WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2013

ENROLLED
COMMITTEE SUBSTITUTE
FOR
COMMITTEE SUBSTITUTE
FOR

Senate Bill No. 426
(Senator Snyder, original sponsor)

[Passed April 13, 2013; in effect ninety days from passage.]
AN ACT to amend and reenact §46-4A-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code; and to amend said code by adding thereto a new section, designated §46-9-516a, all relating to amending the Uniform Commercial Code; clarifying the relationship between article four-a of the West Virginia code and the federal Electronic Fund Transfer Act; resolving conflicts between federal and state law; providing for the effectiveness of filed records; creating additional authority to refuse to accept a record for filing; creating circumstances under which a record filing is false; providing criminal penalties for filing or attempting to file a false record; providing civil penalties for filing or attempting to file a false record; setting forth an administrative procedure initiated by the Secretary of State or a person identified as a debtor on a record; requiring party to an adverse administrative decision by the Secretary of State to file action in Kanawha County Circuit Court if the party wishes to have the Secretary of State’s decision reversed; exempting the filing office and its employees from liability; exempting filings by a regulated
financial institution or its representatives from certain provisions; clarifying the applicability of provisions to records filed prior to the effective date of this article; increasing fees for filing financing statements or other records in secured transactions; increasing fees for responding for requests for information related to secured transactions; and requiring that the increase in fees be deposited in the existing Fund for Civil Legal Services for Low Income Persons.

Be it enacted by the Legislature of West Virginia:

That §46-4A-108 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §46-9-510, §46-9-516, §46-9-521 and §46-9-525 of said code, be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46-9-516a, all to read as follows:

ARTICLE 4A. FUNDS TRANSFERS.


(a) Except as provided in subsection (b) of this section, this article does not apply to a funds transfer any part of which is governed by the Electronic Fund Transfer Act of 1978 (Title XX, Public Law 95-630, 92 Stat. 3728, 15 U. S. C. §1693 et seq.) as amended from time to time.

(b) This article applies to a funds transfer that is a remittance transfer as defined in the Electronic Fund Transfer Act (15 U. S. C. §1693o-1) as amended from time to time, unless the remittance transfer is an electronic fund transfer as defined in the Electronic Fund Transfer Act (15 U. S. C.§1693a) as amended from time to time.

(c) In a funds transfer to which this article applies, in the event of an inconsistency between an applicable provision of this article and an applicable provision of the Electronic Fund


Transfer Act, the provision of the Electronic Fund Transfer Act governs to the extent of the inconsistency.

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

§46-9-510. Effectiveness of filed record.

(a) Filed record effective if authorized. – A filed record is effective only to the extent that it was filed by a person that may file it under section 9-509.

(b) Authorization by one secured party of record. – A record authorized by one secured party of record does not affect the financing statement with respect to another secured party of record.

(c) Continuation statement not timely filed. – A continuation statement that is not filed within the six-month period prescribed by section 9-515(d) is ineffective.

(d) A filed record ceases to be effective if the filing office terminates the record pursuant to section 9-516(a).

§46-9-516. What constitutes filing; effectiveness of filing.

(a) What constitutes filing. – Except as otherwise provided in subsection (b) of this section, communication of a record to a filing office and tender of the filing fee or acceptance of the record by the filing office constitutes filing.

(b) Refusal to accept record; filing does not occur. – Filing does not occur with respect to a record that a filing office refuses to accept because:

(1) The record is not communicated by a method or medium of communication authorized by the filing office;
(2) An amount equal to or greater than the applicable filing fee is not tendered;

(3) The filing office is unable to index the record because:

(A) In the case of an initial financing statement, the record does not provide a name for the debtor;

(B) In the case of an amendment or information statement, the record:

(i) Does not identify the initial financing statement as required by 9-512 or 9-518, as applicable;

(ii) Identifies an initial financing statement whose effectiveness has lapsed under section 9-515; or

(iii) Identifies an initial financing statement which was terminated pursuant to section 9-516(a);

(C) In the case of an initial financing statement that provides the name of a debtor identified as an individual or an amendment that provides a name of a debtor identified as an individual which was not previously provided in the financing statement to which the record relates, the record does not identify the debtor's surname;

(D) In the case of a record filed or recorded in the filing office described in section 9-501(a)(1), the record does not provide a sufficient description of the real property to which it relates; or

