otherwise. If the security interest or agricultural lien becomes unperfected upon lapse, it is deemed never to have been perfected as against a purchaser of the collateral for value.

(d) When continuation statement may be filed. -- A continuation statement may be filed only within six months before the expiration of the five-year period specified in subsection (a) of this section or the thirty-year period specified in subsection (b) of this section, whichever is applicable.

(e) Effect of filing continuation statement. -- Except as otherwise provided in section five hundred ten of this article, upon timely filing of a continuation statement, the effectiveness of the initial financing statement continues for a period of five years commencing on the day on which the financing statement would have become ineffective in the absence of the filing. Upon the expiration of the five-year period, the financing statement lapses in the same manner as provided in subsection (c) of this section, unless, before the lapse, another continuation statement is filed pursuant to subsection (d) of this section. Succeeding continuation statements may be filed in the same manner to continue the effectiveness of the initial financing statement.

(f) Transmitting utility financing statement. -- If a debtor is a transmitting utility and a filed initial financing statement so indicates, the financing statement is effective until a termination statement is filed.

(g) Record of mortgage as financing statement. -- A record of a mortgage that is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under subsection (c), section five hundred two of this article remains effective as a financing statement filed as a fixture filing or as a financing

www.Legislature

statement covering as-extracted collateral or timber to be cut until the mortgage is released or satisfied of record or its effectiveness otherwise terminates as to the real property.

WV Legislature

§46-9-516. What constitutes filing; effectiveness of filing.

(a) What constitutes filing. -- Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. -- Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;

(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by 9-512 or 9-518, as applicable;

(ii) Identifies an initial financing statement whose effectiveness has lapsed under section 9-515; or

(iii) Identifies an initial financing statement which was terminated pursuant to section 9-516(a);

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname;

(D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates; or

(E) In the case of a record submitted to the filing office described in section 9-501(a)(1), the filing office has reason to believe, from information contained in the record or from the person that communicated the record to the office, that:

(i) If the record indicates that the debtor is a transmitting utility, the debtor does not meet the definition of a transmitting utility as described in section 9-102(a)(81);

WV Legislature

(ii) If the record indicates that the transaction relating to the record is a manufactured home transaction, the transaction does not meet the definition of a manufactured home transaction as described in section 9-102(a)(54); or

(iii) If the record indicates that the transaction relating to the record is a public finance transaction, the transaction does not meet the definition of a public finance transaction as described in section 9-102(a)(70);

(4) In the case of an initial financing statement or an amendment, if the filing office believes in good faith that the record was communicated to the filing office in violation of section 9-516a;

(5) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(6) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(7) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or

(8) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) Rules applicable to subsection (b). -- For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. -- A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

WV Legislature

§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 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.

WV Legislature

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.

(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.

WV Legislature

(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.

WV Legislature

§46-9-517. Effect of indexing errors.

The failure of the filing office to index a record correctly does not affect the effectiveness of the filed record.

WV Legislature

§46-9-518. Claim concerning inaccurate or wrongfully filed record.

(a) Statement with respect to record indexed under person's name. -- A person may file in the filing office an information statement with respect to a record indexed there under the person's name if the person believes that the record is inaccurate or was wrongfully filed.

(b) Contents of statement under subsection (a). -- An information statement under subsection (a) of this section must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the information statement relates to a record filed or recorded in a filing office described in section 9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in section 9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the record is inaccurate and indicate the manner in which the person believes the record should be amended to cure any inaccuracy or provide the basis for the person's belief that the record was wrongfully filed.

(c) Statement by secured party of record. -- A person may file in the filing office an information statement with respect to a record filed there if the person is a secured party of record with respect to the financing statement to which the record relates and believes that the person that filed the record was not entitled to do so under section 9-509(d).

(d) Contents of statement under subsection (c). -- An information statement under subsection (c) of this section must:

(1) Identify the record to which it relates by:

(A) The file number assigned to the initial financing statement to which the record relates; and

(B) If the information statement relates to a record filed or recorded in a filing office described in section 9-501(a)(1), the date and time that the initial financing statement was filed or recorded and the information specified in section 9-502(b);

(2) Indicate that it is an information statement; and

(3) Provide the basis for the person's belief that the person that filed the record was not entitled to do so under Section 9-509(d).

WV Legislature

(e) Record not affected by information statement. -- The filing of an information statement does not affect the effectiveness of an initial financing statement or other filed record.

WV Legislature

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

§46-9-519. Numbering, maintaining and indexing records; communicating information provided in records.

(a) Filing office duties. For each record filed in a filing office, the filing office shall:

(1) Assign a unique number to the filed record;

(2) Create a record that bears the number assigned to the filed record and the date and time of filing;

(3) Maintain the filed record for public inspection; and

(4) Index the filed record in accordance with subsections (c), (d) and (e) of this section.

(b) File number. A file number assigned after January 1, 2002, must include a digit that:

(1) Is mathematically derived from or related to the other digits of the file number; and

(2) Aids the filing office in determining whether a number communicated as the file number includes a single-digit or transpositional error.

(c) Indexing: general. Except as otherwise provided in subsections (d) and (e) of this section, the filing office shall:

(1) Index an initial financing statement according to the name of the debtor and index all filed records relating to the initial financing statement in a manner that associates with one another an initial financing statement and all filed records relating to the initial financing statement; and

(2) Index a record that provides a name of a debtor which was not previously provided in the financing statement to which the record relates also according to the name that was not previously provided.

(d) Indexing: real-property-related financing statement. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, it must be filed for record and the filing office shall index it:

(1) Under the names of the debtor and of each owner of record shown on the financing statement as if they were the mortgagors under a mortgage of the real property described; and

(2) To the extent that the law of this state provides for indexing of records of mortgages under the name of the mortgagee, under the name of the secured party as if the secured party were the mortgagee thereunder, or, if indexing is by description, as if the financing

WV Legislature

statement were a record of a mortgage of the real property described.

(e) Indexing: real-property-related assignment. If a financing statement is filed as a fixture filing or covers as-extracted collateral or timber to be cut, the filing office shall index an assignment filed under section 9-514(a) or an amendment filed under section 9-514(b):

(1) Under the name of the assignor as grantor; and

(2) To the extent that the law of this state provides for indexing a record of the assignment of a mortgage under the name of the assignee.

(f) Retrieval and association capability. The filing office shall maintain a capability:

(1) To retrieve a record by the name of the debtor and:

(A) If the filing office is described in section 9-501(a)(1), by the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(B) If the filing office is described in section 9-501(a)(2), by the file number assigned to the initial financing statement to which the record relates; and

(2) To associate and retrieve with one another an initial financing statement and each filed record relating to the initial financing statement.

(g) Removal of debtor's name. The filing office may not remove a debtor's name from the index until one year after the effectiveness of a financing statement naming the debtor lapses under section 9-515 with respect to all secured parties of record.

(h) Timeliness of filing office performance. The filing office shall perform the acts required by subsections (a) through (e), inclusive, of this section at the time and in the manner prescribed by filing-office rule, but not later than two business days after the filing office receives the record in question.

WV Legislature

§46-9-520. Acceptance and refusal to accept record.

(a) Mandatory refusal to accept record. A filing office shall refuse to accept a record for filing for a reason set forth in section 9-516(b) and may refuse to accept a record for filing only for a reason set forth in section 9-516(b).

(b) Communication concerning refusal. If a filing office refuses to accept a record for filing, it shall communicate to the person that presented the record the fact of and reason for the refusal and the date and time the record would have been filed had the filing office accepted it. The communication must be made at the time and in the manner prescribed by filing-office rule but, in the case of a filing office described in section 9-501(a)(2), in no event more than two business days after the filing office receives the record.

(c) When filed financing statement effective. A filed financing statement satisfying section 9-502(a) and (b) is effective, even if the filing office is required to refuse to accept it for filing under subsection (a) of this section. However, section 9-338 applies to a filed financing statement providing information described in section 9-516(b)(5) which is incorrect at the time the financing statement is filed.

(d) Separate application to multiple debtors. If a record communicated to a filing office provides information that relates to more than one debtor, this part applies as to each debtor separately.

WV Legislature

§46-9-521. Written financing statement and amendment thereto.

(a) Initial financing statement. -- A filing office that accepts written records may not refuse to accept a written initial financing statement except for a reason set forth in section 9-516(b): Provided, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators.

(b) Amended financing statement. -- A filing office that accepts written records may not refuse to accept an amended written record except for a reason set forth in section 9-516(b): Provided, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators.

WV Legislature

§46-9-522. Maintenance and destruction of records.

