WEST VIRGINIA CODE CHAPTER 46B

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§46B-1-1. Short title.

This chapter shall be known and may be cited as the "West Virginia Consumer Goods Rental Protection Act".

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§46B-1-2. Scope.

This chapter applies to any transaction, regardless of form, which creates a rental agreement for the rental of consumer goods, unless such transaction is specifically exempted from the application of this chapter by an express provision contained herein.

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§46B-1-3. Applicability of the law of this state.

With respect to consumer goods rented to a resident of this state under a rent-to-own agreement, compliance and the effect of compliance or noncompliance with the provisions of this chapter are governed by the law of this state.

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§46B-1-4. Legislative purpose and intent.

The underlying purposes and intent of this chapter are as follows:

(1) To simplify and clarify the law governing contracts for the rental of consumer goods;

(2) To assure an adequate means for consumers to enter into contracts for the rental of consumer goods at an affordable price, so that consumers are financially able to comply with the terms of such contracts;

(3) To further consumer understanding of the terms of agreements which involve the purchase or rental of consumer goods;

(4) To foster competition among dealers or rent-to-own dealers who supply consumer goods under rental agreements, so that consumers may rent such consumer goods at a reasonable cost;

(5) To protect consumers against unfair practices by some dealers, while having due regard for the interests of legitimate and scrupulous dealers; and

(6) To permit and encourage the development and use of fair and economically sound business practices on the part of dealers, as well as promoting the practice of thrift and the exercise of good judgment by consumers prior to their entering into agreements for the purchase or rental of consumer goods.

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§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 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

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(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.

(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.

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(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, 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

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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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§46B-2-1 Statute of Frauds.

(a) A rental agreement is not enforceable by a dealer by way of action or defense unless there is a writing, signed by both the dealer or his or her agent or employee and the consumer, sufficient to indicate that a rent-to-own agreement has been made between the parties, reasonably identifying and describing the consumer goods to be rented. Any purported rent-to-own agreement entered into without a written agreement may be voided by the consumer, who may return the consumer goods and be refunded all amounts previously paid to the dealer under the purported rental agreement.

(b) A rental agreement is not enforceable by a dealer against a consumer unless the written agreement contains all disclosures required by the provisions of this chapter, and unless a copy of the written agreement is delivered to the consumer contemporaneously with the execution of the written agreement. Any written agreement executed by a consumer which does not comply with the requirements of this subsection may be voided by the consumer.

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§46B-2-2. Unconscionability.

(a) If the court as a matter of law finds a rental agreement or any clause of a rental agreement to have been unconscionable at the time it was made, the court may refuse to enforce the rental agreement, or it may enforce the remainder of the rental agreement without the unconscionable clause, or it may so limit the application of any unconscionable clause as to avoid any unconscionable result.

(b) With respect to a consumer rental agreement, if the court as a matter of law finds that a rental agreement or any clause of a rental agreement has been induced by unconscionable conduct or that unconscionable conduct has occurred in the collection of a claim arising from a rental agreement, the court may grant appropriate relief.

(c) Before making a finding of unconscionability under subsection (a) or (b) of this section, the court, on its own motion or that of a party, shall afford the parties a reasonable opportunity to present evidence as to the setting, purpose and effect of the rental agreement or clause thereof, or of the conduct.

(d) In an action in which the consumer claims unconscionability with respect to a rental agreement:

(1) If the court finds unconscionability under subsection (a) or (b) of this section, the court shall award reasonable attorney's fees to the consumer.

(2) If the court does not find unconscionability and the consumer claiming unconscionability has brought or maintained an action he or she knew to be groundless, the court shall award reasonable attorney's fees to the dealer against whom the claim is made.

(3) In determining attorney's fees, the amount of the recovery on behalf of the claimant under subsections (a) and (b) of this section is not controlling.

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§46B-2-3. Express warranties.

(a) Express warranties by the dealer are created as follows:

(1) Any affirmation of fact or promise made by the dealer to the consumer which relates to the consumer goods is part of the basis of the bargain and creates an express warranty that the consumer goods will conform to the affirmation or promise;

(2) Any description of the consumer goods is part of the basis of the bargain and creates an express warranty that the consumer goods will conform to the description;

(3) Any sample or model exhibited to the consumer by the dealer is part of the basis of the bargain and creates an express warranty that the consumer goods actually delivered to the consumer will conform to the sample or model.

