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2001 MAY -2 P 11: 57

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

Regular Session, 2001



ENROLLED

SENATE BILL NO. 732

(By Senator Wooten, et al **)**



PASSED April 14, 2001

In Effect July 1, 2001 **Passage**

ENROLLED

Senate Bill No. 732

(BY SENATORS WOOTON, CALDWELL, MINARD, OLIVERIO, REDD,
ROSS, ROWE, SNYDER, FACEMYER AND MCKENZIE)

[Passed April 14, 2001; to take effect July 1, 2001.]

AN ACT to amend and reenact section six, article six-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred nine, three hundred thirty-one, three hundred thirty-four, three hundred thirty-six, four hundred six, four hundred eight, five hundred twenty-five and seven hundred five, article nine, chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, relating generally to secured transactions; directing the office of debt management to report to the members of the joint committee on government and finance; excluding transfers by a government or governmental unit from application of the article; preventing assignment of the proceeds of a viatical settlement; preventing assignment of the proceeds of a workers compensation settlement; preventing assignment of the proceeds of a special needs trust from and making certain technical corrections.

Be it enacted by the Legislature of West Virginia:

That section six, article six-a, chapter twelve of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one hundred nine, three hundred thirty-one, three hundred thirty-four, three hundred thirty-six, four hundred six, four hundred eight, five hundred twenty-five and seven hundred five, article nine, chapter two hundred seventy-two, acts of the Legislature, regular session, two thousand, be amended and reenacted, all to read as follows:

CHAPTER 12. PUBLIC MONEYS AND SECURITIES.

ARTICLE 6A. THE DEBT MANAGEMENT ACT OF 1991.

§12-6A-6. Debt information reporting.

1 (a) Within fifteen days following the end of each calen-
2 dar quarter, each state spending unit shall provide the
3 division and the legislative auditor, in the manner pro-
4 vided by this article and in such form and detail as the
5 state treasurer may by regulation require, a statement of
6 the total debt of each such state spending unit incurred
7 during the calendar quarter and owing at the end of such
8 calendar quarter, which statement shall include, but not
9 be limited to, the name of the state spending unit, the
10 amounts and types of debt incurred during the calendar
11 quarter and outstanding at the end of the calendar quar-
12 ter, the cost and expenses of incurring the debt, the
13 maturity date of each debt, the terms and conditions of the
14 debt, the current debt service on the debt, the current
15 interest rate on the debt, the source of the proceeds
16 utilized for repayment of the debt, the amounts of repay-
17 ment during the calendar quarter, the repayment schedule
18 and the security for the debt. A state spending unit having
19 no outstanding debt shall not be required to provide the
20 quarterly report but shall file an annual report, on forms
21 established by the division of debt management: *Provided,*
22 That the state spending unit shall immediately notify the

23 division of debt management of any change in the spend-
24 ing unit's outstanding debt condition.

25 (b) Not less than thirty days prior to a proposed offering
26 of debt to be issued by a state spending unit, written notice
27 of such proposed offering and the terms thereof shall be
28 given to the division by such state spending unit in the
29 form as the division may by regulation require. Within
30 thirty days after closing, the terms shall be reported to the
31 division in the form as the division may by regulation
32 require.

33 (c) On or before the thirty-first day of January and the
34 thirty-first day of July of each year, the treasurer shall
35 prepare and issue a report of all debt of the state and its
36 spending units and of all proposed debt issuances of which
37 the treasurer has received notice and shall furnish a copy
38 of such report to the governor, the president of the Senate,
39 the speaker of the House of Delegates, the members of the
40 joint committee on government and finance, the legislative
41 auditor and upon request to any other legislative commit-
42 tee and any member of the Legislature. The report shall be
43 kept available for inspection by any citizen of the state.
44 The treasurer shall also prepare updated reports of all debt
45 of the state and its spending units which shall be available
46 for inspection at the office of the state treasurer on or
47 before the thirty-first day of March and the thirtieth day
48 of September of each year.

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS.

SUBPART 2. APPLICABILITY OF ARTICLE.

§46-9-109. Scope.