(a) Post-lapse maintenance and retrieval of information. The filing office shall maintain a record of the information provided in a filed financing statement for at least one year after the effectiveness of the financing statement has lapsed under section 9-515 with respect to all secured parties of record. The record must be retrievable by using the name of the debtor and:

(1) If the record was filed or recorded in the filing office described in section 9-501(a)(1), by using the file number assigned to the initial financing statement to which the record relates and the date and time that the record was filed or recorded; or

(2) If the record was filed in the filing office described in section 9-501(a)(2), by using the file number assigned to the initial financing statement to which the record relates.

(b) Destruction of written records. Except to the extent that a statute governing disposition of public records provides otherwise, the filing office immediately may destroy any written record evidencing a financing statement. However, if the filing office destroys a written record, it shall maintain another record of the financing statement which complies with subsection (a) of this section.

WV Legislature

§46-9-523. Information from filing office; sale or license of records.

(a) Acknowledgment of filing written record. -- If a person that files a written record requests an acknowledgment of the filing, the filing office shall send to the person an image of the record showing the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record. However, if the person furnishes a copy of the record to the filing office, the filing office may instead:

(1) Note upon the copy the number assigned to the record pursuant to section 9-519(a)(1) and the date and time of the filing of the record; and

(2) Send the copy to the person.

(b) Acknowledgment of filing other record. -- If a person files a record other than a written record, the filing office shall communicate to the person an acknowledgment that provides:

(1) The information in the record;

(2) The number assigned to the record pursuant to section 9-519(a)(1); and

(3) The date and time of the filing of the record.

(c) Communication of requested information. -- The filing office shall communicate or otherwise make available in a record the following information to any person that requests it:

(1) Whether there is on file on a date and time specified by the filing office, but not a date earlier than three business days before the filing office receives the request, any financing statement that:

(A) Designates a particular debtor;

(B) Has not lapsed under section 9-515 with respect to all secured parties of record; and

(C) If the request so states, has lapsed under section 9-515 and a record of which is maintained by the filing office under section 9-522(a);

(2) The date and time of filing of each financing statement; and

(3) The information provided in each financing statement.

(d) Medium for communicating information. -- In complying with its duty under subsection (c) of this section, the filing office may communicate information in any medium. However, if requested, the filing office shall communicate information by issuing its written certificate.

(e) Timeliness of filing office performance. -- The filing office shall perform the acts required by subsections (a) through (d), inclusive, of this section at the time and in the manner

WV Legislature

prescribed by filing-office rule, but not later than two business days after the filing office receives the request.

(f) Public availability of records. -- At least weekly, the Secretary of State shall offer to sell or license to the public on a nonexclusive basis, in bulk, copies of all records filed in it under this part, in every medium from time to time available to the filing office. The Secretary of State will provide electronically, for purchase, any data maintained in the Secretary of State's UCC Bulk Sale Database. The cost for purchase of the UCC Bulk Database in the electronic medium shall be as follows:

(1) The entire UCC Bulk Sale Database - $12,360;

(2) The weekly updates of the UCC Bulk Sale Database - $258, and

(3) The weekly updates of the UCC Bulk Sale Database in monthly form -- $1,030.

WV Legislature

§46-9-524. Delay by filing office.

Delay by the filing office beyond a time limit prescribed by this part is excused if:

(1) The delay is caused by interruption of communication or computer facilities, war, emergency conditions, failure of equipment or other circumstances beyond control of the filing office; and

(2) The filing office exercises reasonable diligence under the circumstances.

WV Legislature

§46-9-525. Fees.

(a) Initial financing statement or other record: general rule. -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

(1) $20 dollars if the record is communicated in writing and consists of one or two pages; and

(2) $20 dollars if the record is communicated in writing and consists of more than two pages; and

(3) $20 dollars if the record is communicated by another medium authorized by filing-office rule.

(b) Initial financing statement: Public-finance and manufactured housing transactions. -- Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing an initial financing statement of the following kind is the amount specified in subsection (c) of this section, if applicable, plus:

(1) $20 if the financing statement indicates that it is filed in connection with a public-finance transaction;

(2) $20 if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) Number of names. -- The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) Response to information request. -- The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:

(1) $10 if the request is communicated in writing;

(2) $10 if the request is communicated by another medium authorized by filing-office rule; and

(3) $1 per page for each active lien.

(e) Record of mortgage. -- This section does not require a fee with respect to a record of a mortgage which is effective as a financing statement filed as a fixture filing or as a financing statement covering as-extracted collateral or timber to be cut under section 9-502(c). However, the recording and satisfaction fees that otherwise would be applicable to the record of the mortgage apply.

WV Legislature

(f) Deposit of funds. -- All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the special revenue account created by section 59-1-59(c)(4)(B), to provide civil legal services for low income persons, one-fourth shall be deposited in the state fund, general revenue, and one-fourth shall be deposited in the service fees and collections account established by section 59-1-2 for the operation of the office of the Secretary of State. Any balance remaining on June 30, 2001, in the existing special revenue account entitled "uniform commercial code" as established by chapter two hundred four, acts of the Legislature, 1989 regular session, shall be transferred to the service fees and collections account established by section 59-1-2 for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article, unless otherwise provided by appropriation or other action by the Legislature.

WV Legislature

§46-9-526. Filing-office rules.

(a) Adoption of filing-office rules. The Secretary of State shall propose rules for legislative approval consistent with this article and in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(1) Consistent with this article; and

(2) Promulgated pursuant to the provisions of chapter twenty-nine-a of this code.

(b) Harmonization of rules. To keep the filing-office rules and practices of the filing office in harmony with the rules and practices of filing offices in other jurisdictions that enact substantially this part, and to keep the technology used by the filing office compatible with the technology used by filing offices in other jurisdictions that enact substantially this part, the Secretary of State, so far as is consistent with the purposes, policies and provisions of this article, in proposing filing-office rules for legislative approval, shall:

(1) Consult with filing offices in other jurisdictions that enact substantially this part; and

(2) Consult the most recent version of the model rules promulgated by the international association of corporate administrators or any successor organization; and

(3) Take into consideration the rules and practices of, and the technology used by, filing offices in other jurisdictions that enact substantially this part.

WV Legislature

§46-9-527. Duty to report.

The Secretary of State shall report to the Joint Committee on Government and Finance on or before July 1 each year on the operation of the filing office. The report must contain a statement of the extent to which:

(1) The filing-office rules are not in harmony with the rules of filing offices in other jurisdictions that enact substantially this part and the reasons for these variations; and

(2) The filing-office rules are not in harmony with the most recent version of the model rules promulgated by the international association of corporate administrators, or any successor organization, and the reasons for these variations.

WV Legislature

Part 6. Default.

Subpart 1. Default and Enforcement of Security Interest.

§46-9-601. Rights after default; judicial enforcement; consignor or buyer of accounts, chattel paper, payment intangibles or promissory notes.

(a) Rights of secured party after default. After default, a secured party has the rights provided in this part and, except as otherwise provided in section 9-602, those provided by agreement of the parties. A secured party:

(1) May reduce a claim to judgment, foreclose or otherwise enforce the claim, security interest or agricultural lien by any available judicial procedure; and

(2) If the collateral is documents, may proceed either as to the documents or as to the goods they cover.

(b) Rights and duties of secured party in possession or control. A secured party in possession of collateral or control of collateral under section 7-106, 9-104, 9-105, 9-106 or 9-107 has the rights and duties provided in section 9-207.

(c) Rights cumulative; simultaneous exercise. The rights under subsections (a) and (b) of this section are cumulative and may be exercised simultaneously.

(d) Rights of debtor and obligor. Except as otherwise provided in subsection (g) of this section and section 9-605, after default, a debtor and an obligor have the rights provided in this part and by agreement of the parties.

(e) Lien of levy after judgment. If a secured party has reduced its claim to judgment, the lien of any levy that may be made upon the collateral by virtue of an execution based upon the judgment relates back to the earliest of:

(1) The date of perfection of the security interest or agricultural lien in the collateral;

(2) The date of filing a financing statement covering the collateral; or

(3) Any date specified in a statute under which the agricultural lien was created.

(f) Execution sale. A sale pursuant to an execution is a foreclosure of the security interest or agricultural lien by judicial procedure within the meaning of this section. A secured party may purchase at the sale and thereafter hold the collateral free of any other requirements of this article.

(g) Consignor or buyer of certain rights to payment. Except as otherwise provided in section 9-607(c), this part imposes no duties upon a secured party that is a consignor or is a buyer of accounts, chattel paper, payment intangibles or promissory notes.

WV Legislature

§46-9-602. Waiver and variance of rights and duties.