(b) It is not necessary to the creation of an express warranty that the dealer use formal words, such as "warrant" or "guarantee", or that the dealer have a specific intention to make a warranty, but an affirmation merely of the value of the consumer goods or a statement purporting to be merely the dealer's opinion or commendation of the consumer goods does not create a warranty.

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§46B-2-4. Implied warranty of merchantability.

(a) A warranty that the consumer goods will be merchantable is implied in every contract for the rental of consumer goods if the dealer is a merchant with respect to consumer goods of that kind.

(b) Consumer goods to be merchantable must be at least such as:

(1) Pass without objection in the trade under the description in the rental agreement;

(2) Are fit for the ordinary purposes for which consumer goods of that type are used; and

(3) Conform to any promises or affirmations of fact made on the container or label.

(c) Other implied warranties may arise from course of dealing or usage of trade.

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§46B-2-5. Implied warranty of fitness for particular purpose.

If the dealer, at the time the rental contract is made, has reason to know of any particular purpose for which the consumer goods are required and that the consumer is relying on the dealer's skill or judgment to select or furnish suitable consumer goods, there is in the rental contract an implied warranty that the consumer goods will be fit for that purpose.

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§46B-2-6. Manufacturers' warranties; transfer of warranties.

When consumer goods that are subjects of a rent-to-own transaction are warranted by a manufacturer's or supplier's warranty or other warranty that may either be retained by the dealer or transferred to the consumer, the warranty shall be retained by the dealer so long as the dealer is responsible for maintaining the consumer goods. At such time as maintenance of the goods becomes the responsibility of the consumer through a transfer of ownership or otherwise, such warranty shall be transferred to the consumer. The dealer shall advise, orally and in writing, the consumer of any manufacturer's or supplier's warranty that may apply to the consumer goods and any details regarding the warranty and the transfer of the warranty.

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§46B-2-7. Disclaimer of warranties and remedies prohibited.

(a) Notwithstanding any other provision of law to the contrary with respect to consumer goods which are the subject of or are intended to become the subject of a rental contract subject to the provisions of this chapter, all warranties available to the consumer, express or implied, are cumulative and not exclusive, and the consumer shall have the benefit of any or all such warranties. No dealer, manufacturer, supplier or other merchant shall:

(1) Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

(b) Any exclusion, modification or attempted limitation of a warranty, express or implied, shall be void. Words or conduct relevant to the creation of an express warranty and words or conduct tending to negate or limit a warranty must be construed as inconsistent with each other.

(c) It is unlawful in a rental contract subject to the provisions of this chapter to attempt to exclude, modify or otherwise attempt to limit any implied warranty of merchantability or any part of it, or to attempt to exclude, modify or otherwise attempt to limit any implied warranty of fitness.

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§46B-2-8. Third-party beneficiaries of express and implied warranties.

A warranty to or for the benefit of a consumer under this chapter, whether express or implied, extends to any natural person who is in the family or household of the consumer or who is a guest in the consumer's home if it is reasonable to expect that such person may use or be affected by the consumer goods and who is injured in person by breach of the warranty. This section does not displace principles of law and equity that extend a warranty to or for the benefit of a consumer to other persons. The operation of this section may not be excluded, modified or limited.

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§46B-2-9. Risk of loss.

Risk of loss is retained by the dealer and does not pass to the consumer until such time as the consumer receives the goods.

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§46B-3-1. Default; procedure.

(a) Whether the dealer or the consumer is in default under a rental contract is determined by the rental agreement and this chapter.

(b) If the dealer or the consumer is in default under the rental contract, the party seeking enforcement has rights and remedies as provided in this chapter and, except as limited by this chapter, as provided in the rental agreement.

(c) If the dealer or the consumer is in default under the rental contract, the party seeking enforcement may reduce the party's claim to judgment or otherwise enforce the rental contract by self-help or any available judicial procedure or nonjudicial procedure: Provided, That consumer goods may only be repossessed by a dealer without judicial process when such repossession can be effected without a breach of the peace.