1 (a) **General scope of article.** Except as otherwise pro-
2 vided in subsections (c) and (d) of this section, this article
3 applies to:

4 (1) A transaction, regardless of its form, that creates a
5 security interest in personal property or fixtures by
6 contract;

7 (2) An agricultural lien;

8 (3) A sale of accounts, chattel paper, payment intangi-
9 bles or promissory notes;

10 (4) A consignment;

11 (5) A security interest arising under section 2-401, 2-505,
12 2-711(3) or 2A-508(5) as provided in section 9-110; and

13 (6) A security interest arising under section 4-210 or
14 5-118.

15 (b) **Security interest in secured obligation.** The applica-
16 tion of this article to a security interest in a secured
17 obligation is not affected by the fact that the obligation is
18 itself secured by a transaction or interest to which this
19 article does not apply.

20 (c) **Extent to which article does not apply.** This article
21 does not apply to the extent that:

22 (1) A statute, regulation or treaty of the United States
23 preempts this article; or

24 (2) The rights of a transferee beneficiary or nominated
25 person under a letter of credit are independent and
26 superior under section 5-114.

27 (d) **Inapplicability of article.** This article does not apply
28 to:

29 (1) A landlord's lien, other than an agricultural lien;

30 (2) A lien, other than an agricultural lien, given by
31 statute or other rule of law for services or materials, but
32 section 9-333 applies with respect to priority of the lien;

33 (3) An assignment of a claim for wages, salary or other
34 compensation of an employee;

35 (4) A sale of accounts, chattel paper, payment intangi-
36 bles or promissory notes as part of a sale of the business
37 out of which they arose;

38 (5) An assignment of accounts, chattel paper, payment
39 intangibles or promissory notes which is for the purpose of
40 collection only;

41 (6) An assignment of a right to payment under a contract
42 to an assignee that is also obligated to perform under the
43 contract;

44 (7) An assignment of a single account, payment intangi-
45 ble or promissory note to an assignee in full or partial
46 satisfaction of a preexisting indebtedness;

47 (8) A transfer of an interest in or an assignment of a
48 claim under a policy of insurance, other than an assign-
49 ment by or to a health-care provider of a health-care-
50 insurance receivable and any subsequent assignment of the
51 right to payment, but sections 9-315 and 9-322 apply with
52 respect to proceeds and priorities in proceeds;

53 (9) An assignment of a right represented by a judgment,
54 other than a judgment taken on a right to payment that
55 was collateral;

56 (10) A right of recoupment or set-off, but:

57 (A) Section 9-340 applies with respect to the effective-
58 ness of rights of recoupment or set-off against deposit
59 accounts; and

60 (B) Section 9-404 applies with respect to defenses or
61 claims of an account debtor;

62 (11) The creation or transfer of an interest in or lien on
63 real property, including a lease or rents thereunder, except
64 to the extent that provision is made for:

65 (A) Liens on real property in sections 9-203 and 9-308;

66 (B) Fixtures in section 9-334;

67 (C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516,
68 and 9-519; and

69 (D) Security agreements covering personal and real
70 property in section 9-604;

71 (12) An assignment of a claim arising in tort, other than
72 a commercial tort claim, but sections 9-315 and 9-322
73 apply with respect to proceeds and priorities in proceeds;

74 (13) An assignment of a deposit account in a consumer
75 transaction, but sections 9-315 and 9-322 apply with
76 respect to proceeds and priorities in proceeds; or

77 (14) A transfer by a government or a governmental unit.

PART 3. PERFECTION AND PRIORITY.

**§46-9-331. Priority of rights of purchasers of instruments,
documents, and securities under other articles;
priority of interests in financial assets and
security entitlements under article eight.**

1 (a) **Rights under articles three, seven and eight not**
2 **limited.** This article does not limit the rights of a holder in
3 due course of a negotiable instrument, a holder to which a
4 negotiable document of title has been duly negotiated or a
5 protected purchaser of a security. These holders or
6 purchasers take priority over an earlier security interest,
7 even if perfected, to the extent provided in articles three,
8 seven and eight.

9 (b) **Protection under article eight.** This article does not
10 limit the rights of or impose liability on a person to the
11 extent that the person is protected against the assertion of
12 a claim under article eight.

13 (c) **Filing not notice.** Filing under this article does not
14 constitute notice of a claim or defense to the holders, or
15 purchasers, or persons described in subsections (a) and (b)
16 of this section.

