

SB 157

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



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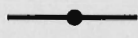
SENATE BILL NO. 157

(By Senator WOOTON, ET AL)

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SECRETARY OF STATE

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PASSED MARCH 7, 1996

In Effect NINETY DAYS FROM Passage

ENROLLED

Senate Bill No. 157

(BY SENATORS WOOTON, BOWMAN, BUCKALEW, DEEM,
DITTMAR, MILLER, OLIVERIO, ROSS AND SCOTT)

[Passed March 7, 1996; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred five, article nine, chapter forty-six of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to clarifying that a certificated certificate of deposit is an "instrument" for purposes of secured transactions governed by the uniform commercial code.

Be it enacted by the Legislature of West Virginia:

That section one hundred five, 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.

§46-9-105. Definitions and index of definitions.

1 (1) In this article, unless the context otherwise re-
2 quires:

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3 (a) "Account debtor" means the person who is obli-
4 gated on an account, chattel paper or general intangible;

5 (b) "Chattel paper" means a writing or writings which
6 evidence both a monetary obligation and a security
7 interest in or a lease of specific goods, but a charter or
8 other contract involving the use or hire of a vessel is not
9 chattel paper. When a transaction is evidenced both by
10 such a security agreement or a lease and by an instru-
11 ment or a series of instruments, the group of writings
12 taken together constitutes chattel paper;

13 (c) "Collateral" means the property subject to a
14 security interest, and includes accounts, and chattel
15 paper which have been sold;

16 (d) "Debtor" means the person who owes payment or
17 other performance of the obligation secured, whether or
18 not he owns or has rights in the collateral, and includes
19 the seller of accounts, or chattel paper. Where the
20 debtor and the owner of the collateral are not the same
21 person, the term "debtor" means the owner of the
22 collateral in any provision of the article dealing with the
23 collateral, the obligor in any provision dealing with the
24 obligation, and may include both where the context so
25 requires;

26 (e) "Deposit account" means a demand, time, savings,
27 passbook or like account maintained with a bank,
28 savings and loan association, credit union or like organi-
29 zation, other than an account evidenced by a certificate
30 of deposit;

31 (f) "Document" means document of title as defined in
32 the general definitions of article 1 (section 1-201), and a
33 receipt of the kind described in subsection (2) of section
34 7-201;

35 (g) "Encumbrance" includes real estate mortgages and
36 other liens on real estate and all other rights in real
37 estate that are not ownership interests;

38 (h) "Goods" includes all things which are moveable at

39 the time the security interest attaches or which are
40 fixtures (section 9-313), but does not include money,
41 documents, instruments, investment property, commod-
42 ity contracts, accounts, chattel paper, general intangi-
43 bles, or minerals or the like (including oil and gas) before
44 extraction. "Goods" also includes standing timber
45 which is to be cut and removed under a conveyance or
46 contract for sale, the unborn young of animals, and
47 growing crops;

48 (i) "Instrument" means a negotiable instrument
49 (defined in section 3-104), or any other writing which
50 evidences a right to the payment of money and is not
51 itself a security agreement or lease and is of a type which
52 is in ordinary course of business transferred by delivery
53 with any necessary endorsement or assignment, includ-
54 ing, but not limited to, all certificated certificates of
55 deposit. The term does not include investment property;

56 (j) "Mortgage" means a consensual interest created by
57 a real estate mortgage, a trust deed on real estate, or the
58 like;

59 (k) An advance is made "pursuant to commitment" if
60 the secured party has bound himself to make it, whether
61 or not a subsequent event of default or other event not
62 within his control has relieved or may relieve him from
63 his obligation;

64 (l) "Security agreement" means an agreement which
65 creates or provides for a security interest;

66 (m) "Secured party" means a lender, seller or other
67 person in whose favor there is a security interest, includ-
68 ing a person to whom accounts or chattel paper have
69 been sold. When the holders of obligations issued under
70 an indenture of trust, equipment trust agreement or the
71 like are represented by a trustee or other person, the
72 representative is the secured party;

73 (n) "Transmitting utility" means any person primarily
74 engaged in the railroad, street railway or trolley bus
75 business, the electric or electronics communications

76 transmission business, the transmission of goods by
77 pipeline, or the transmission or the production and
78 transmission of electricity, steam, gas or water, or the
79 provision of sewer service.

80 (2) Other definitions applying to this article and the
81 sections in which they appear are:

82	“Account”.	Section 9-106.
83	“Attach”.	Section 9-203.
84	“Commodity contract”.	Section 9-115.
85	“Commodity customer”.	Section 9-115.
86	“Commodity intermediary”.	Section 9-115.
87	“Construction mortgage”.	Section 9-313(1).
88	“Consumer goods”.	Section 9-109(1).
89	“Control”.	Section 9-115.
90	“Equipment”.	Section 9-109(2).
91	“Farm products”.	Section 9-109(3).
92	“Fixture”.	Section 9-313(1).
93	“Fixture filing”.	Section 9-313(1).
94	“General intangibles”.	Section 9-106.
95	“Inventory”.	Section 9-109(4).
96	“Investment property”.	Section 9-115.
97	“Lien creditor”.	Section 9-301(3).
98	“Proceeds”.	Section 9-306(1).
99	“Purchase money security interest”.	Section 9-107.
100	“United States”.	Section 9-103.
101	(3) The following definitions in other articles apply to	
102	this article:	
103	“Broker”.	Section 8-102.

104	“Certificated security”.	Section 8-102.
105	“Check”.	Section 3-104.
106	“Clearing corporation”.	Section 8-102.
107	“Contract for sale”.	Section 2-106.
108	“Control”.	Section 8-106.
109	“Delivery”.	Section 8-301.
110	“Entitlement holder”.	Section 8-102.
111	“Financial asset”.	Section 8-102.
112	“Holder in due course”.	Section 3-302.
113	“Note”.	Section 3-104.
114	“Sale”.	Section 2-106.
115	“Securities intermediary”.	Section 8-102.
116	“Security”.	Section 8-102.
117	“Security certificate”.	Section 8-102.
118	“Security entitlement”.	Section 8-102.
119	“Uncertificated security”.	Section 8-102.
120	(4) In addition, article 1 contains general definitions	
121	and principles of construction and interpretation appli-	
122	cable throughout this article.	

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

Rudy Johnson
.....
Chairman Senate Committee

Rudy Seacrest
.....
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

Russell E. Adams
.....
Clerk of the Senate

Gregory W. Brad
.....
Clerk of the House of Delegates

Earl Ray Tomblin
.....
President of the Senate

Carl Albert
.....
Speaker House of Delegates

The within *is approved* this the *19th*
.....
day of *March* 1996.

Gaston Caputo
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/15/96

Time 3:20 pm