(d) Except as otherwise provided in this chapter or the rental agreement, the rights and remedies referred to in subsections (b) and (c) are cumulative.

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§46B-3-2. Notice after default.

Except as otherwise provided in this chapter, the dealer or consumer in default under the rental contract is not entitled to notice of default or notice of enforcement from the other party to the rental agreement.

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§46B-3-3. Termination of rent-to-own agreements.

(a) Upon the termination of a rent-to-own agreement by a consumer, all obligations that are still executory by both parties are discharged, but any right based on a failure of the dealer to maintain the consumer goods in accordance with the provisions of section six of this article, or any other right based on prior default or performance of the dealer survives, and the consumer retains any remedy or defense for such default. Rights and remedies available to the consumer for material misrepresentation or fraud by a dealer are not affected by a termination of the rental agreement by a consumer. Termination of the rental agreement by a consumer shall not bar or be deemed inconsistent with a claim for damages or other right or remedy.

(b) A consumer may terminate a rent-to-own agreement at any time.

(c) When a consumer terminates a rent-to-own transaction, the dealer may not require any further action or payment by the consumer except:

(1) Payment of any unpaid periodic payments and charges accrued before the consumer notified the dealer of the termination of the transaction and made the consumer goods available to be received by the dealer; and

(2) Payment of any pickup charge provided for in the rental agreement.

(d) A dealer may terminate a rent-to-own agreement when the consumer fails to make a periodic payment as it becomes due: Provided, That seven days prior to terminating the rent-to-own agreement, the dealer shall provide a written notice to the consumer informing him or her:

(1) Of the amount of any periodic payment or payments that the consumer has failed to make;

(2) That the consumer may voluntarily surrender possession of the goods to the dealer at the location where the goods are located;

(3) Of any late payment which has been or may be assessed;

(4) Of the right to reinstate which shall include:

(A) The consumer's right to reinstate the agreement by payment of amounts due when the goods are in the possession of the consumer;

(B) The amount of time when the consumer has to reinstate the agreement;

(C) That reinstatement will result in continuation of the original agreement, including the provisions relating to ownership of the goods; and

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(D) The amount of fees to be paid for reinstatement.

(e) The dealer may request that the goods be surrendered at any time after a consumer has failed to timely make a periodic payment required under the agreement.

(f) A rent-to-own agreement terminates when the consumer surrenders the goods. The dealer shall provide the consumer with a notice of reinstatement rights as stated in subdivision (4), subsection (d) of this section.

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§46B-3-4. Reinstatement of written rental agreement.

(a) The consumer may reinstate the transaction at any time until the consumer is served, in a manner pursuant to rule four of the rules of civil procedure, with a civil complaint arising out of the transaction.

(b) When a consumer fails to timely make one or more periodic payments, he or she may reinstate the original rent-to-own transaction, without losing any right or option of the consumer under the rental-purchase agreement, within sixty days after the expiration of the last period for which the consumer made a timely payment: Provided, That if a consumer has made more than forty percent of the regular payments required to obtain ownership of the goods, pursuant to the rent-to-own transaction, the consumer shall have ninety days to reinstate a rent-to-own transaction: Provided, however, That when a dealer seeks to repossess the goods and has lawfully repossessed the goods two previous times during the same transaction, the consumer may not reinstate the transaction.

(c) If reinstatement occurs pursuant to this section, the dealer shall provide the consumer with the same goods leased by the consumer prior to the reinstatement or if those goods are not available to the dealer, substitute property that is of no less quality and condition. When substitute property is provided, the dealer shall make all disclosures required by this chapter. When consumer goods have been repossessed or returned to the possession of the dealer prior to reinstatement, the dealer may charge a nominal reinstatement fee, not to exceed $5.

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§46B-3-5. Consumer's right to ownership of the goods.

When the consumer has paid all periodic payments required by a rent-to-own transaction together with any other charges authorized by law which have been lawfully imposed in the transaction, he or she shall have exclusive ownership of the goods: Provided, That the consumer, after the initial payment, may obtain ownership before the scheduled end of the rent-to-own transaction by paying:

(1) A portion of the periodic payments, which have not yet become payable, subject to any limitation provided by this chapter;

(2) All periodic payments and other charges authorized by law which have already become due and which may be lawfully imposed in the transaction; and

(3) The amount of any documentary or other fee charged by a governmental entity to transfer ownership or proof of ownership.