§46-9-334. Priority of security interests in fixtures and crops.

1 (a) **Security interest in fixtures under this article.** A
2 security interest under this article may be created in goods
3 that are fixtures or may continue in goods that become
4 fixtures. A security interest does not exist under this
5 article in ordinary building materials incorporated into an
6 improvement on land.

7 (b) **Security interest in fixtures under real-property law.**
8 This article does not prevent creation of an encumbrance
9 upon fixtures under real property law.

10 (c) **General rule: subordination of security interest in**
11 **fixtures.** In cases not governed by subsections (d) through
12 (h), inclusive, of this section, a security interest in fixtures
13 is subordinate to a conflicting interest of an encumbrancer
14 or owner of the related real property other than the debtor.

15 (d) **Fixtures purchase-money priority.** Except as other-
16 wise provided in subsection (h) of this section, a perfected
17 security interest in fixtures has priority over a conflicting
18 interest of an encumbrancer or owner of the real property
19 if the debtor has an interest of record in or is in possession
20 of the real property and:

21 (1) The security interest is a purchase-money security
22 interest;

23 (2) The interest of the encumbrancer or owner arises
24 before the goods become fixtures; and

25 (3) The security interest is perfected by a fixture filing
26 before the goods become fixtures or within twenty days
27 thereafter.

28 (e) **Priority of security interest in fixtures over interests**
29 **in real property.** A perfected security interest in fixtures
30 has priority over a conflicting interest of an encumbrancer
31 or owner of the real property if:

32 (1) The debtor has an interest of record in the real
33 property or is in possession of the real property and the
34 security interest:

35 (A) Is perfected by a fixture filing before the interest of
36 the encumbrancer or owner is of record; and

37 (B) Has priority over any conflicting interest of a
38 predecessor in title of the encumbrancer or owner;

39 (2) Before the goods become fixtures, the security
40 interest is perfected by any method permitted by this
41 article and the fixtures are readily removable:

42 (A) Factory or office machines;

43 (B) Equipment that is not primarily used or leased for
44 use in the operation of the real property; or

45 (C) Replacements of domestic appliances that are
46 consumer goods;

47 (3) The conflicting interest is a lien on the real property
48 obtained by legal or equitable proceedings after the
49 security interest was perfected by any method permitted
50 by this article; or

51 (4) The security interest is:

52 (A) Created in a manufactured home in a manufactured-
53 home transaction; and

54 (B) Perfected pursuant to a statute described in section
55 9-311(a)(2).

56 (f) **Priority based on consent, disclaimer or right to**
57 **remove.** A security interest in fixtures, whether or not
58 perfected, has priority over a conflicting interest of an
59 encumbrancer or owner of the real property if:

60 (1) The encumbrancer or owner has, in an authenticated
61 record, consented to the security interest or disclaimed an
62 interest in the goods as fixtures; or

63 (2) The debtor has a right to remove the goods as against
64 the encumbrancer or owner.

65 (g) **Continuation of subsection (f)(2) priority.** The
66 priority of the security interest under subsection (f)(2) of
67 this section continues for a reasonable time if the debtor's
68 right to remove the goods as against the encumbrancer or
69 owner terminates.

70 (h) **Priority of construction mortgage.** A mortgage is a
71 construction mortgage to the extent that it secures an
72 obligation incurred for the construction of an improve-
73 ment on land, including the acquisition cost of the land, if
74 a recorded record of the mortgage so indicates. Except as
75 otherwise provided in subsections (e) and (f) of this
76 section, a security interest in fixtures is subordinate to a
77 construction mortgage if a record of the mortgage is
78 recorded before the goods become fixtures and the goods
79 become fixtures before the completion of the construction.
80 A mortgage has this priority to the same extent as a
81 construction mortgage to the extent that it is given to
82 refinance a construction mortgage.

83 (i) **Priority of security interest in crops.** A perfected
84 security interest in crops growing on real property has
85 priority over a conflicting interest of an encumbrancer or
86 owner of the real property if the debtor has an interest of
87 record in or is in possession of the real property.

88 (j) **Subsection (i) prevails.** Subsection (i) of this section
89 prevails over any inconsistent provision of an existing or
90 future statute, rule or regulation of this state unless the
91 provision is contained in a statute of this state, refers
92 expressly to this section and states that the provision
93 prevails over this section.

