

H.B. 2448

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WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999

ENROLLED

House Bill No. 2448

(By Delegates Cann, Angotti, Jenkins,
Davis, Laird, Capito and Tillis)

Passed March 13, 1999

In Effect Ninety Days from Passage

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OFFICE OF THE CLERK OF THE HOUSE
SENATE AND JUDICIARY

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H. B. 2448

(BY DELEGATES CANN, ANGOTTI, JENKINS,
DAVIS, LAIRD, CAPITO AND TILLIS)

[Passed March 13, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact sections two and three, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section three hundred two, article nine, chapter forty-six, all relating to the creation and perfection of a lien against a vehicle held as inventory for lease by a person in the business of leasing vehicles.

Be it enacted by the Legislature of West Virginia:

That sections two and three, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that section three hundred two, article nine, chapter forty-six of said code be amended and reenacted, all to read as follows:

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

**ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE
SHOWN ON CERTIFICATE OF TITLE; NOTICE TO
CREDITORS AND PURCHASERS.**

§17A-4A-2. Liens and encumbrances subsequently created.

1 (a) Liens or encumbrances placed on vehicles by the
2 voluntary act of the owner after the original issue of title to be
3 properly recorded must be shown on the certificate of title. In
4 such cases, the owner or lienholder shall file application with
5 the department on a blank furnished for that purpose, setting
6 forth the lien or liens and such information and evidence of the
7 lien in connection therewith as the department may deem
8 necessary. Such information shall include the name and address
9 of the lienholder, the kind of and nature of the lien, the date
10 thereof, and the amount thereby secured. However, only the
11 name and address of the lienholder shall be endorsed on the title
12 certificate with the endorsement of the fact of such lien as
13 hereinafter provided. The department, if satisfied that it is
14 proper that the same be recorded, and upon surrender of the
15 certificate of title covering the vehicle, shall thereupon issue a
16 new certificate of title, showing the liens or encumbrances in
17 the order of their filing being according to the date, hour and
18 minute of receipt by the department of the application for same.
19 For the purpose of recording a subsequent lien on a certificate
20 of title, the subsequent lienholder shall make a written request
21 upon the lienholder in possession of the certificate of title,
22 accompanied by proof of the existence of the subsequent lien,
23 stating his or her need to have possession of the certificate of
24 title for the purpose of having his or her lien recorded thereon
25 by the division of motor vehicles. Thereupon, the lienholder in
26 possession of the certificate shall within a reasonable time, not
27 to exceed ten days from the receipt of said written request,
28 deliver the certificate of title to the requesting subsequent
29 lienholder.

30 Upon delivery of the certificate of title, the subsequent
31 lienholder shall immediately forward it and the lienholder's
32 own application to the division of motor vehicles for the filing
33 of the lien and for the recording of the same on the certificate
34 of title. Upon issuing the new certificate, the department shall
35 thereupon send or deliver it to the holder of the first lien.

36 (b) The provisions of subsection (a) of this section shall not
37 apply to: (1) Vehicles held as inventory for sale by a registered

38 dealer holding title by assignment entered upon a certificate of
39 title; or (2) vehicles for which certificates of title have been
40 issued and are held as inventory for lease by a vehicle rental
41 agency or similar person engaged solely in the business of
42 leasing vehicles. Any lien or encumbrance placed on such
43 vehicles by the voluntary act of the owner shall be created and
44 perfected in accordance with the provisions of article nine,
45 chapter forty-six of this code.

**§17A-4A-3. Notice of lien; noninventory lien created by voluntary
act of the owner not shown on certificate of title
void as to subsequent purchasers and lien credi-
tors; exceptions.**

1 (a) A certificate of title, when issued by the department
2 showing a lien or encumbrance, shall be deemed from and after
3 the filing with the department of the application therefor
4 adequate notice to the state and its agencies, boards and
5 commissions, to the United States government and its agencies,
6 boards and commissions, to creditors and to purchasers that a
7 lien against the vehicle exists and the recording of such
8 reservation of title, lien or encumbrance in the county wherein
9 the purchaser or debtor resides or elsewhere is not necessary
10 and shall not be required or have any effect. Notwithstanding
11 any other provision of this code to the contrary, and subject to
12 the provisions of subsection (b) of this section and of section
13 four of this article, any lien or encumbrance placed upon a
14 vehicle by the voluntary act of the owner but not shown on such
15 certificate of title shall be void as to any purchaser for value or
16 lien creditor, who, in either case, without notice of such lien or
17 encumbrance, purchases such vehicle or acquires by attach-
18 ment, levy or otherwise a lien thereupon.