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§46B-3-6. Maintenance of goods.

A dealer shall maintain the goods that are the subject of any rent-to-own transaction in working order and usable condition until such time as the consumer obtains ownership of the goods.

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§46B-3-7. Disclosure requirements.

(a) The dealer shall make all disclosures required by this section.

(b) In all circumstances listed in subsection (c) of this section, the dealer shall disclose the following information with respect to the goods that are the subject of the rental agreement in a clear, conspicuous, and easily understood manner:

(1) Retail value;

(2) Rent-to-own charge;

(3) Rental period;

(4) Number of periodic payments required for ownership;

(5) Amount of each periodic payment;

(6) Total of all payments; and

(7) Whether the goods are new or have been previously rented or are otherwise used.

(c) The dealer shall make the disclosures required in this section:

(1) On a label attached or posted on top of the goods displayed to any potential consumer if the goods are displayed on the premises of the dealer and offered under a rent-to-own agreement by that same dealer;

(2) In any rent-to-own agreement as defined in §46B-1-5 of this code;

(3) In any telephone communication with a potential consumer; and

(4) In any radio, television, or printed advertisement for the goods when the amount of the periodic payment for the item is included in the advertisement.

(d) For any goods displayed or offered online and for which a consumer can enter into a rent-to-own agreement online or remotely through electronic commerce, a dealer may, in lieu of attaching the disclosure required by 46B-3-7(c)(1) of this code to the goods, provide the same information electronically so long as such information is disclosed in a clear, conspicuous, and easily understood manner.

(e) For any goods offered to the consumer under a rent-to-own agreement by one dealer, but displayed by any other person or on the premises of any other dealer, the dealer offering the rent-to-own agreement may provide the information required under §46B-3-7(b) of this code electronically, as described under §46B-3-7(d) of this code, or on a label, as described under §46B-3-7(c)(1) of this code.

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(f) Any oral communications concerning the terms and conditions of the transaction shall be incorporated into a written agreement which shall govern the transaction.

(g) In any transaction involving more than one dealer, only one dealer may make the disclosures required by this article: *Provided*, That when the name of the dealer is required to be disclosed, all dealers shall be disclosed.

(h) A dealer may disclose information that is not required by this section only when the additional information is not stated, used, or placed in a manner that may contradict, obscure, or distract attention from the information required by this section.

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§46B-3-8. Prohibitions for rent-to-own transactions.

No dealer may:

(1) Require any initial payment in any transaction except the payment for the first rental period, deposit fee, taxes, insurance or delivery fees and other disclosed fees or fees authorized by this chapter;

(2) Charge any fee at the time ownership of the consumer goods passes to the consumer, other than an applicable fee, if any, which actually is or will be paid to public officials for perfecting title or ownership in the consumer;

(3) Raise the amount of any payment or charge after the execution of the written agreement without both parties voluntarily entering into a second written agreement;

(4) Take any action to collect a payment which is prohibited by this chapter;

(5) Accept any cosigner other than a person who is in the household of the consumer and who is expected to use the consumer goods;

(6) Take any security interest in any property owned by the consumer;

(7) Require a damage waiver, insurance or form of insurance, insuring the consumer goods against loss or damage, unless the dealer requires such insurance for all goods of comparable type and value in every rent-to-own agreement;

(8) Require damage waiver from a particular insurer;

(9) Seek to collect any charge not authorized by this chapter and disclosed in a written agreement; or

(10) Have an initial period which is more than one week longer than any other rental period.

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§46B-3-9. Limitations on charges and fees.

(a) Any consumer seeking to fulfill obligations pursuant to §46B-3-5 of this code may be charged a fee no greater than the retail value divided by the total of payments multiplied by the amount of the periodic payments which have not yet become due.

(b) A dealer may not charge a fee for delivery or pickup unless the charge is provided for in the written agreement, the parties agree that the dealer shall deliver or pick up the goods, and the charge is reasonably related to the costs of delivery.

