

No. 2892

**WEST VIRGINIA LEGISLATURE**

REGULAR SESSION, 1987



**ENROLLED**

Com. SUB. FOR

**HOUSE BILL No. 2892**

(By Delegate Southern)



Passed March 13, 1987

In Effect NINETY Days FROM Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2892**  
(By DELEGATE SOUTHERN)

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[Passed March 13, 1987; in effect ninety days from passage.]

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AN ACT to amend and reenact sections three hundred seven and four hundred seven, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the uniform commercial code; secured transactions; perfecting security interest in farm products; establishing a central filing system for perfecting security interests against farm product buyers; and procedures relating thereto.

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

That sections three hundred seven and four hundred seven, 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 PAPERS.**

**§46-9-307. Protection of buyers of goods; protection of buyers of farm products; contents of notice of security interest.**

- 1 (1) A buyer in ordinary course of business as defined
- 2 in subsection nine, section two hundred one, article one
- 3 of this chapter, other than a person buying farm

4 products from a person engaged in farming operations,  
5 takes free of a security interest created by his seller even  
6 though the security interest is perfected and even  
7 though the buyer know of its existence.

8 (2) In the case of consumer goods, a buyer takes free  
9 of a security interest even though perfected if he buys  
10 without knowledge of the security interest, for value and  
11 for his own personal, family or household purposes  
12 unless prior to the purchase the secured party has filed  
13 a financing statement covering such goods.

14 (3) A buyer, other than a buyer in ordinary course of  
15 business, takes free of a security interest to the extent  
16 that it secures future advances made after the secured  
17 party acquires knowledge of the purchase, or more than  
18 forty-five days after the purchase, whichever first  
19 occurs, unless made pursuant to a commitment entered  
20 into without knowledge of the purchase and before the  
21 expiration of the forty-five day period.

22 (4) A secured party may enforce a security interest in  
23 farm products against a buyer in the ordinary course  
24 of business who purchases farm products from a person  
25 engaged in farming operations or against a commission  
26 merchant or selling agent who in the ordinary course  
27 of business sells farm products for a person engaged in  
28 farming operations, only where the secured party has  
29 signed and filed in the office of the secretary of state  
30 a form containing the following information:

31 (a) The name and address of the borrower;

32 (b) The borrower's signature;

33 (c) The name and address of the secured party;

34 (d) The social security number of the borrower, or in  
35 the case of a borrower doing business other than as an  
36 individual, the borrower's internal revenue service  
37 taxpayer identification number;

38 (e) A description of the farm products subject to the  
39 security interest including the amount of such products  
40 where applicable; and

41 (f) A reasonable description of the real estate, includ-

42 ing county, where or upon which the farm products are  
43 located.

44 (5) The form described in subsection four of this  
45 section must be amended in writing within three  
46 months, and similarly signed and filed, to reflect  
47 material changes. The effectiveness and continuation of  
48 the form is to be treated as if it were a financing  
49 statement.

50 (6) The provisions of section two hundred one, article  
51 one of this chapter notwithstanding, as used in this  
52 subsection and in subsections four and five of this  
53 section or in subsections three, four, five and six of  
54 section four hundred seven of this article, unless the  
55 context in which used requires otherwise, the term:

56 (a) "Buyer in the ordinary course of business" means  
57 a person who, in the ordinary course of business, buys  
58 farm products from a person engaged in farming  
59 operations who is in the business of selling farm  
60 products;

61 (b) "Commission merchant" shall mean any person  
62 engaged in the business of receiving any farm product  
63 for sale, on commission, or for or on behalf of another  
64 person;

65 (c) "Person" means any individual, partnership,  
66 corporation, trust or any other business entity; and

67 (d) "Selling agent" means any person, other than a  
68 commission merchant, who is engaged in the business  
69 of negotiating the sale and purchase of any farm product  
70 on behalf of a person engaged in farming operations.

**§46-9-407. Information from filing officer; central indexing system for recording security interest in farm products; contents.**

1 (1) If the person filing any financing statement,  
2 termination statement, statement of assignment, or  
3 statement of release, furnishes the filing officer a copy  
4 thereof, the filing officer shall upon request note upon  
5 the copy the file number and date and hour of the filing  
6 of the original and deliver or send the copy to such

7 person.

8 (2) Upon request of any person, the secretary of state  
9 shall issue his certificate showing whether there is on  
10 file in his office on the date and hour stated therein, any  
11 presently effective financing statement naming a  
12 particular debtor and any statement of assignment  
13 thereof and if there is, giving the date and hour of filing  
14 of each such statement and the names and addresses of  
15 each secured party therein. The uniform fee for such a  
16 certificate shall be two dollars if the request for the  
17 certificate is in the standard form prescribed by the  
18 secretary of state and otherwise shall be five dollars plus  
19 fifty cents for each financing statement and for each  
20 statement of assignment reported therein. Upon request  
21 the filing officer shall furnish a copy of any filed  
22 financing statement or statement of assignment for a  
23 uniform fee of fifty cents per page.

24 (3) The secretary of state shall develop and implement  
25 a central indexing system containing the information  
26 filed with his office pursuant to subsection four, section  
27 three hundred seven of this article. Under this system,  
28 the secretary shall record the date and time of filing and  
29 compile the information into a master list organized  
30 according to farm products. The list shall be organized  
31 within each farm product category in alphabetical order  
32 according to the last name of the borrower, or in the  
33 case of borrowers doing business other than as individ-  
34 uals, the first word in the name of such borrower in  
35 numerical order according to the social security or  
36 taxpayer identification number of the borrower, geogra-  
37 phically by county and by crop year. The master list  
38 shall also contain the name and address of the secured  
39 party, the name and address of the borrower, a  
40 description of the farm products, including amount  
41 where applicable, subject to the security interest, and a  
42 reasonable description of the real estate, including the  
43 county where or upon which the farm products are  
44 located.

45 (4) The secretary of state shall maintain a list of all  
46 buyers of farm products, commission merchants and  
47 selling agents who register with the secretary of state

48 indicating an interest in receiving the lists described in  
49 subsection five of this section.

50 (5) The secretary of state shall distribute on a regular  
51 basis as determined by the secretary of state to each  
52 buyer, commission merchant and selling agent regis-  
53 tered under subsection four, a copy in written or printed  
54 form of those portions of the master list which the buyer,  
55 commission merchant or selling agent has indicated an  
56 interest in receiving.

57 (6) Upon the request of any person, the secretary of  
58 state shall provide within twenty-four hours an oral  
59 confirmation of the filing of the form described in  
60 subsection four, section three hundred seven of this  
61 article, followed by a written confirmation.

*John A. ...*  
*James ...*  
*James ...*

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

*Bruce A. Williams*  
.....  
Chairman Senate Committee

*Lyle Satter*  
.....  
Chairman House Committee  
Member

Originating in the House.

Takes effect ninety days from passage.

*Todd C. Smith*  
.....  
Clerk of the Senate

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

*Sam Tankership*  
.....  
President of the Senate

*Robert C. Bell*  
.....  
Speaker of the House of Delegates

The within *approved* this the *31<sup>st</sup>*  
*March* day of ....., 1987.

*Arch A. Moore, Jr.*  
.....  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/25/07  
Time 5:01 p.m.

RECEIVED

1987 APR -1 PM 3:41

OFFICE OF THE  
SECRETARY OF STATE