WEST VIRGINIA CODE CHAPTER 46A ARTICLE 4

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§46A-4-101. Authority to make loans.

Unless a person has first obtained a license from the commissioner authorizing the person to make regulated consumer loans, he or she may not engage in the business of:

(1) Making regulated consumer loans; or

(2) Taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans: Provided, That the licensing provisions of this act do not pertain to any "collection agency" as defined in, and licensed by, the "Collection Agency Act of 1973" at W. Va. Code §§47-16-1 et seq.

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§46A-4-102. License to make regulated consumer loans.

(1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant and the findings required of him or her before he or she may issue a license. At the time of the filing of the application, the sum of $750 shall be paid to the commissioner as an investigation fee.

(2) A license may not be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state or to one licensed under the provisions of the West Virginia Mortgage Loan Act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. A license will not be granted to any office located outside this state: Provided, That the limitation of licensing contained in this subsection does not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. A license may not be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least $10,000 in capital and has, for each specified location of operation, assets of at least $2,000.

(3) Upon written request, the applicant is entitled to a hearing on the question of his or her qualifications for a license if: (a) The commissioner has notified the applicant in writing that his or her application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him or her that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally

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licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business for which he or she holds a license and not under any other name than that stated in the license.

(7) A license issued under the provisions of this section shall not be transferable or assignable.

(8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

(9) All mortgage loan originators, as defined in article seventeen-a, chapter thirty-one of this code, who are employed by a licensed regulated consumer lender must be licensed or registered and issued a unique identifier by the Nationwide Mortgage Licensing System and Registry pursuant to the requirements provided in article seventeen-a, chapter thirty-one of this code.

(10) All regulated consumer lenders must file with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $100,000 for licensees with West Virginia mortgage loan originations of $0 to $3 million, $150,000 for West Virginia mortgage loan originations greater than $3 million and up to $10 million, and $200,000 for West Virginia mortgage loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state.

(11) All regulated consumer lenders shall notify the commissioner of any merger or acquisition which may result in a change of control or a change in principals of the regulated consumer lender within fifteen days of announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice of these circumstances by a corporate licensee, the commissioner may require all information necessary to determine whether it results in a transfer or assignment of the license and thus if a new application is required in order for the company to continue doing business under this article. A licensee that is an entity other than a corporation shall in these circumstances submit a new application for licensure at the time of notice.

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§46A-4-103. Revocation, suspension or forfeiture of license.

(a) The commissioner may issue to a person licensed to make regulated consumer loans an order to show cause why his or her license should not be revoked or should not be suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the commissioner shall revoke or suspend the license if he or she finds that:

(1) The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made or issued pursuant to this article;

(2) The licensee has failed to remit their required annual assessment, or to maintain their status as a business in good standing with the office of the Secretary of State, notwithstanding notification in writing by the commissioner sent by certified mail to the licensee's last known address providing for thirty days to rectify such failure;

(3) The licensee has forfeited their license by failing to remain open for regulated consumer lending business in conformity with the rules or order of the commissioner; or

(4) Facts or conditions exist which would clearly have justified the commissioner in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(b) No revocation or suspension of a license under this article is lawful unless prior to institution of proceedings by the commissioner notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the commissioner finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, he or she may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

(d) Nothing in this section limits the authority of the commissioner to take action against a regulated consumer lender pursuant to chapter thirty-one-a of this code.

(e) Whenever the commissioner revokes or suspends a license, he or she shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he or she shall mail by registered or certified mail or deliver to the licensee a copy of the order and the findings supporting the order.

(f) Any person holding a license to make regulated consumer loans may relinquish the license by notifying the commissioner in writing of its relinquishment, but this relinquishment shall not affect his or her liability for acts previously committed.

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(g) No revocation, suspension, forfeiture or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(h) The commissioner may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the commissioner in refusing to grant a license.