(c) Any late fee imposed by a dealer may not exceed five percent of the periodic payment or $15, whichever is less. Only one late charge may be imposed for any payment for which a late charge may be charged. Under a rental agreement in which periodic payments are due weekly, a late charge may not be imposed until the payment is three days late. Otherwise, a late charge may not be imposed until the payment is five days late.

(d) The total of payments in a rent-to-own transaction shall not be greater than 240 percent of the retail value.

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§46B-3-10. Attorney general; promulgation of rules.

The Attorney General may adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof. In addition, the Attorney General shall adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of said chapter, as are necessary and proper to determine formula or method of ascertaining retail value as defined in this article and as are necessary and proper to detail the requirements for disclosure set forth in this article.

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§46B-4-1. Extortionate conduct in rent-to-own transaction.

If the court finds as a matter of fact that it was the understanding of the dealer and the consumer at the time a rental agreement for a rent-to-own transaction was made that delay in making a payment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the agreement of the extension of credit is unenforceable through civil judicial process against the dealer and the consumer, at his or her option, may rescind the agreement and retain the goods without any obligation to pay for them.

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§46B-4-2. Referral sales or leases.

With respect to a rent-to-own transaction, the dealer may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale or lease in consideration of his giving to the dealer the names of prospective purchasers or consumers, or otherwise aiding the dealer in making a lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the consumer agrees to lease. If a consumer is induced by a violation of this section to enter into a rent-to-own transaction, the agreement is unenforceable against the consumer, who at his or her option, may rescind the agreement and retain the goods without any obligation to pay for them.

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§46B-4-3. Practice of law by debt collectors.

Unless a licensed attorney in this state, no debt collector shall engage in conduct deemed the practice of law. Without limiting the general application of the foregoing, the following conduct is deemed the practice of law:

(1) The performance of legal services, furnishing of legal advice or false representation, direct or by implication, that any person is an attorney;

(2) Any communication with consumers in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

(3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

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§46B-4-4. Threats or coercion.

No debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion or attempt to coerce. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use, or express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person;

(2) The accusation or threat to accuse any person of fraud, any crime or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a consumer is willfully refusing to pay a just debt or the threat to so make false accusations;

(4) The threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;

(5) The threat that nonpayment of an alleged claim will result in the:

(A) Arrest of any person; or

(B) Garnishment of any wages of any person or the taking of other action requiring judicial sanction, without informing the consumer that there must be in effect a judicial order permitting such garnishment or such other action before it can be taken; and

(6) The threat to take any action prohibited by this chapter or other law regulating the debt collector's conduct.

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§46B-4-5. Oppression and abuse.

No debt collector shall unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(3) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication; and

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

WV Legislature

§46B-4-6. Unreasonable publication.

No debt collector shall unreasonably publicize information relating to any alleged indebtedness of consumer. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The communication to any employer or his agent before judgment has been rendered of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(2) The disclosure, publication or communication of information relating to a consumer's indebtedness to any relative or family member of the consumer if such person is not residing with the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) The disclosure, publication or communication of any information relating to a consumer's indebtedness to any other person other than a credit reporting agency, by publishing or posting any list of consumers, commonly known as "deadbeat lists"; and

(4) The use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address and phone number of the debt collector.

WV Legislature

§46B-4-7. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company or organization;

(2) The failure to clearly disclose in all communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(4) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) Any false representation or implication of the character, extent or amount of a claim against a consumer or of its status in any legal proceeding;

(6) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;

(7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(8) Any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

WVLegislature

§46B-4-8. Unfair or unconscionable means.

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(2) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(4) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the written rental agreement and by statute; and

(5) Any communication with a consumer whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.

WV Legislature

§46B-4-9. Postal violations.

No debt collector shall use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.

WV Legislature

§46B-5-1. Notice of assignment.

A consumer is authorized to pay the original dealer until he receives notification of assignment of rights to payment pursuant to a rent-to-own transaction and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original dealer.

WV Legislature

§46B-5-2. Receipts; statements of account; evidence of payment.

(a) The dealer shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a written rental agreement. A periodic statement showing a payment received complies with this subsection.

