WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED

SENATE BILL NO. 732

(By Senator Wooton, 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.


§12-6A-6. Debt information reporting.

(a) Within fifteen days following the end of each calendar quarter, each state spending unit shall provide the division and the legislative auditor, in the manner provided by this article and in such form and detail as the state treasurer may by regulation require, a statement of the total debt of each such state spending unit incurred during the calendar quarter and owing at the end of such calendar quarter, which statement shall include, but not be limited to, the name of the state spending unit, the amounts and types of debt incurred during the calendar quarter and outstanding at the end of the calendar quarter, the cost and expenses of incurring the debt, the maturity date of each debt, the terms and conditions of the debt, the current debt service on the debt, the current interest rate on the debt, the source of the proceeds utilized for repayment of the debt, the amounts of repayment during the calendar quarter, the repayment schedule and the security for the debt. A state spending unit having no outstanding debt shall not be required to provide the quarterly report but shall file an annual report, on forms established by the division of debt management: Provided, That the state spending unit shall immediately notify the
division of debt management of any change in the spending unit’s outstanding debt condition.

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

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

CHAPTER 46. UNIFORM COMMERCIAL CODE.

ARTICLE 9. SECURED TRANSACTIONS.

SUBPART 2. APPLICABILITY OF ARTICLE.


(a) General scope of article. Except as otherwise provided in subsections (c) and (d) of this section, this article applies to:
(1) A transaction, regardless of its form, that creates a security interest in personal property or fixtures by contract;

(2) An agricultural lien;

(3) A sale of accounts, chattel paper, payment intangibles or promissory notes;

(4) A consignment;

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

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

(b) Security interest in secured obligation. The application of this article to a security interest in a secured obligation is not affected by the fact that the obligation is itself secured by a transaction or interest to which this article does not apply.

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

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

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

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

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

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

(3) An assignment of a claim for wages, salary or other compensation of an employee;
(4) A sale of accounts, chattel paper, payment intangibles or promissory notes as part of a sale of the business out of which they arose;

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

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

(7) An assignment of a single account, payment intangible or promissory note to an assignee in full or partial satisfaction of a preexisting indebtedness;

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

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

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

(A) Section 9-340 applies with respect to the effectiveness of rights of recoupment or set-off against deposit accounts; and

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

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

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

(B) Fixtures in section 9-334;
(C) Fixture filings in sections 9-501, 9-502, 9-512, 9-516, and 9-519; and

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

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

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

(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.

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

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

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

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

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

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

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

1. The security interest is a purchase-money security interest;
2. The interest of the encumbrancer or owner arises before the goods become fixtures; and
3. The security interest is perfected by a fixture filing before the goods become fixtures or within twenty days thereafter.

(e) **Priority of security interest in fixtures over interests in real property.** A perfected security interest in fixtures has priority over a conflicting interest of an encumbrancer or owner of the real property if:
(1) The debtor has an interest of record in the real property or is in possession of the real property and the security interest:

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

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

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

(A) Factory or office machines;

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

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

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

(4) The security interest is:

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

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

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

(1) The encumbrancer or owner has, in an authenticated record, consented to the security interest or disclaimed an interest in the goods as fixtures; or
(2) The debtor has a right to remove the goods as against the encumbrancer or owner.

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

(h) **Priority of construction mortgage.** A mortgage is a construction mortgage to the extent that it secures an obligation incurred for the construction of an improvement on land, including the acquisition cost of the land, if a recorded record of the mortgage so indicates. Except as otherwise provided in subsections (e) and (f) of this section, a security interest in fixtures is subordinate to a construction mortgage if a record of the mortgage is recorded before the goods become fixtures and the goods become fixtures before the completion of the construction. A mortgage has this priority to the same extent as a construction mortgage to the extent that it is given to refinance a construction mortgage.

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

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

§46-9-336. **Commingled goods.**

(a) “**Commingled goods.**” In this section, “commingled goods” means goods that are physically united with other
goods in such a manner that their identity is lost in a product or mass.

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

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

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

(e) **Priority of security interest.** Except as otherwise provided in subsection (f) of this section, the other provisions of this part determine the priority of a security interest that attaches to the product or mass under subsection (c) of this section.

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

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

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

PART 4. RIGHTS OF THIRD PARTIES.
§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.

(a) **Discharge of account debtor; effect of notification.** Subject to subsections (b) through (i), an account debtor on an account, chattel paper or a payment intangible may discharge its obligation by paying the assignor until, but not after, the account debtor receives a notification, authenticated by the assignor or the assignee, that the amount due or to become due has been assigned and that payment is to be made to the assignee. After receipt of the notification, the account debtor may discharge its obligation by paying the assignee and may not discharge the obligation by paying the assignor.

(b) **When notification ineffective.** Subject to subsection (h) of this section, notification is ineffective under subsection (a) of this section:

1. If it does not reasonably identify the rights assigned;
2. To the extent that an agreement between an account debtor and a seller of a payment intangible limits the account debtor’s duty to pay a person other than the seller and the limitation is effective under law other than this article; or
3. At the option of an account debtor, if the notification notifies the account debtor to make less than the full amount of any installment or other periodic payment to the assignee, even if:
   1. Only a portion of the account, chattel paper or payment intangible has been assigned to that assignee;
   2. A portion has been assigned to another assignee; or
   3. The account debtor knows that the assignment to that assignee is limited.
(c) **Proof of assignment.** Subject to subsection (h) of this section, if requested by the account debtor, an assignee shall seasonably furnish reasonable proof that the assignment has been made. Unless the assignee complies, the account debtor may discharge its obligation by paying the assignor, even if the account debtor has received a notification under subsection (a) of this section.

