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
ENROLLED
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.

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

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

(b) The provisions of subsection (a) of this section shall not apply to: (1) Vehicles held as inventory for sale by a registered
dealer holding title by assignment entered upon a certificate of
title; or (2) vehicles for which certificates of title have been
issued and are held as inventory for lease by a vehicle rental
agency or similar person engaged solely in the business of
leasing vehicles. Any lien or encumbrance placed on such
vehicles by the voluntary act of the owner shall be created and
perfected in accordance with the provisions of article nine,
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 creditors; exceptions.

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

(b) The creation and perfection of a lien against: (1) A
vehicle held as inventory for sale by a registered dealer holding
title by assignment; or (2) a vehicle for which a certificate of
title has been issued and is held as inventory for lease by a
vehicle rental agency or similar person engaged solely in the
business of leasing vehicles in accordance with the provisions
of article nine, chapter forty-six of this code shall be deemed
adequate notice to the state and its agencies, boards and commissions, to the United States government and its agencies, boards and commissions, to creditors and to purchasers that a lien against the vehicle exists, subject to the provisions of section three hundred seven, article nine, chapter forty-six of this code, except that any lien or encumbrance on such a vehicle shall not be effective against the rights of any purchaser for value who purchases such vehicle primarily for personal, family, household or agricultural purposes unless such lien or encumbrance is recorded on the certificate of title or specified 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) A financing statement must be filed to perfect all security interests except the following:

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

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

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

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

(e) An assignment of accounts which does not alone or in conjunction with other assignments to the same assignee transfer a significant part of the outstanding accounts of the assignor;
(f) A security interest of a collecting bank (section 4-208) or arising under the article on sales (see section 9-113) or covered in subsection (3) of this section;

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

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

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

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

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

(b) The following statute of this state: Chapter seventeen-a of this code; but 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 persons engaged solely in the business of leasing vehicles, the filing provisions of this article (Part 4) apply to a security interest in that collateral created by him or her as debtor; or

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

(4) Compliance with a statute or treaty described in subsection (3) of this section is equivalent to the filing of a financing statement under this article, and a security interest in property subject to the statute or treaty can be perfected only by
compliance therewith except as provided in section 9-103 on multiple state transactions. Duration and renewal of perfection of a security interest perfected by compliance with the statute or treaty are governed by the provisions of the statute or treaty; 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.

Taken 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 3/5, 1999.

day of ___________________________.

Governor