§46-9-336. Commingled goods.

1 (a) **"Commingled goods."** In this section, "commingled
2 goods" means goods that are physically united with other

3 goods in such a manner that their identity is lost in a
4 product or mass.

5 (b) **No security interest in commingled goods as such.** A
6 security interest does not exist in commingled goods as
7 such. However, a security interest may attach to a product
8 or mass that results when goods become commingled
9 goods.

10 (c) **Attachment of security interest to product or mass.**
11 If collateral becomes commingled goods, a security interest
12 attaches to the product or mass.

13 (d) **Perfection of security interest.** If a security interest
14 in collateral is perfected before the collateral becomes
15 commingled goods, the security interest that attaches to
16 the product or mass under subsection (c) of this section is
17 perfected.

18 (e) **Priority of security interest.** Except as otherwise
19 provided in subsection (f) of this section, the other provi-
20 sions of this part determine the priority of a security
21 interest that attaches to the product or mass under subsec-
22 tion (c) of this section.

23 (f) **Conflicting security interests in product or mass.** If
24 more than one security interest attaches to the product or
25 mass under subsection (c) of this section, the following
26 rules determine priority:

27 (1) A security interest that is perfected under subsection
28 (d) has priority over a security interest that is unperfected
29 at the time the collateral becomes commingled goods.

30 (2) If more than one security interest is perfected under
31 subsection (d) of this section, the security interests rank
32 equally in proportion to the value of the collateral at the
33 time it became commingled goods.

§46-9-406. Discharge of account debtor; notification of assignment; identification and proof of assignment; restrictions on assignment of accounts, chattel paper, payment intangibles and promissory notes ineffective.

1 (a) **Discharge of account debtor; effect of notification.**
2 Subject to subsections (b) through (i), an account debtor on
3 an account, chattel paper or a payment intangible may
4 discharge its obligation by paying the assignor until, but
5 not after, the account debtor receives a notification,
6 authenticated by the assignor or the assignee, that the
7 amount due or to become due has been assigned and that
8 payment is to be made to the assignee. After receipt of the
9 notification, the account debtor may discharge its obliga-
10 tion by paying the assignee and may not discharge the
11 obligation by paying the assignor.

12 (b) **When notification ineffective.** Subject to subsection
13 (h) of this section, notification is ineffective under subsec-
14 tion (a) of this section:

15 (1) If it does not reasonably identify the rights assigned;

16 (2) To the extent that an agreement between an account
17 debtor and a seller of a payment intangible limits the
18 account debtor's duty to pay a person other than the seller
19 and the limitation is effective under law other than this
20 article; or

21 (3) At the option of an account debtor, if the notification
22 notifies the account debtor to make less than the full
23 amount of any installment or other periodic payment to
24 the assignee, even if:

25 (A) Only a portion of the account, chattel paper or
26 payment intangible has been assigned to that assignee;

27 (B) A portion has been assigned to another assignee; or

28 (C) The account debtor knows that the assignment to
29 that assignee is limited.

30 (c) **Proof of assignment.** Subject to subsection (h) of this
31 section, if requested by the account debtor, an assignee
32 shall seasonably furnish reasonable proof that the assign-
33 ment has been made. Unless the assignee complies, the
34 account debtor may discharge its obligation by paying the
35 assignor, even if the account debtor has received a notifi-
36 cation under subsection (a) of this section.

37 (d) **Term restricting assignment generally ineffective.**
38 Except as otherwise provided in subsection (e) of this
39 section and sections 2A-303 and 9-407, and subject to
40 subsection (h) of this section, a term in an agreement
41 between an account debtor and an assignor or in a promis-
42 sory note is ineffective to the extent that it:

43 (1) Prohibits, restricts or requires the consent of the
44 account debtor or person obligated on the promissory note
45 to the assignment or transfer of, or the creation, attach-
46 ment, perfection or enforcement of a security interest in,
47 the account, chattel paper, payment intangible or promis-
48 sory note; or

49 (2) Provides that the assignment or transfer or the
50 creation, attachment, perfection or enforcement of the
51 security interest may give rise to a default, breach, right of
52 recoupment, claim, defense, termination, right of termina-
53 tion or remedy under the account, chattel paper, payment
54 intangible or promissory note.