(b) Upon written request of a consumer, the dealer shall provide a written statement of the dates and amounts of payments made within the past twelve months and the total amount unpaid. The requested statement shall be provided without charge once during each year of the term of the agreement. If additional statements are requested, the creditor may charge not in excess of $3 for each additional statement.

(c) After a consumer has fulfilled all obligations with respect to a rent-to-own transaction, the dealer shall, upon the request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

WV Legislature

§46B-5-3. Notification.

(a) Every person engaged in this state in making rent-to-own transactions and every person having an office or place of business in this state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from such transactions shall file notification with the State Tax Department within thirty days after commencing business in this state, and, thereafter, on or before the thirty-first day of January of each year. A notification shall be deemed to be in compliance with this section if the information hereinafter required is given in an application for a business registration certificate provided for in section four, article twelve, chapter eleven of this code. The State Tax Commissioner shall make any information required by this section available to the Attorney General or commissioner upon request. The notification shall state:

(1) Name of the person;

(2) Name in which business is transacted if different from subdivision (1) of this subsection;

(3) Address of principal office, which may be outside this state;

(4) Address of all offices or retail stores, if any, in this state at which rent-to-own transactions are made or, in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted; and

(5) Address of designated agent upon whom service of process may be made in this state.

(b) If information in a notification becomes inaccurate after filing, accurate information must be filed within thirty days.

WV Legislature

§46B-6-1. Assignment of earnings.

(a) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more rent-to-own transactions may not exceed twenty-five percent of his disposable earnings for that week.

(b) As used in this section:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(2) "Assignment of earnings" includes all forms of assignments, deductions, transfers or sales of earnings to another, either as payment or as security and whether stated to be revocable or nonrevocable and includes any deductions authorized under the provisions of section three, article five, chapter twenty-one of this code, except deductions for union or club dues, pension plans, payroll savings plans, charities, stock purchase plans and hospitalization and medical insurance.

(c) Any assignment of earnings and any deduction under section three, article five, chapter twenty-one of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(d) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

WV Legislature

§46B-6-2. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a rent-to-own transaction. An authorization in violation of this section is void. The provisions of this section shall not be construed as in any way impliedly authorizing a confession of judgment in any other type of transaction.

WV Legislature

§46B-6-3. No garnishment before judgment.

Prior to entry of judgment in an action against the consumer for debt arising from a rent-to-own transaction, the dealer may not attach unpaid earnings of the consumer by garnishment or like proceedings. The provisions of this section shall not be construed as in any way impliedly authorizing garnishment before judgment in any other type of transaction.

WV Legislature

§46B-6-4. Limitation on garnishment.

(a) For the purposes of the provisions in this chapter relating to garnishment:

(1) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(2) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(b) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a rent-to-own transaction may not exceed the lesser of:

(1) Twenty percent of his disposable earnings for that week;

(2) The amount by which his disposable earnings for that week exceed thirty times the federal minimum hourly wage prescribed by Section 6(a)(1) of the "Fair Labor Standards Act of 1938", U.S.C. Title 19, Section 206(a)(1), in effect at the time the earnings are payable; or

(3) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (2) of this subsection.

(c) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or five-b, chapter thirty-eight of this code by a creditor resulting from a rent-to-own transaction, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he resides to reduce or temporarily or permanently remove such execution upon his earnings on the grounds that such execution causes or will cause undue hardship to him or his family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

(d) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment or notice of withholding in point of time or filing.

WV Legislature

§46B-6-5. No discharge or reprisal because of garnishment.

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a rent-to-own transaction.

WV Legislature

§46B-6-6. Personal property exemptions.

Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judicial process resulting from rent-to-own transactions, except for the purchase money due on such property, in such amounts as follows: Clothing and other wearing apparel of the consumer, his spouse and any dependents of such consumer, not to exceed the fair market value of $200; furniture, appliances, furnishings and fixtures regularly used for family purposes in the consumer's residence, to the extent of the fair market value of $1,000; children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his or her spouse and any dependent of such consumer; tools of trade, including any income-producing property used in the consumer's principal occupation, to the extent of the fair market value of $1,000; and any policy of life or endowment insurance which is payable to the spouse or children of the insured consumer or to a trustee for their benefit, except the cash value of any accrued dividends thereon. When a consumer claims personal property as exempt under the provisions of this section, he shall deliver a list containing all the personal property owned or claimed by him and all items of such property he claims as exempt hereunder, with the value of each separate item listed according to his best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the consumer shall state at the foot thereof what part of such property he claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his spouse with the same effect as if the consumer had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the dealer or his agent or attorney. The rights granted and procedures provided for in article eight, chapter thirty-eight of this code shall apply to any proceeding under this section, except that the provisions of sections one and three of such article shall not apply.

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§46B-7-1. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who takes or holds any negotiable instrument, nonnegotiable instrument, or contract or other writing, arising from a rent-to-own lease which is subject to the provisions of this chapter, shall be conclusively presumed to have appointed the Secretary of State as his attorney-in-fact with authority to accept service of notice and process in any action or proceeding brought against him arising out of such rent-to-own transaction. A person shall be considered a nonresident hereunder if he is a nonresident at the time such service of notice and process is sought. No act of such person appointing the Secretary of State shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with a fee of $2, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such person at his address, which address shall be stated in such process or notice: Provided, That such return receipt shall be signed by such person or an agent or employee of such person if a corporation, or the registered or certified mail so sent by said Secretary of State is refused by the addressee and the registered or certified mail is returned to said Secretary of State, or to his office, showing thereon the stamp of the U.S. postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. But no process or notice shall be served on the Secretary of State or accepted fewer than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceeding.

The provisions for service of process or notice herein are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.

WV Legislature

§46B-8-1. Enforcement.

For a violation of or a failure to comply with the provisions of this article by a dealer, a consumer is entitled to recover from the dealer the consumer's actual damages, reasonable attorney's fees and court costs and a civil penalty in an amount not less than $100 nor more than $1,000 for each violation.

WV Legislature

§46B-8-2. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(a) The Attorney General may bring a civil action to restrain a dealer or a person acting in his behalf from engaging in a course of:

(1) Making or enforcing unconscionable terms or provisions of rent-to-own transactions;

(2) Fraudulent or unconscionable conduct in inducing consumers to enter into rent-to-own transactions; or

(3) Fraudulent or unconscionable conduct in the collection of payments arising from rent-to-own transactions.

(b) In an action brought pursuant to this section the court may grant relief only if it finds:

(1) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(2) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers; and

(3) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are rent-to-own transactions.

(c) In applying this section, consideration shall be given to each of the following factors, among others:

(1) Belief by the dealer at the time rent-to-own transactions are made that there was no reasonable probability of payment in full of the obligation by the consumer;

(2) Knowledge by the dealer at the time of the sale of the inability of the consumer to receive substantial benefits from the transaction;

(3) Gross disparity between the price of the property or services sold that are the subject of the transaction and the value of the property measured by the price at which similar property are readily obtainable in rent-to-own transactions by like consumers;

(4) The fact that the dealer contracted for or received separate charges for insurance with respect to the goods with the effect of making the sales or loans, considered as a whole, unconscionable; and

(5) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement or similar factors.

WV Legislature

(d) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.

WV Legislature

§46B-8-3. Civil actions by Attorney General.

(a) After demand, the Attorney General may bring a civil action against a dealer for making or collecting charges in excess of those permitted by this chapter. If the court finds that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a dealer has made an excess charge in a deliberate violation of or in reckless disregard for this chapter or if a dealer has refused to refund an excess charge within a reasonable time after demand by the consumer or the Attorney General, the court may also order the respondent to pay to the consumer a civil penalty in an amount determined by the court not in excess of ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection may be set off against the consumer's obligation. If a consumer brings an action against a dealer to recover an excess charge or civil penalty, an action by the Attorney General to recover for the same excess charge shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. No action pursuant to this subsection may be brought more than one year after the time the excess charge was made. If the dealer establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(b) The Attorney General may bring a civil action against a dealer to recover a civil penalty for willfully violating this chapter and if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter, it may assess a civil penalty of no more than $5,000. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than four years before the action is brought.

WV Legislature