Except as otherwise provided in section 9-624, to the extent that they give rights to a debtor or obligor and impose duties on a secured party, the debtor or obligor may not waive or vary the rules stated in the following listed sections:

(1) Section 9-207(b)(4)(C), which deals with use and operation of the collateral by the secured party;

(2) Section 9-210, which deals with requests for an accounting and requests concerning a list of collateral and statement of account;

(3) Section 9-607(c), which deals with collection and enforcement of collateral;

(4) Sections 9-608(a) and 9-615(c) to the extent that they deal with application or payment of noncash proceeds of collection, enforcement, or disposition;

(5) Sections 9-608(a) and 9-615(d) to the extent that they require accounting for or payment of surplus proceeds of collateral;

(6) Section 9-609 to the extent that it imposes upon a secured party that takes possession of collateral without judicial process the duty to do so without breach of the peace;

(7) Sections 9-610(b), 9-611, 9-613 and 9-614, which deal with disposition of collateral;

(8) Section 9-615(f), which deals with calculation of a deficiency or surplus when a disposition is made to the secured party, a person related to the secured party, or a secondary obligor;

(9) Section 9-616, which deals with explanation of the calculation of a surplus or deficiency;

(10) Sections 9-620, 9-621 and 9-622, which deal with acceptance of collateral in satisfaction of obligation;

(11) Section 9-623, which deals with redemption of collateral;

(12) Section 9-624, which deals with permissible waivers; and

(13) Sections 9-625 and 9-626, which deal with the secured party's liability for failure to comply with this article.

WV Legislature

§46-9-603. Agreement on standards concerning rights and duties.

(a) Agreed standards. The parties may determine by agreement the standards measuring the fulfillment of the rights of a debtor or obligor and the duties of a secured party under a rule stated in section 9-602 if the standards are not manifestly unreasonable.

(b) Agreed standards inapplicable to breach of peace. Subsection (a) of this section does not apply to the duty under section 9-609 to refrain from breaching the peace.

WV Legislature

§46-9-604. Procedure if security agreement covers real property or fixtures.

(a) Enforcement: personal and real property. If a security agreement covers both personal and real property, a secured party may proceed:

(1) Under this part as to the personal property without prejudicing any rights with respect to the real property; or

(2) As to both the personal property and the real property in accordance with the rights with respect to the real property, in which case the other provisions of this part do not apply.

(b) Enforcement: fixtures. Subject to subsection (c) of this section, if a security agreement covers goods that are or become fixtures, a secured party may proceed:

(1) Under this part; or

(2) In accordance with the rights with respect to real property, in which case the other provisions of this part do not apply.

(c) Removal of fixtures. Subject to the other provisions of this part, if a secured party holding a security interest in fixtures has priority over all owners and encumbrancers of the real property, the secured party, after default, may remove the collateral from the real property.

(d) Injury caused by removal. A secured party that removes collateral shall promptly reimburse any encumbrancer or owner of the real property, other than the debtor, for the cost of repair of any physical injury caused by the removal. The secured party need not reimburse the encumbrancer or owner for any diminution in value of the real property caused by the absence of the goods removed or by any necessity of replacing them. A person entitled to reimbursement may refuse permission to remove until the secured party gives adequate assurance for the performance of the obligation to reimburse.

WV Legislature

§46-9-605. Unknown debtor or secondary obligor.

A secured party does not owe a duty based on its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

WV Legislature

§46-9-606. Time of default for agricultural lien.

For purposes of this part, a default occurs in connection with an agricultural lien at the time the secured party becomes entitled to enforce the lien in accordance with the statute under which it was created.

WV Legislature

§46-9-607. Collection and enforcement by secured party.

(a) Collection and enforcement generally. -- If so agreed, and in any event after default, a secured party:

(1) May notify an account debtor or other person obligated on collateral to make payment or otherwise render performance to or for the benefit of the secured party;

(2) May take any proceeds to which the secured party is entitled under section 9-315;

(3) May enforce the obligations of an account debtor or other person obligated on collateral and exercise the rights of the debtor with respect to the obligation of the account debtor or other person obligated on collateral to make payment or otherwise render performance to the debtor, and with respect to any property that secures the obligations of the account debtor or other person obligated on the collateral;

(4) If it holds a security interest in a deposit account perfected by control under section 9-104(a)(1), may apply the balance of the deposit account to the obligation secured by the deposit account; and

(5) If it holds a security interest in a deposit account perfected by control under section 9-104(a)(2) or (3), may instruct the bank to pay the balance of the deposit account to or for the benefit of the secured party.

(b) Nonjudicial enforcement of mortgage. -- If necessary to enable a secured party to exercise under subsection (a)(3) of this section the right of a debtor to enforce a mortgage nonjudicially, the secured party may record in the office in which a record of the mortgage is recorded:

(1) A copy of the security agreement that creates or provides for a security interest in the obligation secured by the mortgage; and

(2) The secured party's sworn affidavit in recordable form stating that:

(A) A default has occurred with respect to the obligation secured by the mortgage; and

(B) The secured party is entitled to enforce the mortgage nonjudicially.

(c) Commercially reasonable collection and enforcement. -- A secured party shall proceed in a commercially reasonable manner if the secured party:

(1) Undertakes to collect from or enforce an obligation of an account debtor or other person obligated on collateral; and

(2) Is entitled to charge back uncollected collateral or otherwise to full or limited recourse against the debtor or a secondary obligor.

WV Legislature

(d) Expenses of collection and enforcement. -- A secured party may deduct from the collections made pursuant to subsection (c) of this section reasonable expenses of collection and enforcement, including reasonable attorney's fees and legal expenses incurred by the secured party.

(e) Duties to secured party not affected. -- This section does not determine whether an account debtor, bank or other person obligated on collateral owes a duty to a secured party.

WV Legislature

§46-9-608. Application of proceeds of collection or enforcement; liability for deficiency and right to surplus.

(a) Application of proceeds, surplus and deficiency if obligation secured. If a security interest or agricultural lien secures payment or performance of an obligation, the following rules apply:

(1) A secured party shall apply or pay over for application the cash proceeds of collection or enforcement under section 9-607 in the following order to:

(A) The reasonable expenses of collection and enforcement and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(B) The satisfaction of obligations secured by the security interest or agricultural lien under which the collection or enforcement is made; and

(C) The satisfaction of obligations secured by any subordinate security interest in or other lien on the collateral subject to the security interest or agricultural lien under which the collection or enforcement is made if the secured party receives an authenticated demand for proceeds before distribution of the proceeds is completed.

(2) If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder complies, the secured party need not comply with the holder's demand under paragraph (1)(C) of this subsection.

(3) A secured party need not apply or pay over for application noncash proceeds of collection and enforcement under section 9-607 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(4) A secured party shall account to and pay a debtor for any surplus, and the obligor is liable for any deficiency.

(b) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes, the debtor is not entitled to any surplus and the obligor is not liable for any deficiency.

WV Legislature

§46-9-609. Secured party's right to take possession after default.

(a) Possession; rendering equipment unusable; disposition on debtor's premises. After default, a secured party:

(1) May take possession of the collateral; and

(2) Without removal, may render equipment unusable and dispose of collateral on a debtor's premises under section 9-610.

(b) Judicial and nonjudicial process. A secured party may proceed under subsection (a) of this section:

(1) Pursuant to judicial process; or

(2) Without judicial process, if it proceeds without breach of the peace.

(c) Assembly of collateral. If so agreed, and in any event after default, a secured party may require the debtor to assemble the collateral and make it available to the secured party at a place to be designated by the secured party which is reasonably convenient to both parties.

WV Legislature

§46-9-610. Disposition of collateral after default.

(a) Disposition after default. After default, a secured party may sell, lease, license or otherwise dispose of any or all of the collateral in its present condition or following any commercially reasonable preparation or processing.

(b) Commercially reasonable disposition. Every aspect of a disposition of collateral, including the method, manner, time, place and other terms, must be commercially reasonable. If commercially reasonable, a secured party may dispose of collateral by public or private proceedings, by one or more contracts, as a unit or in parcels, and at any time and place and on any terms.

(c) Purchase by secured party. A secured party may purchase collateral:

(1) At a public disposition; or

(2) At a private disposition only if the collateral is of a kind that is customarily sold on a recognized market or the subject of widely distributed standard price quotations.

(d) Warranties on disposition. A contract for sale, lease, license or other disposition includes the warranties relating to title, possession, quiet enjoyment, and the like which by operation of law accompany a voluntary disposition of property of the kind subject to the contract.

(e) Disclaimer of warranties. A secured party may disclaim or modify warranties under subsection (d) of this section:

(1) In a manner that would be effective to disclaim or modify the warranties in a voluntary disposition of property of the kind subject to the contract of disposition; or

(2) By communicating to the purchaser a record evidencing the contract for disposition and including an express disclaimer or modification of the warranties.

(f) Record sufficient to disclaim warranties. A record is sufficient to disclaim warranties under subsection (e) of this section if it indicates "There is no warranty relating to title, possession, quiet enjoyment, or the like in this disposition" or uses words of similar import.