55 (e) **Inapplicability of subsection (d) to certain sales.**
56 Subsection (d) of this section does not apply to the sale of
57 a payment intangible or promissory note.

58 (f) **Legal restrictions on assignment generally ineffective.**
59 Except as otherwise provided in sections 2A-303 and 9-407
60 and subject to subsections (h) and (i) of this section, a rule
61 of law, statute or regulation that prohibits, restricts or
62 requires the consent of a government, governmental body
63 or official, or account debtor to the assignment or transfer
64 of, or creation of a security interest in, an account or

65 chattel paper is ineffective to the extent that the rule of
66 law, statute or regulation:

67 (1) Prohibits, restricts or requires the consent of the
68 government, governmental body or official, or account
69 debtor to the assignment or transfer of, or the creation,
70 attachment, perfection or enforcement of a security
71 interest in the account or chattel paper; or

72 (2) Provides that the assignment or transfer or the
73 creation, attachment, perfection or enforcement of the
74 security interest may give rise to a default, breach, right of
75 recoupment, claim, defense, termination, right of termina-
76 tion or remedy under the account or chattel paper.

77 (g) **Subsection (b)(3) not waivable.** Subject to subsection
78 (h) of this section, an account debtor may not waive or
79 vary its option under subsection (b)(3) of this section.

80 (h) **Rule for individual under other law.** This section is
81 subject to law other than this article which establishes a
82 different rule for an account debtor who is an individual
83 and who incurred the obligation primarily for personal,
84 family or household purposes.

85 (i) **Inapplicability.** This section does not apply to an
86 assignment of a health-care-insurance receivable. Subsec-
87 tion (f) does not apply to an assignment or transfer of, or
88 the creation, attachment, perfection or enforcement of a
89 security interest in, a right the transfer of which is prohib-
90 ited or restricted by any of the following statutes to the
91 extent that the statute is inconsistent with subsection (f):
92 Chapter twenty-three, article four, section eighteen,
93 Chapter forty-six-a, article six-h, and a claim or right to
94 receive benefits under a special needs trust as described in
95 42 U.S.C. §1396p(d)(4).

96 (j) **Section prevails over specified inconsistent law.** This
97 section prevails over any inconsistent provision of an
98 existing or future statute, rule or regulation of this state
99 unless the provision is contained in a statute of this state,

100 refers expressly to this section and states that the provi-
101 sion prevails over this section.

**§46-9-408. Restrictions on assignment of promissory notes,
health-care-insurance receivables and certain
general intangibles ineffective.**

1 (a) **Term restricting assignment generally ineffective.**
2 Except as otherwise provided in subsection (b) of this
3 section, a term in a promissory note or in an agreement
4 between an account debtor and a debtor which relates to
5 a health-care-insurance receivable or a general intangible,
6 including a contract, permit, license or franchise, and
7 which term prohibits, restricts or requires the consent of
8 the person obligated on the promissory note or the account
9 debtor to, the assignment or transfer of or creation,
10 attachment or perfection of a security interest in, the
11 promissory note, health-care-insurance receivable or
12 general intangible, is ineffective to the extent that the
13 term:

14 (1) Would impair the creation, attachment or perfection
15 of a security interest; or

16 (2) Provides that the assignment or transfer or the
17 creation, attachment or perfection of the security interest
18 may give rise to a default, breach, right of recoupment,
19 claim, defense, termination, right of termination or remedy
20 under the promissory note, health-care-insurance receiv-
21 able or general intangible.

22 (b) **Applicability of subsection (a) to sales of certain**
23 **rights to payment.** Subsection (a) of this section applies to
24 a security interest in a payment intangible or promissory
25 note only if the security interest arises out of a sale of the
26 payment intangible or promissory note.