(i) In addition to the authority authorized by this section, the commissioner may impose a fine or penalty not exceeding $2,000 upon any regulated consumer lender required to be licensed under this article who violates this chapter, chapter thirty-one-a or any other law or rule that the Division of Banking is authorized to enforce with respect to companies licensed under this article. For the purposes of this section, each day, excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a licensed consumer lender is a separate violation and, as such, each day is subject to the maximum fine of $2,000 per day. Any fine or penalty imposed under this subsection may be contested by the licensee pursuant to article five, chapter twenty-nine-a of this code.

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§46A-4-104. Records; annual reports.

(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where regulated consumer loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account such two-year period is measured from the date of each entry.

(2) On or before February 15 each year, every licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to all regulated consumer loans made by him and showing in detail the actual financial condition and the amount of the assets and liabilities of such financial institution. The commissioner shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

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§46A-4-105. Examinations; assessments and investigations.

(1) The commissioner shall examine at least every eighteen months the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the Attorney General or the commissioner may at any time investigate the loans, business and records of any regulated consumer lender. For these purposes he shall have free and reasonable access to the offices, places of business and records of the lender.

(2) If the lender's records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the commissioner may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the commissioner may apply to any circuit court of this state for an order compelling compliance.

(5) The commissioner of banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the State Treasury for the department of banking an annual assessment payable on July 1, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest as is set out in section eight, article two, chapter thirty-one-a of this code.

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§46A-4-106. Application of Administrative Procedures Act.

Except as otherwise provided, the provisions of chapter twenty-nine-a of this code apply to and govern all administrative action taken by the commissioner pursuant to the provisions of this article.

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§46A-4-107. Loan finance charge for regulated consumer lenders.

(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of $3,500 or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 31 percent per year on the unpaid balance of the principal amount.

(3) On a loan greater than $3,500 but less than or equal to $15,000, or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 27 percent per year on the unpaid balance of the principal amount: Provided, That the loan finance charge on any loan greater than $15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than $3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee: Provided, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points, or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within 24 months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges is permissible and does not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended is, for purposes of this subsection, the amount financed. Other than herein provided, no points, origination fee, investigation fee, or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by §46A-3-109 of this code, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing, or consolidation is governed by the provisions on rebate upon prepayment, refinancing, or consolidation contained in §46A-3-111 of this code.

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(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one-twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during the billing cycle.

For the purpose of this subdivision, a billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to 30.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer or the pro rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan not secured by real estate of $3,500 or less contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: Provided, That no other finance charges are imposed on the loan. The processing fee permitted under this subsection shall be included in the calculation of the loan finance charge and the financing of the fee shall be permissible and may not constitute charging interest on interest.

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property

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located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive, and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

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§46A-4-108. Use of multiple loan agreements.

A regulated consumer lender may not use multiple loan agreements with intent to obtain a higher loan finance charge than would otherwise be permitted by the provisions of this article. A regulated consumer lender uses multiple loan agreements if, with intent to obtain a higher loan finance charge than would otherwise be permitted, he allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the regulated consumer lender for a regulated consumer loan under this article.

The excess amount of the loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties.

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§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy; limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents prohibitions on residential mortgage loans; providing civil remedy.

(1) No consumer loan of $2,000 or less may be secured by an interest in land, other than a purchase money loan for that land, unless the lender is licensed in this state as a regulated consumer lender or as a mortgage lender, or is a federally insured depository institution permitted to conduct lending in West Virginia. A security interest taken in violation of this subsection is void.

(2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no regulated consumer lender shall take any assignment of or order for payment of any earnings to secure any loan made by any regulated consumer lender under this article. An assignment or order taken in violation of this subsection is void. This subsection does not prohibit a court from ordering a garnishment to affect recovery of moneys owed by a borrower to a lender as part of a judgment in favor of said lender.

(3) Other than for a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower. Where federal law permits a security interest in certain nonpurchase items deemed not to be household goods, the security agreement creating such security interest must be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

(4) A regulated consumer lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due thereon at the time of said discharge from any court of the United States of America exercising jurisdiction in insolvency and bankruptcy matters, unless said regulated consumer lender shall pay to and deliver to the borrower the full amount of the loan shown on said note, promise to pay, or security, less any deductions for charges herein specifically authorized.