WV Legislature

§46-9-611. Notification before disposition of collateral.

(a) "Notification date." In this section, "notification date" means the earlier of the date on which:

(1) A secured party sends to the debtor and any secondary obligor an authenticated notification of disposition; or

(2) The debtor and any secondary obligor waive the right to notification.

(b) Notification of disposition required. Except as otherwise provided in subsection (d) of this section, a secured party that disposes of collateral under section 9-610 shall send to the persons specified in subsection (c) of this section a reasonable authenticated notification of disposition.

(c) Persons to be notified. To comply with subsection (b), the secured party shall send an authenticated notification of disposition to:

(1) The debtor;

(2) Any secondary obligor; and

(3) If the collateral is other than consumer goods:

(A) Any other person from which the secured party has received, before the notification date, an authenticated notification of a claim of an interest in the collateral;

(B) Any other secured party or lienholder that, ten days before the notification date, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(i) Identified the collateral;

(ii) Was indexed under the debtor's name as of that date; and

(iii) Was filed in the office in which to file a financing statement against the debtor covering the collateral as of that date; and

(C) Any other secured party that, ten days before the notification date, held a security interest in the collateral perfected by compliance with a statute, regulation, or treaty described in section 9-311(a).

(d) Subsection (b) inapplicable: perishable collateral; recognized market. Subsection (b) of this section does not apply if the collateral is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market.

(e) Compliance with subsection (c)(3)(B). A secured party complies with the requirement for

WV Legislature

notification prescribed by subsection (c)(3)(B) of this section if:

(1) Not later than twenty days or earlier than thirty days before the notification date, the secured party requests, in a commercially reasonable manner, information concerning financing statements indexed under the debtor's name in the office indicated in subsection (c)(3)(B) of this section; and

(2) Before the notification date, the secured party:

(A) Did not receive a response to the request for information; or

(B) Received a response to the request for information and sent an authenticated notification of disposition to each secured party or other lienholder named in that response whose financing statement covered the collateral.

WV Legislature

§46-9-612. Timeliness of notification before disposition of collateral.

(a) Reasonable time is question of fact. Except as otherwise provided in subsection (b) of this section, whether a notification is sent within a reasonable time is a question of fact.

(b) Ten-day period sufficient in non-consumer transaction. In a transaction other than a consumer transaction, a notification of disposition sent after default and ten days or more before the earliest time of disposition set forth in the notification is sent within a reasonable time before the disposition.

WV Legislature

§46-9-613. Contents and form of notification before disposition of collateral: general.

Except in a consumer-goods transaction, the following rules apply:

(1) The contents of a notification of disposition are sufficient if the notification:

(A) Describes the debtor and the secured party;

(B) Describes the collateral that is the subject of the intended disposition;

(C) States the method of intended disposition;

(D) States that the debtor is entitled to an accounting of the unpaid indebtedness and states the charge, if any, for an accounting; and

(E) States the time and place of a public disposition or the time after which any other disposition is to be made.

(2) Whether the contents of a notification that lacks any of the information specified in paragraph (1) of this section are nevertheless sufficient is a question of fact.

(3) The contents of a notification providing substantially the information specified in paragraph (1) of this section are sufficient, even if the notification includes:

(A) Information not specified by that paragraph; or

(B) Minor errors that are not seriously misleading.

(4) A particular phrasing of the notification is not required.

(5) The following form of notification and the form appearing in section 9-614(3), when completed, each provides sufficient information:

NOTIFICATION OF DISPOSITION OF COLLATERAL

To:[*Name of debtor, obligor, or other person to which the notification is sent*]

From:[*Name, address, and telephone number of secured party*]

Name of Debtor(s):[*Include only if debtor(s) are not an addressee*]

For a public disposition:

We will sell or [lease or license, *as applicable*] the [*describe collateral*] to the highest qualified bidder in public as follows:

WV Legislature

Day and Date: _____

Time:_____

Place:_____

For a private disposition:

We will sell [or lease or license, *as applicable*] the [*describe collateral*] privately sometime after [*day and date*].

You are entitled to an accounting of the unpaid indebtedness secured by the property that we intend to sell [or lease or license, *as applicable*] for a charge of $ _____. You may request an accounting by calling us at [*telephone number*].

[End of Form]

WV Legislature

§46-9-614. Contents and form of notification before disposition of collateral: consumer-goods transaction.

In a consumer-goods transaction, the following rules apply:

(1) A notification of disposition must provide the following information:

(A) The information specified in section 9-613(1);

(B) A description of any liability for a deficiency of the person to which the notification is sent;

(C) A telephone number from which the amount that must be paid to the secured party to redeem the collateral under section 9-623 is available; and

(D) A telephone number or mailing address from which additional information concerning the disposition and the obligation secured is available.

(2) A particular phrasing of the notification is not required.

(3) The following form of notification, when completed, provides sufficient information:

[*Name and address of secured party*]

[*Date*]

NOTICE OF OUR PLAN TO SELL PROPERTY

[*Name and address of any obligor who is also a debtor*]

Subject: [*Identification of Transaction*]

We have your [*describe collateral*] , because you broke promises in our agreement.

For a public disposition:

We will sell [*describe collateral*] at public sale. A sale could include a lease or license. The sale will be held as follows:

Date:_____

Time:_____

Place:_____

You may attend the sale and bring bidders if you want.

WV Legislature

For a private disposition:

We will sell [*describe collateral*] at private sale sometime after [*date*] . A sale could include a lease or license.

The money that we get from the sale (after paying our costs) will reduce the amount you owe. If we get less money than you owe, you [*will or will not, as applicable*] still owe us the difference. If we get more money than you owe, you will get the extra money, unless we must pay it to someone else.

You can get the property back at any time before we sell it by paying us the full amount you owe (not just the past due payments), including our expenses. To learn the exact amount you must pay, call us at [*telephone number*] .

If you want us to explain to you in writing how we have figured the amount that you owe us, you may call us at [*telephone number*] or write us at [*secured party's address*] and request a written explanation.

If you need more information about the sale call us at [*telephone number*] or write us at [*secured party's address*] .

We are sending this notice to the following other people who have an interest in [*describe collateral*] or who owe money under your agreement:

[*Names of all other debtors and obligors, if any*]

[End of Form]

(4) A notification in the form of paragraph (3) of this section is sufficient, even if additional information appears at the end of the form.

(5) A notification in the form of paragraph (3) of this section is sufficient, even if it includes errors in information not required by paragraph (1) of this section, unless the error is misleading with respect to rights arising under this article.

(6) If a notification under this section is not in the form of paragraph (3) of this section, law other than this article determines the effect of including information not required by paragraph (1) of this section.

WV Legislature

§46-9-615. Application of proceeds of disposition; liability for deficiency and right to surplus.

(a) Application of proceeds. A secured party shall apply or pay over for application the cash proceeds of disposition under section 9-610 in the following order to:

(1) The reasonable expenses of retaking, holding, preparing for disposition, processing and disposing, and, to the extent provided for by agreement and not prohibited by law, reasonable attorney's fees and legal expenses incurred by the secured party;

(2) The satisfaction of obligations secured by the security interest or agricultural lien under which the disposition is made;

(3) The satisfaction of obligations secured by any subordinate security interest in or other subordinate lien on the collateral if:

(A) The secured party receives from the holder of the subordinate security interest or other lien an authenticated demand for proceeds before distribution of the proceeds is completed; and

(B) In a case in which a consignor has an interest in the collateral, the subordinate security interest or other lien is senior to the interest of the consignor; and

(4) A secured party that is a consignor of the collateral if the secured party receives from the consignor an authenticated demand for proceeds before distribution of the proceeds is completed.

(b) Proof of subordinate interest. If requested by a secured party, a holder of a subordinate security interest or other lien shall furnish reasonable proof of the interest or lien within a reasonable time. Unless the holder does so, the secured party need not comply with the holder's demand under subsection (a)(3).

(c) Application of noncash proceeds. A secured party need not apply or pay over for application noncash proceeds of disposition under section 9-610 unless the failure to do so would be commercially unreasonable. A secured party that applies or pays over for application noncash proceeds shall do so in a commercially reasonable manner.

(d) Surplus or deficiency if obligation secured. If the security interest under which a disposition is made secures payment or performance of an obligation, after making the payments and applications required by subsection (a) of this section and permitted by subsection (c) of this section:

(1) Unless subsection (a)(4) of this section requires the secured party to apply or pay over cash proceeds to a consignor, the secured party shall account to and pay a debtor for any surplus; and

WV Legislature

(2) The obligor is liable for any deficiency.

(e) No surplus or deficiency in sales of certain rights to payment. If the underlying transaction is a sale of accounts, chattel paper, payment intangibles or promissory notes:

(1) The debtor is not entitled to any surplus; and

(2) The obligor is not liable for any deficiency.