27 (c) **Legal restrictions on assignment generally ineffec-**
28 **tive.** A rule of law, statute or regulation that prohibits,
29 restricts or requires the consent of a government, govern-
30 mental body or official, person obligated on a promissory

31 note, or account debtor to the assignment or transfer of, or
32 creation of a security interest in, a promissory note,
33 health-care-insurance receivable or general intangible,
34 including a contract, permit, license or franchise between
35 an account debtor and a debtor, is ineffective to the extent
36 that the rule of law, statute or regulation:

37 (1) Would impair the creation, attachment or perfection
38 of a security interest; or

39 (2) Provides that the assignment or transfer or the
40 creation, attachment or perfection of the security interest
41 may give rise to a default, breach, right of recoupment,
42 claim, defense, termination, right of termination or remedy
43 under the promissory note, health-care-insurance receiv-
44 able or general intangible.

45 (d) **Limitation on ineffectiveness under subsections (a)**
46 **and (c).** To the extent that a term in a promissory note or
47 in an agreement between an account debtor and a debtor
48 which relates to a health-care-insurance receivable or
49 general intangible or a rule of law, statute or regulation
50 described in subsection (c) of this section would be effec-
51 tive under law other than this article but is ineffective
52 under subsection (a) or (c) of this section, the creation,
53 attachment or perfection of a security interest in the
54 promissory note, health-care-insurance receivable or
55 general intangible:

56 (1) Is not enforceable against the person obligated on the
57 promissory note or the account debtor;

58 (2) Does not impose a duty or obligation on the person
59 obligated on the promissory note or the account debtor;

60 (3) Does not require the person obligated on the promis-
61 sory note or the account debtor to recognize the security
62 interest, pay or render performance to the secured party,
63 or accept payment or performance from the secured party;

64 (4) Does not entitle the secured party to use or assign the
65 debtor's rights under the promissory note, health-care-
66 insurance receivable or general intangible, including any
67 related information or materials furnished to the debtor in
68 the transaction giving rise to the promissory note, health-
69 care-insurance receivable or general intangible;

70 (5) Does not entitle the secured party to use, assign,
71 possess or have access to any trade secrets or confidential
72 information of the person obligated on the promissory note
73 or the account debtor; and

74 (6) Does not entitle the secured party to enforce the
75 security interest in the promissory note, health-care-
76 insurance receivable or general intangible.

77 (e) **Section prevails over specified inconsistent law.** This
78 section prevails over any inconsistent provisions of an
79 existing or future statute, rule or regulation of this state
80 unless the provision is contained in a statute of this state,
81 refers expressly to this section and states that the provi-
82 sion prevails over this section.

83 (f) **Inapplicability.** Subsection (c) of this section does not
84 apply to an assignment or transfer of or the creation,
85 attachment, perfection, or enforcement of a security
86 interest in, a right the transfer of which is prohibited or
87 restricted by any of the following statutes, to the extent
88 that the statute is inconsistent with said subsection:
89 Chapter twenty-three, article four, section eighteen;
90 chapter forty-six-a, article six-h; and a claim or right to
91 receive benefits under a special needs trust as described in
92 42 U.S.C. §1396(d)(4).

PART 5. FILING.

SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.

§46-9-525. Fees.

1 (a) **Initial financing statement or other record: general**
2 **rule.** Except as otherwise provided in subsection (e) of this
3 section, the fee for filing and indexing a record under this
4 part, other than an initial financing statement of the kind
5 described in subsection (b) of this section, is the amount
6 specified in subsection (c) of this section, if applicable,
7 plus:

8 (1) Ten dollars if the record is communicated in writing
9 and consists of one or two pages;

10 (2) Ten dollars if the record is communicated in writing
11 and consists of more than two pages; and

12 (3) Ten dollars if the record is communicated by another
13 medium authorized by filing-office rule.

14 (b) **Initial financing statement: public-finance and**
15 **manufactured housing transactions.** Except as otherwise
16 provided in subsection (e) of this section, the fee for filing
17 and indexing an initial financing statement of the follow-
18 ing kind is the amount specified in subsection (c) of this
19 section, if applicable, plus:

20 (1) Ten dollars if the financing statement indicates that
21 it is filed in connection with a public-finance transaction;

22 (2) Ten dollars if the financing statement indicates that
23 it is filed in connection with a manufactured-home
24 transaction.

25 (c) **Number of names.** The number of names required to
26 be indexed does not affect the amount of the fee in subsec-
27 tions (a) and (b) of this section.

