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WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1984



ENROLLED

SENATE BILL NO. 164

(By Mr. HARMON & MR. CHAFIN)



PASSED March 10 1984

In Effect Ninety days from Passage



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**Senate Bill No. 164**

(BY MR. HARMAN AND MR. CHAFIN)

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[Passed March 10, 1984; in effect ninety days from passage.]

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AN ACT to amend and reenact sections three hundred one and three hundred twelve, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating generally to priority of certain security interests; the period for filing purchase money security interests to preserve priority over the rights of transferees in bulk or lien creditors; and the period for filing purchase money security interests in collateral other than inventory to preserve priority over other security interests in the same collateral.

*Be it enacted by the Legislature of West Virginia:*

That sections three hundred one and three hundred twelve, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPER.**

**PART 3. RIGHTS OF THIRD PARTIES; PERFECTED AND UNPERFECTED SECURITY INTERESTS; RULES OF PRIORITY.**

**§46-9-301. Persons who take priority over unperfected security interests; right of "lien creditor."**

- 1     (1) Except as otherwise provided in subsection (2), an  
2 unperfected security interest is subordinate to the rights  
3 of  
4     (a) Persons entitled to priority under section 9-312;  
5     (b) A person who becomes a lien creditor before the  
6 security interest is perfected;

7 (c) In the case of goods, instruments, documents, and  
8 chattel paper, a person who is not a secured party and  
9 who is a transferee in bulk or other buyer not in ordinary  
10 course of business; or is a buyer of farm products in  
11 ordinary course of business, to the extent that he gives  
12 value and receives delivery of the collateral without  
13 knowledge of the security interest and before it is per-  
14 fected; and

15 (d) In the case of accounts and general intangibles, a  
16 person who is not a secured party and who is a transferee  
17 to the extent that he gives value without knowledge of  
18 the security interest and before it is perfected.

19 (2) If the secured party files with respect to a purchase  
20 money security interest before or within twenty days  
21 after the debtor receives possession of the collateral,  
22 he takes priority over the rights of a transferee in bulk or  
23 of a lien creditor which arise between the time the se-  
24 curity interest attaches and the time of filing.

25 (3) A "lien creditor" means a creditor who has acquired  
26 a lien on the property involved by attachment, levy or the  
27 like and includes an assignee for benefit of creditors from  
28 the time of assignment, and a trustee in bankruptcy from  
29 the date of the filing of the petition or a receiver in equity  
30 from the time of appointment.

31 (4) A person who becomes a lien creditor while a  
32 security interest is perfected takes subject to the security  
33 interest only to the extent that it secures advances made  
34 before he becomes a lien creditor or within forty-five days  
35 thereafter or made without knowledge of the lien or pur-  
36 suant to a commitment entered into without knowledge  
37 of the lien.

**§46-9-312. Priorities among conflicting security interests in the same collateral.**

1 (1) The rules of priority stated in other sections of this  
2 part and in the following sections shall govern when  
3 applicable: Section 4-208 with respect to the security in-  
4 terests of collecting banks in items being collected, accom-  
5 panying documents and proceeds; section 9-103 on secur-

6 ity interests related to other jurisdictions; section 9-114  
7 on consignments.

8 (2) A perfected security interest in crops for new  
9 value given to enable the debtor to produce the crops  
10 during the production season and given not more than  
11 three months before the crops become growing crops by  
12 planting or otherwise takes priority over an earlier per-  
13 fected security interest to the extent that such earlier  
14 interest secures obligations due more than six months  
15 before the crops become growing crops by planting or  
16 otherwise, even though the person giving new value had  
17 knowledge of the earlier security interest.

18 (3) A perfected purchase money security interest in  
19 inventory has priority over a conflicting security interest  
20 in the same inventory and also has priority in identifiable  
21 cash proceeds received on or before the delivery of the  
22 inventory to a buyer if:

23 (a) The purchase money security interest is perfected  
24 at the time the debtor receives possession of the inven-  
25 tory; and

26 (b) The purchase money secured party gives notifica-  
27 tion in writing to the holder of the conflicting security  
28 interest if the holder had filed a financing statement  
29 covering the same types of inventory (i) before the date  
30 of the filing made by the purchase money secured party,  
31 or (ii) before the beginning of the twenty-one day period  
32 where the purchase money security interest is temporar-  
33 ily perfected without filing or possession (subsection (5)  
34 of section 9-304);

35 (c) The holder of the conflicting security interest re-  
36 ceives the notification within five years before the debtor  
37 receives possession of the inventory; and

38 (d) The notification states that the person giving the  
39 notice has or expects to acquire a purchase money secur-  
40 ity interest in inventory of the debtor, describing such  
41 inventory by item or type.

42 (4) A purchase money security interest in collateral  
43 other than inventory has priority over a conflicting secur-  
44 ity interest in the same collateral or its proceeds if the  
45 purchase money security interest is perfected at the time

46 the debtor receives possession of the collateral or within  
47 twenty days thereafter.

48 (5) In all cases not governed by other rules stated in  
49 this section (including cases of purchase money security  
50 interest which do not qualify for the special priorities set  
51 forth in subsections (3) and (4) of this section), priority  
52 between conflicting security interests in the same collat-  
53 eral shall be determined according to the following rules:

54 (a) Conflicting security interests rank according to  
55 priority in time of filing or perfection. Priority dates  
56 from the time a filing is first made covering the collateral  
57 or the time the security interest is first perfected, which-  
58 ever is earlier, provided that there is no period thereafter  
59 when there is neither filing nor perfection.

60 (b) So long as conflicting security interests are unper-  
61 fected, the first to attach has priority.

62 (6) For the purposes of subsection (5) a date of filing  
63 or perfection as to collateral is also a date of filing or  
64 perfection as to proceeds.

65 (7) If future advances are made while a security in-  
66 terest is perfected by filing, the taking of possession, or  
67 under section 8-321 on securities, the security interest has  
68 the same priority for the purposes of subsection (5) with  
69 respect to the future advances as it does with respect to  
70 the first advance. If a commitment is made before or  
71 while the security interest is so perfected, the security  
72 interest has the same priority with respect to advances  
73 made pursuant thereto. In other cases a perfected security  
74 interest has priority from the date the advance is made.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

*James E. Holton*  
Chairman Senate Committee

*Donald Anello*  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Todd C. Hutto*  
Clerk of the Senate

*Donald L. Kopp*  
Clerk of the House of Delegates

*Walter McLean*  
President of the Senate

*John M. Seese, Jr.*  
Speaker House of Delegates

The within is approved this the 30 day of March, 1984.

*John R. Dyer*  
Governor



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