(f) Calculation of surplus or deficiency in disposition to person related to secured party. The surplus or deficiency following a disposition is calculated based on the amount of proceeds that would have been realized in a disposition complying with this part to a transferee other than the secured party, a person related to the secured party, or a secondary obligor if:

(1) The transferee in the disposition is the secured party, a person related to the secured party, or a secondary obligor; and

(2) The amount of proceeds of the disposition is significantly below the range of proceeds that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(g) Cash proceeds received by junior secured party. A secured party that receives cash proceeds of a disposition in good faith and without knowledge that the receipt violates the rights of the holder of a security interest or other lien that is not subordinate to the security interest or agricultural lien under which the disposition is made:

(1) Takes the cash proceeds free of the security interest or other lien;

(2) Is not obligated to apply the proceeds of the disposition to the satisfaction of obligations secured by the security interest or other lien; and

(3) Is not obligated to account to or pay the holder of the security interest or other lien for any surplus.

WV Legislature

§46-9-616. Explanation of calculation of surplus or deficiency.

(a) Definitions. In this section:

(1) "Explanation" means a writing that:

(A) States the amount of the surplus or deficiency;

(B) Provides an explanation in accordance with subsection (c) of this section of how the secured party calculated the surplus or deficiency;

(C) States, if applicable, that future debits, credits, charges, including additional credit service charges or interest, rebates, and expenses may affect the amount of the surplus or deficiency; and

(D) Provides a telephone number or mailing address from which additional information concerning the transaction is available.

(2) "Request" means a record:

(A) Authenticated by a debtor or consumer obligor;

(B) Requesting that the recipient provide an explanation; and

(C) Sent after disposition of the collateral under section 9-610.

(b) Explanation of calculation. In a consumer-goods transaction in which the debtor is entitled to a surplus or a consumer obligor is liable for a deficiency under section 9-615, the secured party shall:

(1) Send an explanation to the debtor or consumer obligor, as applicable, after the disposition and:

(A) Before or when the secured party accounts to the debtor and pays any surplus or first makes written demand on the consumer obligor after the disposition for payment of the deficiency; and

(B) Within fourteen days after receipt of a request; or

(2) In the case of a consumer obligor who is liable for a deficiency, within fourteen days after receipt of a request, send to the consumer obligor a record waiving the secured party's right to a deficiency.

(c) Required information. To comply with subsection (a)(1)(B) of this section, a writing must provide the following information in the following order:

(1) The aggregate amount of obligations secured by the security interest under which the

WV Legislature

disposition was made, and, if the amount reflects a rebate of unearned interest or credit service charge, an indication of that fact, calculated as of a specified date:

(A) If the secured party takes or receives possession of the collateral after default, not more than thirty-five days before the secured party takes or receives possession; or

(B) If the secured party takes or receives possession of the collateral before default or does not take possession of the collateral, not more than thirty-five days before the disposition;

(2) The amount of proceeds of the disposition;

(3) The aggregate amount of the obligations after deducting the amount of proceeds;

(4) The amount, in the aggregate or by type, and types of expenses, including expenses of retaking, holding, preparing for disposition, processing, and disposing of the collateral, and attorney's fees secured by the collateral which are known to the secured party and relate to the current disposition;

(5) The amount, in the aggregate or by type, and types of credits, including rebates of interest or credit service charges, to which the obligor is known to be entitled and which are not reflected in the amount in paragraph (1) of this subsection; and

(6) The amount of the surplus or deficiency.

(d) Substantial compliance. A particular phrasing of the explanation is not required. An explanation complying substantially with the requirements of subsection (a) of this section is sufficient, even if it includes minor errors that are not seriously misleading.

(e) Charges for responses. A debtor or consumer obligor is entitled without charge to one response to a request under this section during any six-month period in which the secured party did not send to the debtor or consumer obligor an explanation pursuant to subdivision (1), subsection (b) of this section. The secured party may require payment of a charge not exceeding $25 for each additional response.

WV Legislature

§46-9-617. Rights of transferee of collateral.

(a) Effects of disposition. A secured party's disposition of collateral after default:

(1) Transfers to a transferee for value all of the debtor's rights in the collateral;

(2) Discharges the security interest under which the disposition is made; and

(3) Discharges any subordinate security interest or other subordinate lien.

(b) Rights of good-faith transferee. A transferee that acts in good faith takes free of the rights and interests described in subsection (a) of this section, even if the secured party fails to comply with this article or the requirements of any judicial proceeding.

(c) Rights of other transferee. If a transferee does not take free of the rights and interests described in subsection (a) of this section, the transferee takes the collateral subject to:

(1) The debtor's rights in the collateral;

(2) The security interest or agricultural lien under which the disposition is made; and

(3) Any other security interest or other lien.

WV Legislature

§46-9-618. Rights and duties of certain secondary obligors.

(a) Rights and duties of secondary obligor. A secondary obligor acquires the rights and becomes obligated to perform the duties of the secured party after the secondary obligor:

(1) Receives an assignment of a secured obligation from the secured party;

(2) Receives a transfer of collateral from the secured party and agrees to accept the rights and assume the duties of the secured party; or

(3) Is subrogated to the rights of a secured party with respect to collateral.

(b) Effect of assignment, transfer or subrogation. An assignment, transfer or subrogation described in subsection (a) of this section:

(1) Is not a disposition of collateral under section 9-610; and

(2) Relieves the secured party of further duties under this article.

WV Legislature

§46-9-619. Transfer of record or legal title.

(a) "Transfer statement." In this section, "transfer statement" means a record authenticated by a secured party stating:

(1) That the debtor has defaulted in connection with an obligation secured by specified collateral;

(2) That the secured party has exercised its post-default remedies with respect to the collateral;

(3) That, by reason of the exercise, a transferee has acquired the rights of the debtor in the collateral; and

(4) The name and mailing address of the secured party, debtor and transferee.

(b) Effect of transfer statement. A transfer statement entitles the transferee to the transfer of record of all rights of the debtor in the collateral specified in the statement in any official filing, recording, registration or certificate-of-title system covering the collateral. If a transfer statement is presented with the applicable fee and request form to the official or office responsible for maintaining the system, the official or office shall:

(1) Accept the transfer statement;

(2) Promptly amend its records to reflect the transfer; and

(3) If applicable, issue a new appropriate certificate of title in the name of the transferee.

(c) Transfer not a disposition; no relief of secured party's duties. A transfer of the record or legal title to collateral to a secured party under subsection (b) of this section or otherwise is not of itself a disposition of collateral under this article and does not of itself relieve the secured party of its duties under this article.

WV Legislature

§46-9-620. Acceptance of collateral in full or partial satisfaction of obligation; compulsory disposition of collateral.

(a) Conditions to acceptance in satisfaction. Except as otherwise provided in subsection (g) of this section, a secured party may accept collateral in full or partial satisfaction of the obligation it secures only if:

(1) The debtor consents to the acceptance under subsection (c) of this section;

(2) The secured party does not receive, within the time set forth in subsection (d) of this section, a notification of objection to the proposal authenticated by:

(A) A person to which the secured party was required to send a proposal under section 9-621; or

(B) Any other person, other than the debtor, holding an interest in the collateral subordinate to the security interest that is the subject of the proposal;

(3) If the collateral is consumer goods, the collateral is not in the possession of the debtor when the debtor consents to the acceptance; and

(4) Subsection (e) of this section does not require the secured party to dispose of the collateral or the debtor waives the requirement pursuant to section 9-624.

(b) Purported acceptance ineffective. A purported or apparent acceptance of collateral under this section is ineffective unless:

(1) The secured party consents to the acceptance in an authenticated record or sends a proposal to the debtor; and

(2) The conditions of subsection (a) of this section are met.

(c) Debtor's consent. For purposes of this section:

(1) A debtor consents to an acceptance of collateral in partial satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default; and

(2) A debtor consents to an acceptance of collateral in full satisfaction of the obligation it secures only if the debtor agrees to the terms of the acceptance in a record authenticated after default or the secured party:

(A) Sends to the debtor after default a proposal that is unconditional or subject only to a condition that collateral not in the possession of the secured party be preserved or maintained;

WV Legislature

(B) In the proposal, proposes to accept collateral in full satisfaction of the obligation it secures; and

(C) Does not receive a notification of objection authenticated by the debtor within twenty days after the proposal is sent.

(d) Effectiveness of notification. To be effective under subsection (a)(2) of this section, a notification of objection must be received by the secured party:

(1) In the case of a person to which the proposal was sent pursuant to section 9-621, within twenty days after notification was sent to that person; and

(2) In other cases:

(A) Within twenty days after the last notification was sent pursuant to section 9-621; or

(B) If a notification was not sent, before the debtor consents to the acceptance under subsection (c) of this section.