(5) In making any loan secured by any encumbrance on residential property, no lender may, and no such lending transaction may contain terms which:

(A) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a duplicate fee or points to act as both broker and lender for the same mortgage loan; collect a fee for a product or service where the product or service is not actually provided; or, misrepresent the amount charged by or paid to a third party for a product or service;

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(B) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the real estate that is to be encumbered;

(C) Make or assist in making any loan secured by any encumbrance on residential property with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: Provided, That this subdivision shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

(D) Allow or require a loan secured by any encumbrance on residential property to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(E) Require or contain terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: Provided, That the provisions of this subdivision shall not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of another residential dwelling, or commercial loans for multiple residential purchases;

(F) Secure a residential mortgage loan in a principal amount, that when added to the aggregate total of the outstanding principal balances of all other residential mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest residential mortgage loan is made. For purposes of this paragraph, a lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, or other evidence of fair market value, if the lender does not have actual knowledge that the value is incorrect; or

(G)(1) Require compulsory arbitration which does not comply with federal law; (2) contain a document with blank or blanks to be filled in after the consummation of the loan; (3) contain a power of attorney to confess judgment; (4) contain any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article; (5) contain any requirement that more than one installment be payable in any one installment period; or (6) contain any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned; or

(H) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction.

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§46A-4-110. Conduct of business other than making loans.

(1) No licensee shall conduct the business of making loans under the provisions of this article within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is sufficiently related to that of a financial institution and is such that the granting of such authority would not facilitate evasions of this article or of the rules lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter, or from making loans authorized under the provisions of the West Virginia secondary mortgage loan act as set forth in article seventeen, chapter thirty-one of this code, or from engaging in any business previously approved by the commissioner prior to September 1, 1996.

(2) A licensee may purchase, hold and convey real property as follows:

(a) As shall be necessary for the convenient transaction of its business;

(b) As is mortgaged to it in good faith by way of security for loans made by or money due to such regulated consumer lender;

(c) As is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(d) As is acquired by the sale on execution or judgment or decree of any court in its favor.

(3) A licensee shall not purchase, hold or convey any real property in any other case or for any other purpose whatsoever. Real property shall be conveyed only by authority of the board of directors of any such regulated consumer lender. No real property acquired upon foreclosure in the cases contemplated in subdivision (b), or acquired under subdivisions (c) and (d) of this section shall be held for a longer time than ten years, unless such period shall be extended by the commissioner of banking.

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§46A-4-110a. Prohibited conduct.

(1) A regulated consumer lender shall not:

(a) Accept or receive deposits or sell or offer for sale its secured or unsecured evidences or certificates of indebtedness;

(b) Pay any fees, bonuses, commissions, rewards or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used: Provided, That nothing herein prevents a regulated consumer lender from agreeing in connection with a loan to pay a broker fee, finders fee or dealer participation fee, or to split the origination fee or points paid: Provided, however, That the fee or fee split is disclosed to the borrower and where proper is included in the finance charge; or

(c) Fail to disclose the amount of a payoff of an existing loan within three business days of receiving a request for such information from either the borrower or an agent acting on behalf of the borrower.

(2) Unless preempted by federal law, no consumer loan by a regulated consumer lender may contain any scheduled balloon payment as set forth in this chapter. Nor may any regulated consumer lender loan contain terms of repayment which result in negative amortization: Provided, That nothing herein prevents unequal payment schedules resulting from a variable rate loan or a revolving line of credit.

(3) A regulated consumer lender may not make revolving loans for the retail purchase of consumer goods and services by use of a lender credit card.

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§46A-4-111. Disclosure of higher annual percentage rate upon refinancing of a loan not secured by real estate at higher rate; requiring documentation of a reasonable net tangible benefit to the borrower of any refinancing of a real estate secured loan.