(E) In the case of a record submitted to the filing office described in section 9-501(a)(1), the filing office has reason to believe, from information contained in the record or from person that communicated the record to the office, that:
(i) If the record indicates that the debtor is a transmitting utility, the debtor does not meet the definition of a transmitting utility as described in section 9-102(a)(81);

(ii) If the record indicates that the transaction relating to the record is a manufactured home transaction, the transaction does not meet the definition of a manufactured home transaction as described in section 9-102(a)(54); or

(iii) If the record indicates that the transaction relating to the record is a public finance transaction, the transaction does not meet the definition of a public finance transaction as described in section 9-102(a)(70);

(4) In the case of an initial financing statement or an amendment, if the filing office believes in good faith that the record was communicated to the filing office in violation of section 9-516(a);

(5) In the case of an initial financing statement or an amendment that adds a secured party of record, the record does not provide a name and mailing address for the secured party of record;

(6) In the case of an initial financing statement or an amendment that provides a name of a debtor which was not previously provided in the financing statement to which the amendment relates, the record does not:

(A) Provide a mailing address for the debtor;

(B) Indicate whether the name provided as the name of the debtor is the name of an individual or an organization;

(7) In the case of an assignment reflected in an initial financing statement under section 9-514(a) or an amendment filed under section 9-514(b), the record does not provide a name and mailing address for the assignee; or
(8) In the case of a continuation statement, the record is not filed within the six-month period prescribed by section 9-515(d).

(c) Rules applicable to subsection (b). – For purposes of subsection (b):

(1) A record does not provide information if the filing office is unable to read or decipher the information; and

(2) A record that does not indicate that it is an amendment or identify an initial financing statement to which it relates, as required by section 9-512, 9-514 or 9-518, is an initial financing statement.

(d) Refusal to accept record; record effective as filed record. – A record that is communicated to the filing office with tender of the filing fee, but which the filing office refuses to accept for a reason other than one set forth in subsection (b) of this section, is effective as a filed record except as against a purchaser of the collateral which gives value in reasonable reliance upon the absence of the record from the files.

§46-9-516a. Filing fraudulent records; civil and criminal penalties; administrative proceedings; immunity from liability.

(a) No person may cause to be communicated to the filing office for filing a false record the person knows or reasonably should know:

(1) Is not authorized or permitted under sections 9-509, 9-708 or 9-808; and

(2) Is filed with the intent to harass or defraud the person identified as debtor on the record or any other person.
(b) Any person who violates subsection (a) of this section shall, for a first offense, be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1000 or, in the discretion of the court, be confined in jail not more than twelve months, or both fined and confined. Any person who violates subsection (a) of this section shall, for a second or subsequent offense, be guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) Any person who violates subsection (a) of this section is liable in a civil action to each injured person for:

(1) The greater of the actual damages caused by the violation or up to $10,000 in lieu of actual damages;

(2) Reasonable attorney fees;

(3) Court costs and other related expenses of bringing an action including reasonable investigative expenses; and

(4) In the discretion of the court, punitive damages in an amount determined by the court or jury.

(d) A person identified as a debtor in a filed record the person believes was caused to be communicated to the filing office in violation of subsection (a) of this section may, under penalty of perjury, file with the Secretary of State an affidavit to that effect. The Secretary of State shall adopt and make available a form affidavit for use under this section.

(e) Upon receipt of an affidavit filed under this section, or upon administrative action by the Secretary of State, the Secretary of State shall communicate to the secured party of record on the record to which the affidavit or administrative action relates and to the person who communicated the record
to the filing office, if different and known to the office, a request for additional documentation supporting the effectiveness of the record. The Secretary of State shall review all such documentation received within thirty days after the first request for additional documentation is sent if the Secretary of State has a reasonable basis for concluding that the record was communicated to the filing office in violation of subsection (a) of this section.

The Secretary of State may initiate an administrative action under this subsection with regard to a filed record if the Secretary of State has reason to believe, from information contained in the record or obtained from the person who communicated the record to the filing office, that the record was communicated to the filing office in violation of subsection (a) of this section. The Secretary of State may give heightened scrutiny to a record that indicates the debtor is a transmitting utility or that indicates the transaction to which the record relates is a manufactured home transaction or a public finance transaction.

(f) The Secretary of State may not charge a fee to file an affidavit under this section and may not return a fee paid for filing a record terminated under this section.