(e) Mandatory disposition of consumer goods. A secured party that has taken possession of collateral shall dispose of the collateral pursuant to section 9-610 within the time specified in subsection (f) of this section if:

(1) Sixty percent of the cash price has been paid in the case of a purchase-money security interest in consumer goods; or

(2) Sixty percent of the principal amount of the obligation secured has been paid in the case of a nonpurchase-money security interest in consumer goods.

(f) Compliance with mandatory disposition requirement. To comply with subsection (e) of this section, the secured party shall dispose of the collateral:

(1) Within ninety days after taking possession; or

(2) Within any longer period to which the debtor and all secondary obligors have agreed in an agreement to that effect entered into and authenticated after default.

(g) No partial satisfaction in consumer transaction. In a consumer transaction, a secured party may not accept collateral in partial satisfaction of the obligation it secures.

WV Legislature

§46-9-621. Notification of proposal to accept collateral.

(a) Persons to which proposal to be sent. A secured party that desires to accept collateral in full or partial satisfaction of the obligation it secures shall send its proposal to:

(1) Any person from which the secured party has received, before the debtor consented to the acceptance, an authenticated notification of a claim of an interest in the collateral;

(2) Any other secured party or lienholder that, ten days before the debtor consented to the acceptance, held a security interest in or other lien on the collateral perfected by the filing of a financing statement that:

(A) Identified the collateral;

(B) Was indexed under the debtor's name as of that date; and

(C) Was filed in the office or offices in which to file a financing statement against the debtor covering the collateral as of that date; and

(3) Any other secured party that, ten days before the debtor consented to the acceptance, held a security interest in the collateral perfected by compliance with a statute, regulation or treaty described in section 9-311(a).

(b) Proposal to be sent to secondary obligor in partial satisfaction. A secured party that desires to accept collateral in partial satisfaction of the obligation it secures shall send its proposal to any secondary obligor in addition to the persons described in subsection (a) of this section.

WV Legislature

§46-9-622. Effect of acceptance of collateral.

(a) Effect of acceptance. A secured party's acceptance of collateral in full or partial satisfaction of the obligation it secures:

(1) Discharges the obligation to the extent consented to by the debtor;

(2) Transfers to the secured party all of a debtor's rights in the collateral;

(3) Discharges the security interest or agricultural lien that is the subject of the debtor's consent and any subordinate security interest or other subordinate lien; and

(4) Terminates any other subordinate interest.

(b) Discharge of subordinate interest notwithstanding noncompliance. A subordinate interest is discharged or terminated under subsection (a) of this section, even if the secured party fails to comply with this article.

WV Legislature

§46-9-623. Right to redeem collateral.

(a) Persons that may redeem. A debtor, any secondary obligor, or any other secured party or lienholder may redeem collateral.

(b) Requirements for redemption. To redeem collateral, a person shall tender:

(1) Fulfillment of all obligations secured by the collateral; and

(2) The reasonable expenses and attorney's fees described in section 9-615(a)(1).

(c) When redemption may occur. A redemption may occur at any time before a secured party:

(1) Has collected collateral under section 9-607;

(2) Has disposed of collateral or entered into a contract for its disposition under section 9-610; or

(3) Has accepted collateral in full or partial satisfaction of the obligation it secures under section 9-622.

WV Legislature

§46-9-624. Waiver.

(a) Waiver of disposition notification. A debtor or secondary obligor may waive the right to notification of disposition of collateral under section 9-611 only by an agreement to that effect entered into and authenticated after default.

(b) Waiver of mandatory disposition. A debtor may waive the right to require disposition of collateral under section 9-620(e) only by an agreement to that effect entered into and authenticated after default.

(c) Waiver of redemption right. Except in a consumer-goods transaction, a debtor or secondary obligor may waive the right to redeem collateral under section 9-623 only by an agreement to that effect entered into and authenticated after default.

WV Legislature

SUBPART 2. NONCOMPLIANCE WITH ARTICLE.

§46-9-625. Remedies for secured party's failure to comply with article.

(a) Judicial orders concerning noncompliance. -- If it is established that a secured party is not proceeding in accordance with this article, a court may order or restrain collection, enforcement, or disposition of collateral on appropriate terms and conditions.

(b) Damages for noncompliance. -- Subject to subsections (c), (d) and (f) of this section, a person is liable for damages in the amount of any loss caused by a failure to comply with this article. Loss caused by a failure to comply may include loss resulting from the debtor's inability to obtain, or increased costs of, alternative financing.

(c) Persons entitled to recover damages; statutory damages if collateral is consumer goods. -- Except as otherwise provided in section 9-628:

(1) A person that, at the time of the failure, was a debtor, was an obligor, or held a security interest in or other lien on the collateral may recover damages under subsection (b) of this section for its loss; and

(2) If the collateral is consumer goods, a person that was a debtor or a secondary obligor at the time a secured party failed to comply with this part may recover for that failure in any event an amount not less than the credit service charge plus ten percent of the principal amount of the obligation or the time-price differential plus ten percent of the cash price.

(d) Recovery when deficiency eliminated or reduced. -- A debtor whose deficiency is eliminated under section 9-626 may recover damages for the loss of any surplus. However, a debtor or secondary obligor whose deficiency is eliminated or reduced under section 9-626 may not otherwise recover under subsection (b) of this section for noncompliance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(e) Statutory damages: noncompliance with specified provisions. -- In addition to any damages recoverable under subsection (b) of this section, the debtor, consumer obligor or person named as a debtor in a filed record, as applicable, may recover $500 in each case from a person that:

(1) Fails to comply with section 9-208;

(2) Fails to comply with section 9-209;

(3) Files a record that the person is not entitled to file under section 9-509(a);

(4) Fails to cause the secured party of record to file or send a termination statement as required by section 9-513(a) or (c);

(5) Fails to comply with section 9-616(b)(1) and whose failure is part of a pattern, or

WV Legislature

consistent with a practice, of noncompliance; or

(6) Fails to comply with section 9-616(b)(2).

(f) Statutory damages: noncompliance with section 9-210. -- A debtor or consumer obligor may recover damages under subsection (b) of this section and, in addition, $500 in each case from a person that, without reasonable cause, fails to comply with a request under section 9-210. A recipient of a request under section 9-210 which never claimed an interest in the collateral or obligations that are the subject of a request under that section has a reasonable excuse for failure to comply with the request within the meaning of this subsection.

(g) Limitation of security interest: noncompliance with section 9-210. -- If a secured party fails to comply with a request regarding a list of collateral or a statement of account under section 9-210, the secured party may claim a security interest only as shown in the list or statement included in the request as against a person that is reasonably misled by the failure.

WV Legislature

§46-9-626. Action in which deficiency or surplus is in issue.

(a) Applicable rules if amount of deficiency or surplus in issue. In an action arising from a transaction, other than a consumer transaction, in which the amount of a deficiency or surplus is in issue, the following rules apply:

(1) A secured party need not prove compliance with the provisions of this part relating to collection, enforcement, disposition or acceptance unless the debtor or a secondary obligor places the secured party's compliance in issue.

(2) If the secured party's compliance is placed in issue, the secured party has the burden of establishing that the collection, enforcement, disposition or acceptance was conducted in accordance with this part.

(3) Except as otherwise provided in section 9-628, if a secured party fails to prove that the collection, enforcement, disposition, or acceptance was conducted in accordance with the provisions of this part relating to collection, enforcement, disposition, or acceptance, the liability of a debtor or a secondary obligor for a deficiency is limited to an amount by which the sum of the secured obligation, expenses, and attorney's fees exceeds the greater of:

(A) The proceeds of the collection, enforcement, disposition or acceptance; or

(B) The amount of proceeds that would have been realized had the noncomplying secured party proceeded in accordance with the provisions of this part relating to collection, enforcement, disposition or acceptance.

(4) For purposes of paragraph (3)(B) of this subsection, the amount of proceeds that would have been realized is equal to the sum of the secured obligation, expenses and attorney's fees unless the secured party proves that the amount is less than that sum.

(5) If a deficiency or surplus is calculated under section 9-615(f), the debtor or obligor has the burden of establishing that the amount of proceeds of the disposition is significantly below the range of prices that a complying disposition to a person other than the secured party, a person related to the secured party, or a secondary obligor would have brought.

(b) Non-consumer transactions; no inference. The limitation of the rules in subsection (a) of this section to transactions other than consumer transactions is intended to leave to the court the determination of the proper rules in consumer transactions. The court may not infer from that limitation the nature of the proper rule in consumer transactions and may continue to apply established approaches.

WV Legislature

§46-9-627. Determination of whether conduct was commercially reasonable.