(1) Any nonrevolving consumer loan or consumer credit sale that is not secured by residential real estate that is refinanced or consolidated with a new loan under this article after September 1, 2009, at a higher annual percentage rate than the consumer loan or consumer credit sale being refinanced must provide the consumer the following disclosures:

"If you do agree to refinance or consolidate your existing obligation, you will be paying an annual percentage rate of _____% on the existing balance of $_____, instead of the annual percentage rate of _____% which you are now paying.

I acknowledge receipt of this information _____ (initials of borrower)."

Nothing in this subsection shall prohibit the receipt of goods or services by the borrower at the time the consolidated loan agreement is made, nor shall this subsection prohibit or pertain to any loan where the refinancing or consolidation results in the consumer paying the same or a lower annual percentage rate.

(2) No nonrevolving consumer loan or consumer credit sale that is secured by residential real estate may be refinanced or consolidated with a new loan secured by residential real estate and made under this article unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower's circumstances. The reasonable, tangible net benefit shall be documented in writing on a form prescribed by the commissioner and maintained in the loan file.

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§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.

All references in this code to supervised loans, supervised lenders, industrial loans, industrial loan companies and licensees thereof, as well as to article seven, chapter thirty-one of this code, shall, after the operative date of this chapter and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to regulated consumer loans, regulated consumer lenders, regulated consumer lender licensees and to this article.

All authority vested by this chapter in the commissioner shall be considered to be in addition to, and not in limitation of, the authority vested in the commissioner of banking by provisions contained in other chapters of this code.

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§46A-4-113. Continuation of licensing.

All persons licensed under the provisions of article seven, chapter thirty-one of this code, or as supervised lenders under the prior provisions of this article on the operative date of this chapter, are licensed to make regulated consumer loans under the provisions of this article, and all provisions of this article shall after the operative date of this chapter apply to the persons so previously licensed, including, without limitation, the provisions governing notification contained in article seven of this chapter.

The commissioner may, but is not required to, deliver evidence of licensing to the persons so previously licensed. Persons holding both supervised lender and industrial loan company licenses, or operating such a licensed business in the same office will be combined and provided a single regulated lender license.

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§46A-4-114. Permitting licensee to conduct business at remote location.

(a) Notwithstanding any provision of this article to the contrary, but subject to the requirements of this section, employees of a West Virginia licensee located in West Virginia may perform work for the licensee at their residence: *Provided*, That such a residence is located within 100 miles of a licensed West Virginia corporation or branch office: *Provided, however*, That nothing in this subsection restricts employees of the licensee from participating in regulated consumer lending activities at other locations for limited periods of time. Any regulated consumer lender activity conducted by an employee of the West Virginia licensee shall be considered, reported, and regulated as loans of the West Virginia licensee, regardless of the employee's location during the activity.

(b) A licensee, prior to authorizing work by employees at a location other than the licensee's designated place of business, shall ensure the following:

(1) No in-person customer interactions will be conducted at the other location;

(2) The other location is not designated as a business location to consumers or customers;

(3) Appropriate data security and privacy safeguards are in place for licensee and consumer data, information, and records at the other location, including, but not limited to, the use and maintenance of secure virtual private networks and maintenance of appropriate security updates, patches, or other alterations to ensure the security of electronic devices;

(4) Appropriate risk-based monitoring and oversight processes of work performed by the employees of a licensee at the other location are in place, and records of such monitoring and processes are maintained;

(5) No consumer information or records are maintained at the other location;

(6) All consumer and licensee information and records remain accessible and available for regulatory oversight and examinations;

(7) Employees are trained and keep confidential all conversations about, and with, consumers that may be conducted at the other location; and

(8) The other location is a safe and secure workplace for employees.

(c) A licensee, prior to authorizing work at a location other than the licensee's designated place of business, shall establish written policies and procedures to ensure compliance with the requirements of subsection (b) of this section.

(d) A licensee that authorizes work at another location pursuant to this section shall:

(1) Periodically review and document compliance with the provisions of this section and the written policies and procedures established pursuant to subsection (c) of this section as it

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relates to every employee who works at another location; and

(2) Certify annually to the commissioner that the provisions of this section have been met as to each employee working at another location.

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