19 (b) The creation and perfection of a lien against: (1) A
20 vehicle held as inventory for sale by a registered dealer holding
21 title by assignment; or (2) a vehicle for which a certificate of
22 title has been issued and is held as inventory for lease by a
23 vehicle rental agency or similar person engaged solely in the
24 business of leasing vehicles in accordance with the provisions
25 of article nine, chapter forty-six of this code shall be deemed

26 adequate notice to the state and its agencies, boards and
27 commissions, to the United States government and its agencies,
28 boards and commissions, to creditors and to purchasers that a
29 lien against the vehicle exists, subject to the provisions of
30 section three hundred seven, article nine, chapter forty-six of
31 this code, except that any lien or encumbrance on such a vehicle
32 shall not be effective against the rights of any purchaser for
33 value who purchases such vehicle primarily for personal,
34 family, household or agricultural purposes unless such lien or
35 encumbrance is recorded on the certificate of title or specified
36 on the bill of sale.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS; SALES OF ACCOUNTS AND CHATTEL PAPERS.

§46-9-302. When filing is required to perfect security interest; security interests to which filing provisions of this article do not apply.

1 (1) A financing statement must be filed to perfect all
2 security interests except the following:

3 (a) A security interest in collateral in possession of the
4 secured party under section 9-305;

5 (b) A security interest temporarily perfected in instruments,
6 certificated securities or documents without delivery under
7 section 9-304 or in proceeds for a ten-day period under section
8 9-306;

9 (c) A security interest created by an assignment of a
10 beneficial interest in a trust or a decedent's estate;

11 (d) A purchase money security interest in consumer goods;
12 but filing is required for a motor vehicle required to be regis-
13 tered; and fixture filing is required for priority over conflicting
14 interests in fixtures to the extent provided in section 9-313;

15 (e) An assignment of accounts which does not alone or in
16 conjunction with other assignments to the same assignee
17 transfer a significant part of the outstanding accounts of the
18 assignor;

19 (f) A security interest of a collecting bank (section 4-208)
20 or arising under the article on sales (see section 9-113) or
21 covered in subsection (3) of this section;

22 (g) An assignment for the benefit of all the creditors of the
23 transferor, and subsequent transfers by the assignee thereunder;

24 (h) A security interest in investment property which is
25 perfected without filing under section 9-115 or section 9-116.

26 (2) If a secured party assigns a perfected security interest,
27 no filing under this article is required in order to continue the
28 perfected status of the security interest against creditors of and
29 transferees from the original debtor.

30 (3) The filing of a financing statement otherwise required
31 by this article is not necessary or effective to perfect a security
32 interest in property subject to:

33 (a) A statute or treaty of the United States which provides
34 for a national or international registration or a national or
35 international certificate of title or which specifies a place of
36 filing different from that specified in this article for filing of the
37 security interest; or

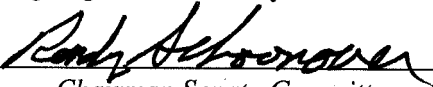
38 (b) The following statute of this state: Chapter seventeen-a
39 of this code; but during any period in which collateral is
40 inventory: (i) Held for sale by a person who is in the business
41 of selling goods of that kind; or (ii) held for lease by a vehicle
42 rental agency or similar persons engaged solely in the business
43 of leasing vehicles, the filing provisions of this article (Part 4)
44 apply to a security interest in that collateral created by him or
45 her as debtor; or

46 (c) A certificate of title statute of another jurisdiction under
47 the law of which indication of a security interest on the certifi-
48 cate is required as a condition of perfection (subsection (2) of
49 section 9-103).

50 (4) Compliance with a statute or treaty described in
51 subsection (3) of this section is equivalent to the filing of a
52 financing statement under this article, and a security interest in
53 property subject to the statute or treaty can be perfected only by

54 compliance therewith except as provided in section 9-103 on
55 multiple state transactions. Duration and renewal of perfection
56 of a security interest perfected by compliance with the statute
57 or treaty are governed by the provisions of the statute or treaty;
58 in other respects the security interest is subject to this article.

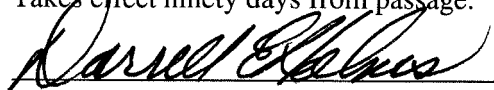
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

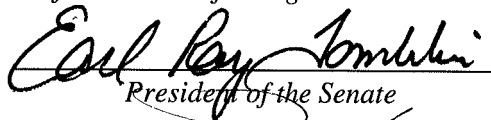

Chairman House Committee

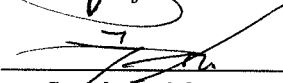
Originating in the House.

Takes effect ninety days from passage.

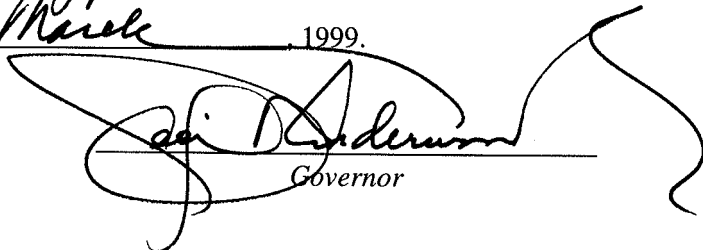

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 31st
day of March, 1999.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/26/99

Time 2:40 pm