(a) Greater amount obtainable under other circumstances; no preclusion of commercial reasonableness. The fact that a greater amount could have been obtained by a collection, enforcement, disposition or acceptance at a different time or in a different method from that selected by the secured party is not of itself sufficient to preclude the secured party from establishing that the collection, enforcement, disposition or acceptance was made in a commercially reasonable manner.

(b) Dispositions that are commercially reasonable. A disposition of collateral is made in a commercially reasonable manner if the disposition is made:

(1) In the usual manner on any recognized market;

(2) At the price current in any recognized market at the time of the disposition; or

(3) Otherwise in conformity with reasonable commercial practices among dealers in the type of property that was the subject of the disposition.

(c) Approval by court or on behalf of creditors. A collection, enforcement, disposition, or acceptance is commercially reasonable if it has been approved:

(1) In a judicial proceeding;

(2) By a bona fide creditors' committee;

(3) By a representative of creditors; or

(4) By an assignee for the benefit of creditors.

(d) Approval under subsection (c) not necessary; absence of approval has no effect. Approval under subsection (c) of this section need not be obtained and lack of approval does not mean that the collection, enforcement, disposition or acceptance is not commercially reasonable.

WV Legislature

§46-9-628. Nonliability and limitation on liability of secured party; liability of secondary obligor.

(a) Limitation of liability of secured party for noncompliance with article. Unless a secured party knows that a person is a debtor or obligor, knows the identity of the person and knows how to communicate with the person:

(1) The secured party is not liable to the person, or to a secured party or lienholder that has filed a financing statement against the person, for failure to comply with this article; and

(2) The secured party's failure to comply with this article does not affect the liability of the person for a deficiency.

(b) Limitation of liability based on status as secured party. A secured party is not liable because of its status as secured party:

(1) To a person that is a debtor or obligor, unless the secured party knows:

(A) That the person is a debtor or obligor;

(B) The identity of the person; and

(C) How to communicate with the person; or

(2) To a secured party or lienholder that has filed a financing statement against a person, unless the secured party knows:

(A) That the person is a debtor; and

(B) The identity of the person.

(c) Limitation of liability if reasonable belief that transaction not a consumer-goods transaction or consumer transaction. A secured party is not liable to any person, and a person's liability for a deficiency is not affected, because of any act or omission arising out of the secured party's reasonable belief that a transaction is not a consumer-goods transaction or a consumer transaction or that goods are not consumer goods, if the secured party's belief is based on its reasonable reliance on:

(1) A debtor's representation concerning the purpose for which collateral was to be used, acquired or held; or

(2) An obligor's representation concerning the purpose for which a secured obligation was incurred.

(d) Limitation of liability for statutory damages. A secured party is not liable to any person under section 9-625(c)(2) for its failure to comply with section 9-616.

WV Legislature

(e) Limitation of multiple liability for statutory damages. A secured party is not liable under section 9-625(c)(2) more than once with respect to any one secured obligation.

WV Legislature

Part 7. Transition.

§46-9-701. Effective date.

This article takes effect on July 1, 2001.

WV Legislature

§46-9-702. Savings clause.

(a) Pre-effective-date transactions or liens. Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before this article takes effect.

(b) Continuing validity. Except as otherwise provided in subsection (c) of this section and sections 9-703 through 9-709:

(1) Transactions and liens that were not governed by former article nine, were validly entered into or created before this article takes effect and would be subject to this article if they had been entered into or created after this article takes effect, and the rights, duties and interests flowing from those transactions and liens remain valid after this article takes effect; and

(2) The transactions and liens may be terminated, completed, consummated and enforced as required or permitted by this article or by the law that otherwise would apply if this article had not taken effect.

(c) Pre-effective-date proceedings. This article does not affect an action, case or proceeding commenced before this article takes effect.

WV Legislature

§46-9-703. Security interest perfected before effective date.

(a) Continuing priority over lien creditor: perfection requirements satisfied. A security interest that is enforceable immediately before this article takes effect and would have priority over the rights of a person that becomes a lien creditor at that time is a perfected security interest under this article if, when this article takes effect, the applicable requirements for enforceability and perfection under this article are satisfied without further action.

(b) Continuing priority over lien creditor: perfection requirements not satisfied. Except as otherwise provided in section 9-705, if, immediately before this article takes effect, a security interest is enforceable and would have priority over the rights of a person that becomes a lien creditor at that time, but the applicable requirements for enforceability or perfection under this article are not satisfied when this article takes effect, the security interest:

(1) Is a perfected security interest for two years after this article takes effect;

(2) Remains enforceable thereafter only if the security interest becomes enforceable under section 9-203 before the second year expires; and

(3) Remains perfected thereafter only if the applicable requirements for perfection under this article are satisfied before the second year expires.

WV Legislature

§46-9-704. Security interest unperfected before effective date.

A security interest that is enforceable immediately before this article takes effect but which would be subordinate to the rights of a person that becomes a lien creditor at that time:

(1) Remains an enforceable security interest for two years after this article takes effect;

(2) Remains enforceable thereafter if the security interest becomes enforceable under section 9-203 when this article takes effect or within two years thereafter; and

(3) Becomes perfected:

(A) Without further action, when this article takes effect if the applicable requirements for perfection under this article are satisfied before or at that time; or

(B) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

WV Legislature

Part 7. Transition.

§46-9-705. Effectiveness of action taken before effective date.

(a) Pre-effective-date action; two-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this article takes effect, the action is effective to perfect a security interest that attaches under this article within two years after this article takes effect. An attached security interest becomes unperfected two years after this article takes effect unless the security interest becomes a perfected security interest under this article before the expiration of that period.

(b) Pre-effective-date filing. The filing of a financing statement before this article takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) Pre-effective-date filing in jurisdiction formerly governing perfection. This article does not render ineffective an effective financing statement that, before this article takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 9-103. However, except as otherwise provided in subsections (d) and (e) of this section and section 9-706, the financing statement ceases to be effective at the earlier of:

(1) The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or

(2) June 30, 2006.

(d) Continuation statement. The filing of a continuation statement after this article takes effect does not continue the effectiveness of the financing statement filed before this article takes effect. However, upon the timely filing of a continuation statement after this article takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this article takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c)(2) to transmitting utility financing statement. Subsection (c)(2) of this section applies to a financing statement that, before this article takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 9-103 only to the extent that part 3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

WV Legislature

(f) Application of part 5. A financing statement that includes a financing statement filed before this article takes effect and a continuation statement filed after this article takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.

WV Legislature

§46-9-706. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement. The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before this article takes effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article;

(2) The preeffective-date financing statement was filed in an office in another state or another office in this state; and

(3) The initial financing statement satisfies subsection (c) of this section.

(b) Period of continued effectiveness. The filing of an initial financing statement under subsection (a) of this section continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before this article takes effect, for the period provided in former section 9-403 with respect to a financing statement; and

(2) If the initial financing statement is filed after this article takes effect, for the period provided in section 9-515 with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). To be effective for purposes of subsection (a) of this section, an initial financing statement must:

(1) Satisfy the requirements of part 5 for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective.

WV Legislature

§46-9-707. Amendment of preeffective-date financing statement.

(a) "Preeffective-date financing statement." In this section, "preeffective-date financing statement" means a financing statement filed before this article takes effect.

(b) Applicable law. After this article takes effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in part 3. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. Except as otherwise provided in subsection (d) of this section, if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after this article takes effect only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) An amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-706(c); or

(3) An initial financing statement that provides the information as amended and satisfies section 9-706(c) is filed in the office specified in section 9-501.

(d) Method of amending: continuation. If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under section 9-705(d) and (f) or 9-706.

(e) Method of amending: additional termination rule. Whether or not the law of this state governs perfection of a security interest, effectiveness of a preeffective-date financing statement filed in this state may be terminated after this article takes effect by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies section 9-706(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in part 3 as the office in which to file a financing statement.

WV Legislature

§46-9-708. Persons entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before this article takes effect; or

(B) To perfect or continue the perfection of a security interest.

WV Legislature

§46-9-709. Priority.

(a) Law governing priority. This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before this article takes effect, former article nine determines priority.

(b) Priority if security interest becomes enforceable under section 9-203. For purposes of section 9-322(a), the priority of a security interest that becomes enforceable under section 9-203 of this article dates from the time this article takes effect if the security interest is perfected under this article by the filing of a financing statement before this article takes effect which would not have been effective to perfect the security interest under former article nine. This subsection does not apply to conflicting security interests each of which is perfected by the filing of such a financing statement.

WV Legislature

Part 8. Transition Provisions For 2012 Amendments

§46-9-801. Effective date.

The amendments to this article enacted by the Legislature during the 2012 Regular Legislative Session take effect on July 1, 2013.

