WEST VIRGINIA CODE: §46B-1-5

§46B-1-5. General definitions.

The following words and phrases, when used in this chapter, shall have the meanings respectively ascribed to them in this section, unless the context in which such words or phrases are used elsewhere in this chapter clearly requires a different meaning:

(1) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" include agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(2) "Consumer" means a natural person who acquires, or seeks to acquire, the right to possession and use of consumer goods from a dealer.

(3) "Consumer goods" or "goods" means goods intended to be used primarily for personal, family or household purposes.

(4) "Damage waiver" means the voiding or disregard by the dealer of any obligation on the part of the consumer to pay the value of the consumer goods or to make payments pursuant to a rent-to-own agreement in the event of loss or damage to the consumer goods in excess of normal wear and tear or the insurance of the value of the consumer goods or of payments pursuant to the rent-to-own agreement in the event of loss or damage to the consumer goods in excess of normal wear and tear.

(5) "Dealer" or "rent-to-own dealer" means a person who, in the ordinary course of business, transfers or offers to transfer the right to possession and use of consumer goods to a consumer or acts as an agent to transfer or offer to transfer the right to possession and use of consumer goods to a consumer, pursuant to a rental agreement.

(6) "Debt collection" means any action, conduct or practice of soliciting claims for collection or the collection of a claim or claims owed or due or alleged to be owed or due to a dealer by a consumer under a rent-to-own agreement.

(7) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme and are intended or calculated to be used to collect claims.

(8) "Financial organization" means a corporation, partnership, cooperative or association

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which:

(A) Is organized, chartered or holding an authorization certificate under the laws of this state or of the United States which authorizes the organization to make consumer loans; and

(B) Is subject to supervision and examination with respect to such loans by an official or agency of this state or of the United States.

(9) "Ownership" means the right to enjoy, possess and use consumer goods to the exclusion of other persons, including the right to transfer legal title to such consumer goods or to otherwise control, handle or dispose of such consumer goods, whether or not indicia of such ownership is established by, or otherwise required to be evidenced by, a title-paper, letter, receipt or other document or instrument.

(10) "Period" or "rental period" means a week, a month or another specific length of time set forth in a rent-to-own agreement, during which such period the consumer has a right to continue possessing and using consumer goods, after having made the periodic rental payment for such period.

(11) "Periodic payment" means a payment required to be made by a consumer to have the right to possession and use of consumer goods during a specified time period. The periodic payment does not include any applicable sales, use, privilege, excise or documentary stamp taxes otherwise payable upon a transfer of consumer goods from a dealer to a consumer, except as provided for by the disclosure requirements or other applicable requirements set forth in this chapter.

(12) "Person" or "party" includes a natural person or an individual, an organization, partnership or corporation.

(13) "Person related to" with respect to an individual means: (A) The spouse of the individual; (B) a brother, brother-in-law, sister or sister-in-law of the individual; (C) an ancestor or lineal descendant of the individual or his spouse; and (D) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization, partnership or corporation means: (A) A person directly or indirectly controlling, controlled by or under common control with the organization, partnership or corporation; (B) an officer or director of the organization, partnership or corporation or a person performing similar functions with respect to the organization or to a person related to the organization, partnership or corporation; (C) the spouse of a person related to the organization, partnership or corporation; and (D) a relative by blood or marriage of a person related to the organization, partnership or corporation shares the same home with him or her.

(14) "Premises" means a particular physical place of business opened to the public by a dealer.

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(15) "Rental agreement" means the bargain, with respect to the rental of consumer goods under a rent-to-own agreement, of the dealer and the consumer as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance as provided in this chapter.

(16) "Rental contract" means the total legal obligation that results from the rental agreement as affected by this chapter and any other applicable rules of law.

(17) (A) "Rent-to-own agreement" means a rental agreement which:

(i) Transfers the right to possession and use of the rental property from the dealer to the consumer;

(ii) Obligates the consumer to pay successive periodic rental payments as each shall become due, in order to continue his or her right to possession and use of the rented consumer goods;

(iii) Is subject to termination by the consumer as permitted by this chapter, whereupon the consumer is not obligated to make payments for any period of time other than a period during which he or she chooses to maintain possession and use of the rented consumer goods; and

(iv) Provides that upon compliance with the terms of the agreement the consumer shall become or has the option to become the owner of the property.

(B) The term "rent-to-own agreement" does not include a rental agreement in which:

(i) A financial organization is a party, if the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto;

(ii) Any of the consumer goods which are the subject matter of the rental agreement are vehicles as defined in section one, article one, chapter seventeen-a of this code;

(iii) All of the consumer goods which are the subject of the rental agreement are either two-way telecommunications equipment, medical equipment or musical instruments, and the rental agreement is subject to the federal Truth in Lending Act or the federal Consumer Leasing Act and the regulations promulgated pursuant thereto; or

(iv) All of the goods which are the subject matter of the rental agreement are primarily intended to be used for agricultural purposes.

(18) "Retail value" or "fair market value" of particular consumer goods means the price at which goods of like type, quality and quantity would change hands between a willing seller and a willing buyer, at retail, for cash, in the particular market area at the time of the rent-to-own rental agreement, which price does not include any applicable sales, use, privilege,

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excise or documentary stamp taxes payable upon the transfer of such goods.

(19) "Rent-to-own charge", in connection with any rent-to-own agreement, means the sum of all charges in excess of the retail value which must be paid directly or indirectly by the consumer in order for the consumer to acquire ownership of the consumer goods without payment of further consideration.

(20) "Termination" means the cancellation of a rental agreement when the consumer determines that he or she no longer desires to pay periodic payments and retain the right to possession and use of the consumer goods or either party puts an end to the rental agreement for default by the other party in accordance with the provisions of this chapter.

(21) "Total of payments" means the total of all periodic payments specified in the written agreement which the consumer must pay in order to acquire ownership of the consumer goods without the payment of additional consideration to the dealer.

(22) "Willing buyer" means a person who:

(A) Buys consumer goods at retail for his or her personal use or for the use of his or her family or household;

(B) Has a reasonable knowledge of the relevant facts to be considered in ascertaining the fair market price of consumer goods which are offered to be sold at retail; and

(C) Is under no compulsion to buy or to buy from a particular seller.

(23) "Willing seller" means a person other than a rent-to-own dealer who:

(A) In the ordinary course of business regularly sells or offers for sale consumer goods at retail;

(B) Has no direct or indirect ownership connection with any dealer;

(C) Has a reasonable knowledge of the relevant facts to be considered in fixing the fair market price of consumer goods which are offered to be sold at retail; and

(D) Is under no compulsion to sell or to sell to a particular buyer.

(24) "Written agreement" means a written document containing or evidencing the terms of a rent-to-own transaction, reduced to a tangible and legible form by printing, typewriting, computer print-out or any other intentional reduction.

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