(g) The Secretary of State shall promptly communicate to the secured party of record a notice of the termination of a record under subsection (c) of this section. A secured party of record who believes in good faith that the record was not communicated to the filing office in violation of subsection (a) of this section may file an action to require that the record be reinstated by the filing office. A person who communicated a record to the filing office that the filing office rejected in reliance on section 9-516(b)(4), who believes in good faith that the record was not communicated to the filing office in violation of section 9-516(b)(4), may file an action to require that the record be accepted by the
filing office. The jurisdiction for the action is the circuit court of Kanawha County.

(h) If the court determines that a record terminated under this section or rejected in reliance on section 9-516(b)(4) should be reinstated or accepted, the court shall provide a copy of an order to that effect to the Secretary of State. On receipt of an order reinstating a terminated record, the Secretary of State shall refile the record along with a notice indicating that the record was refiled pursuant to this section and its initial filing date. On receipt of an order requiring that a rejected record be accepted, the Secretary of State shall promptly file the record along with a notice indicating that the record was filed pursuant to this section and the date on which it was communicated for filing. A rejected record that is filed pursuant to an order of a court shall have the effect described in section 9-516(d) for a record the filing office refuses to accept for a reason other than one set forth in section 9-516(b).

(i) A terminated record that is refiled under subsection (h) of this section is effective as a filed record from the initial filing date. If the period of effectiveness of a refiled record would have lapsed during the period of termination, the secured party may file a continuation statement within thirty days after the record is refiled and the continuation statement has the same effect as if it had been filed during the six-month period described in section 9-515(d). A refiled record is considered never to have been ineffective against all persons and for all purposes except that it is not effective as against a purchaser of the collateral that gave value in reasonable reliance on the absence of the record from the files.

(j) Neither the filing office nor any of its employees incur liability for the termination or failure to accept a record for filing in the lawful performance of the duties of the office or employee.
(k) This section does not apply to a record communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution, except that the Secretary of State may request from the secured party of record on the record or from the person that communicated the record to the filing office, if different and known to the office, additional documentation supporting that the record was communicated to the filing office by a regulated financial institution or by a representative of a regulated financial institution. For the purposes of this section the term “regulated financial institution” means a financial institution subject to regulatory oversight or examination by a state or federal agency and includes banks, savings banks, savings associations, building and loan associations, credit unions, consumer finance companies, industrial banks, industrial loan companies, investment funds, installment sellers, mortgage servicers, sales finance companies and leasing companies.

(l) If a record was communicated to the filing office for filing before the effective date of this section, and its communication would have constituted a violation of subsection (a) of this section if it had occurred on or after the effective date of this section:

(i) Subsections (b) and (c) are not applicable; and

(ii) The remaining subsections of this section are applicable.

§46-9-521. Written financing statement and amendment thereto.

(a) Initial financing statement. – A filing office that accepts written records may not refuse to accept a written initial financing statement except for a reason set forth in section 9-516(b): Provided, That the written record must be on the most recent revision of the appropriate form as
approved by the International Association of Commercial Administrators.

(b) Amended financing statement. — A filing office that accepts written records may not refuse to accept an amended written record except for a reason set forth in section 9-516(b): Provided, That the written record must be on the most recent revision of the appropriate form as approved by the International Association of Commercial Administrators.

§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) $20 if the record is communicated in writing and consists of one or two pages; and

(2) $20 if the record is communicated in writing and consists of more than two pages; and

(3) $20 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 (c) 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) $20 if the financing statement indicates that it is filed in connection with a public-finance transaction;
(2) $20 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. $10 if the request is communicated in writing;
2. $10 if the request is communicated by another medium authorized by filing-office rule; and
3. $1 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 as follows: One-half shall be deposited in the special revenue account created by section 59-1-59(c)(4)(B), to provide civil legal services for low income persons, one-fourth shall be deposited in the state general revenue, and one-fourth shall be deposited in the service fees and collections account established by section 59-1-2 for the operation of the office of the Secretary of State. Any balance remaining on June 30, 2001, in the
existing special revenue account entitled "uniform commercial code" as established by chapter two hundred four, acts of the Legislature, 1989 regular session, shall be transferred to the service fees and collections account established by section 59-1-2 for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article, unless otherwise provided by appropriation or other action by the Legislature.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Originated in the Senate.

In effect ninety days from passage.

The within is approved this the 2nd Day of May, 2013.

Governor
PRESENTED TO THE GOVERNOR

MAY - 1 2013

Time 1:45 pm