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

1. Prohibits, restricts or requires the consent of the account debtor or person obligated on the promissory note to the assignment or transfer of, or the creation, attachment, perfection or enforcement of a security interest in, the account, chattel paper, payment intangible or promissory note; or

2. Provides that the assignment or transfer or the creation, attachment, perfection or enforcement of the security interest may give rise to a default, breach, right of recoupment, claim, defense, termination, right of termination or remedy under the account, chattel paper, payment intangible or promissory note.

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

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

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

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

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

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

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

(j) Section prevails over specified inconsistent law. This section prevails over any inconsistent provision of an existing or future statute, rule or regulation of this state unless the provision is contained in a statute of this state,
§46-9-408. Restrictions on assignment of promissory notes, health-care-insurance receivables and certain general intangibles ineffective.

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

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

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

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

(c) Legal restrictions on assignment generally ineffective. A rule of law, statute or regulation that prohibits, restricts or requires the consent of a government, governmental body or official, person obligated on a promissory
note, or account debtor to the assignment or transfer of, or creation of a security interest in, a promissory note, health-care-insurance receivable or general intangible, including a contract, permit, license or franchise between an account debtor and a debtor, is ineffective to the extent that the rule of law, statute or regulation:

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

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

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

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

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

(3) Does not require the person obligated on the promissory note or the account debtor to recognize the security interest, pay or render performance to the secured party, or accept payment or performance from the secured party;
(4) Does not entitle the secured party to use or assign the debtor's rights under the promissory note, health-care-insurance receivable or general intangible, including any related information or materials furnished to the debtor in the transaction giving rise to the promissory note, health-care-insurance receivable or general intangible;

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

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

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

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

**PART 5. FILING.**

**SUBPART 2. DUTIES AND OPERATION OF FILING OFFICE.**

§46-9-525. **Fees.**
(a) **Initial financing statement or other record: general rule.** Except as otherwise provided in subsection (e) of this section, the fee for filing and indexing a record under this part, other than an initial financing statement of the kind described in subsection (b) of this section, is the amount specified in subsection (c) of this section, if applicable, plus:

1. Ten dollars if the record is communicated in writing and consists of one or two pages;
2. Ten dollars if the record is communicated in writing and consists of more than two pages; and
3. Ten dollars if the record is communicated by another medium authorized by filing-office rule.

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

1. Ten dollars if the financing statement indicates that it is filed in connection with a public-finance transaction;
2. Ten dollars if the financing statement indicates that it is filed in connection with a manufactured-home transaction.

(c) **Number of names.** The number of names required to be indexed does not affect the amount of the fee in subsections (a) and (b) of this section.

(d) **Response to information request.** The fee for responding to a request for information from the filing office, including for issuing a certificate showing whether there is on file any financing statement naming a particular debtor, is:
(1) Five dollars if the request is communicated in writing;
(2) Five dollars if the request is communicated by another medium authorized by filing-office rule; and
(3) Fifty cents per page for each active lien.

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

(f) Deposit of funds. All fees and moneys collected by the secretary of state pursuant to the provisions of this article shall be deposited by the secretary of state in a separate fund in the state treasury and shall be expended solely for the purposes of this article, unless otherwise provided by appropriation or other action of the Legislature.

PART 7. TRANSITION.

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

(a) Preeffective-date action; two-year perfection period unless reperfected. If action, other than the filing of a financing statement, is taken before this article takes effect and the action would have resulted in priority of a security interest over the rights of a person that becomes a lien creditor had the security interest become enforceable before this article takes effect, the action is effective to perfect a security interest that attaches under this article within two years after this article takes effect. An attached security interest becomes unperfected two years after this article takes effect unless the security interest becomes a perfected security interest under this article before the expiration of that period.
(b) Preeffective-date filing. The filing of a financing statement before this article takes effect is effective to perfect a security interest to the extent the filing would satisfy the applicable requirements for perfection under this article.

(c) Preeffective-date filing in jurisdiction formerly governing perfection. This article does not render ineffective an effective financing statement that, before this article takes effect, is filed and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 9-103. However, except as otherwise provided in subsections (d) and (e) of this section and section 9-706, the financing statement ceases to be effective at the earlier of:

1. The time the financing statement would have ceased to be effective under the law of the jurisdiction in which it is filed; or
2. The thirtieth day of June, two thousand six.

(d) Continuation statement. The filing of a continuation statement after this article takes effect does not continue the effectiveness of the financing statement filed before this article takes effect. However, upon the timely filing of a continuation statement after this article takes effect and in accordance with the law of the jurisdiction governing perfection as provided in part 3, the effectiveness of a financing statement filed in the same office in that jurisdiction before this article takes effect continues for the period provided by the law of that jurisdiction.

(e) Application of subsection (c)(2) to transmitting utility financing statement. Subsection (c)(2) of this section applies to a financing statement that, before this article takes effect, is filed against a transmitting utility and satisfies the applicable requirements for perfection under the law of the jurisdiction governing perfection as provided in former section 9-103 only to the extent that part
3 provides that the law of a jurisdiction other than the jurisdiction in which the financing statement is filed governs perfection of a security interest in collateral covered by the financing statement.

(f) Application of part 5. A financing statement that includes a financing statement filed before this article takes effect and a continuation statement filed after this article takes effect is effective only to the extent that it satisfies the requirements of part 5 for an initial financing statement.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

To take effect July 1, 2001.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within....................... this the.....


Governor