28 (d) **Response to information request.** The fee for re-
29 sponding to a request for information from the filing
30 office, including for issuing a certificate showing whether
31 there is on file any financing statement naming a particu-
32 lar debtor, is:

33 (1) Five dollars if the request is communicated in
34 writing;

35 (2) Five dollars if the request is communicated by
36 another medium authorized by filing-office rule; and

37 (3) Fifty cents per page for each active lien.

38 (e) **Record of mortgage.** This section does not require a
39 fee with respect to a record of a mortgage which is effec-
40 tive as a financing statement filed as a fixture filing or as
41 a financing statement covering as-extracted collateral or
42 timber to be cut under section 9-502(c). However, the
43 recording and satisfaction fees that otherwise would be
44 applicable to the record of the mortgage apply.

45 (f) **Deposit of funds.** All fees and moneys collected by
46 the secretary of state pursuant to the provisions of this
47 article shall be deposited by the secretary of state in a
48 separate fund in the state treasury and shall be expended
49 solely for the purposes of this article, unless otherwise
50 provided by appropriation or other action of the Legisla-
51 ture.

PART 7. TRANSITION.

§46-9-705. Effectiveness of action taken before effective date.

1 (a) **Preeffective-date action; two-year perfection period**
2 **unless reperfected.** If action, other than the filing of a
3 financing statement, is taken before this article takes
4 effect and the action would have resulted in priority of a
5 security interest over the rights of a person that becomes
6 a lien creditor had the security interest become enforce-
7 able before this article takes effect, the action is effective
8 to perfect a security interest that attaches under this
9 article within two years after this article takes effect. An
10 attached security interest becomes unperfected two years
11 after this article takes effect unless the security interest
12 becomes a perfected security interest under this article
13 before the expiration of that period.

14 **(b) Preeffective-date filing.** The filing of a financing
15 statement before this article takes effect is effective to
16 perfect a security interest to the extent the filing would
17 satisfy the applicable requirements for perfection under
18 this article.

19 **(c) Preeffective-date filing in jurisdiction formerly gov-**
20 **erning perfection.** This article does not render ineffective
21 an effective financing statement that, before this article
22 takes effect, is filed and satisfies the applicable require-
23 ments for perfection under the law of the jurisdiction
24 governing perfection as provided in former section 9-103.
25 However, except as otherwise provided in subsections (d)
26 and (e) of this section and section 9-706, the financing
27 statement ceases to be effective at the earlier of:

28 (1) The time the financing statement would have ceased
29 to be effective under the law of the jurisdiction in which it
30 is filed; or

31 (2) The thirtieth day of June, two thousand six.

32 **(d) Continuation statement.** The filing of a continuation
33 statement after this article takes effect does not continue
34 the effectiveness of the financing statement filed before
35 this article takes effect. However, upon the timely filing
36 of a continuation statement after this article takes effect
37 and in accordance with the law of the jurisdiction govern-
38 ing perfection as provided in part 3, the effectiveness of a
39 financing statement filed in the same office in that juris-
40 diction before this article takes effect continues for the
41 period provided by the law of that jurisdiction.

42 **(e) Application of subsection (c)(2) to transmitting utility**
43 **financing statement.** Subsection (c)(2) of this section
44 applies to a financing statement that, before this article
45 takes effect, is filed against a transmitting utility and
46 satisfies the applicable requirements for perfection under
47 the law of the jurisdiction governing perfection as pro-
48 vided in former section 9-103 only to the extent that part

49 3 provides that the law of a jurisdiction other than the
50 jurisdiction in which the financing statement is filed
51 governs perfection of a security interest in collateral
52 covered by the financing statement.

53 (f) **Application of part 5.** A financing statement that
54 includes a financing statement filed before this article
55 takes effect and a continuation statement filed after this
56 article takes effect is effective only to the extent that it
57 satisfies the requirements of part 5 for an initial financing
58 statement.

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

Carly Fiorino
.....
Chairman Senate Committee

Robert J. ...
.....
Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Doreen ...
.....
Clerk of the Senate

Bruce ...
.....
Clerk of the House of Delegates

Carl Ray Tomblin
.....
President of the Senate

...
.....
Speaker House of Delegates

The within *is appended* this the *2nd*
Day of *May*, 2001.

Rob Wise
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

4/20/01

Time

5:35 pm