WV Legislature

§46-9-802. Savings clause.

(a) Preeffective-date transactions or liens. -- Except as otherwise provided in this part, this article applies to a transaction or lien within its scope, even if the transaction or lien was entered into or created before the amendments to this article during the 2012 Regular Legislative Session take effect as provided in section 9-801.

(b) Preeffective-date proceedings. -- This article does not affect an action, case, or proceeding commenced before the amendments to this article during the 2012 Regular Legislative Session take effect as provided in section 9-801.

WV Legislature

§46-9-803. Security interest perfected before effective date.

(a) Continuing perfection: perfection requirements satisfied. -- A security interest that is a perfected security interest immediately before the amendments to this article take effect is a perfected security interest under this article if, when this article takes effect, the applicable requirements for attachment and perfection under this article as amended by the Legislature during the 2012 Regular Legislative Session are satisfied without further action.

(b) Continuing perfection: perfection requirements not satisfied. -- Except as otherwise provided in section 9-805, if, immediately before amendments to this article take effect, a security interest is a perfected security interest, but the applicable requirements for perfection under this article as amended by the Legislature during the 2012 Regular Legislative Session are not satisfied when the amendments to this article take effect, the security interest remains perfected thereafter only if the applicable requirements for perfection under this article as amended by the Legislature during the 2012 Regular Legislative Session are satisfied within one year after the amendments take effect.

WV Legislature

§46-9-804. Security interest unperfected before effective date.

A security interest that is an unperfected security interest immediately before the amendments to this article during the 2012 Regular Legislative Session take effect becomes a perfected security interest:

(1) Without further action, when the amendments to this article during the 2012 Regular Legislative Session take effect if the applicable requirements for perfection under this article as amended during the 2012 Regular Legislative Session are satisfied before or at that time; or

(2) When the applicable requirements for perfection are satisfied if the requirements are satisfied after that time.

WV Legislature

§46-9-805. Effectiveness of action taken before effective date.

(a) Preeffective-date filing effective. -- The filing of a financing statement before the amendments to this article during the 2012 Regular Legislative Session take effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article as amended during the 2012 Regular Legislative Session.

(b) When preeffective-date filing becomes ineffective. -- This article does not render ineffective an effective financing statement that, before the amendments to this article during the 2011 Regular Legislative Session take effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before its amendment during the 2012 Regular Legislative Session. However, except as otherwise provided in subsections (c) and (d) and Section 9-806, the financing statement ceases to be effective:

(1) If the financing statement is filed in this state, at the time the financing statement would have ceased to be effective had the amendments to this article during the 2012 Regular Legislative Session not taken effect; or

(2) If the financing statement is filed in another jurisdiction, at the earlier of:

(A) The time the financing statement would have ceased to be effective under the law of that jurisdiction; or

(B) June 30, 2018.

(c) Continuation statement. -- The filing of a continuation statement after the amendments to this article during the 2012 Regular Legislative Session take effect does not continue the effectiveness of a financing statement filed before those amendments to the article take effect. However, upon the timely filing of a continuation statement after the amendments to this article during the 2012 Regular Legislative session take effect and in accordance with the law of the jurisdiction governing perfection as provided in this article as amended during the 2012 Regular Legislative Session, the effectiveness of a financing statement filed in the same office in that jurisdiction before the amendments to this article during the 2012 Regular Legislative Session takes effect continues for the period provided by the law of that jurisdiction.

(d) Application of subsection (b)(2)(B) to transmitting utility financing statement. -- Subsection (b)(2)(B) applies to a financing statement that, before the amendments to this article during the 2012 Regular Legislative Session take effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in this article as it existed before amendment, only to the extent that this article as amended by during the 2012 Regular Legislative Session provides that the law of a jurisdiction other than the jurisdiction in which the

WV Legislature

financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(e) Application of Part 5. -- A financing statement that includes a financing statement filed before the amendments to this article during the 2012 Regular Session take effect and a continuation statement filed after the amendments to this article during the 2012 Regular Legislative Session take effect is effective only to the extent that it satisfies the requirements of Part 5 as amended during the 2012 Regular Legislative Session for an initial financing statement. A financing statement that indicates that the debtor is a decedent's estate indicates that the collateral is being administered by a personal representative within the meaning of section 9-503(a)(2) as amended during the 2012 Regular Legislative Session . A financing statement that indicates that the debtor is a trust or is a trustee acting with respect to property held in trust indicates that the collateral is held in a trust within the meaning of section 9-503(a)(3) as amended during the 2012 Regular Legislative Session.

WV Legislature

§46-9-806. When initial financing statement suffices to continue effectiveness of financing statement.

(a) Initial financing statement in lieu of continuation statement. -- The filing of an initial financing statement in the office specified in section 9-501 continues the effectiveness of a financing statement filed before the amendments to this article during the 2012 Regular Legislative Session take effect if:

(1) The filing of an initial financing statement in that office would be effective to perfect a security interest under this article as amended during the 2012 Regular Legislative Session;

(2) The preeffective-date financing statement was filed in an office in another state; and

(3) The initial financing statement satisfies subsection (c).

(b) Period of continued effectiveness. -- The filing of an initial financing statement under subsection (a) continues the effectiveness of the preeffective-date financing statement:

(1) If the initial financing statement is filed before the amendments to this article during the 2012 Regular Legislative Session take effect, for the period provided in section 9-515 as it existed prior to the 2012 amendments, with respect to an initial financing statement; and

(2) If the initial financing statement is filed after the amendments to this article during the 2012 Regular Legislative Session take effect, for the period provided in section 9-515 as amended by the Legislature during the 2012 Regular Legislative Session, with respect to an initial financing statement.

(c) Requirements for initial financing statement under subsection (a). -- To be effective for purposes of subsection (a), an initial financing statement must:

(1) Satisfy the requirements of Part 5 as amended by the Legislature during the 2012 Regular Legislative Session for an initial financing statement;

(2) Identify the preeffective-date financing statement by indicating the office in which the financing statement was filed and providing the dates of filing and file numbers, if any, of the financing statement and of the most recent continuation statement filed with respect to the financing statement; and

(3) Indicate that the preeffective-date financing statement remains effective.

WV Legislature

§46-9-807. Amendment of preeffective-date financing statement.

(a) "Preeffective-date financing statement". -- In this section, "preeffective-date financing statement" means a financing statement filed before the amendments to this article during the 2012 Regular Legislative Session take effect.

(b) Applicable law. -- After the amendments to this article during the 2012 Regular Legislative Session take effect, a person may add or delete collateral covered by, continue or terminate the effectiveness of, or otherwise amend the information provided in, a preeffective-date financing statement only in accordance with the law of the jurisdiction governing perfection as provided in this article as amended during the 2012 Regular Legislative Session. However, the effectiveness of a preeffective-date financing statement also may be terminated in accordance with the law of the jurisdiction in which the financing statement is filed.

(c) Method of amending: general rule. -- Except as otherwise provided in subsection (d), if the law of this state governs perfection of a security interest, the information in a preeffective-date financing statement may be amended after the amendments to this article during the 2012 Regular Legislative Session take effect only if:

(1) The preeffective-date financing statement and an amendment are filed in the office specified in section 9-501;

(2) An amendment is filed in the office specified in section 9-501 concurrently with, or after the filing in that office of, an initial financing statement that satisfies section 9-806(c); or

(3) An initial financing statement that provides the information as amended and satisfies section 9-806(c) is filed in the office specified in section 9-501.

(d) Method of amending: continuation. -- If the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement may be continued only under section 9-805(c) and (e) or 9-806.

(e) Method of amending: additional termination rule. -- Whether or not the law of this state governs perfection of a security interest, the effectiveness of a preeffective-date financing statement filed in this state may be terminated after the amendments to this article during the 2012 Regular Legislative Session take effect by filing a termination statement in the office in which the preeffective-date financing statement is filed, unless an initial financing statement that satisfies section 9-806(c) has been filed in the office specified by the law of the jurisdiction governing perfection as provided in this article as amended during the 2012 Regular Legislative Session as the office in which to file a financing statement.

WV Legislature

§46-9-808. Person entitled to file initial financing statement or continuation statement.

A person may file an initial financing statement or a continuation statement under this part if:

(1) The secured party of record authorizes the filing; and

(2) The filing is necessary under this part:

(A) To continue the effectiveness of a financing statement filed before the amendments to this article during the 2012 Regular Legislative Session take effect; or

(B) To perfect or continue the perfection of a security interest.

WV Legislature

§46-9-809. Priority.

This article determines the priority of conflicting claims to collateral. However, if the relative priorities of the claims were established before the amendments to this article during the 2012 Regular Legislative Session take effect, this article, as it existed before the 2012 amendments determines priority.

WV Legislature