WEST VIRGINIA CODE CHAPTER 46a ARTICLE 1

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§46A-1-101. Short title.

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

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§46A-1-102. General definitions.

In addition to definitions appearing in subsequent articles, in this chapter:

(1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

(2) "Agreement" means the bargain of the parties in fact as found in their language or by implication from other circumstances including course of dealing or usage of trade or course of performance. A "consumer credit agreement" is an agreement where credit is granted.

(3) "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" includes 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.

(4) "Amount financed" means the total of the following items to the extent that payment is deferred:

(a) The cash price of the goods, services or interest in land, less the amount of any down payment whether made in cash or in property traded in;

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

(c) If not included in the cash price:

(i) Any applicable sales, use, privilege, excise or documentary stamp taxes;

(ii) Amounts actually paid or to be paid by the seller for registration, certificate of title or license fees; and

(iii) Additional charges permitted by this chapter.

(5) "Average daily balance" in a billing cycle for which a sales finance charge or loan finance charge is made is the sum of the amount unpaid each day during that cycle divided by the number of days in that cycle. The amount unpaid on a day is determined by adding to the balance, if any, unpaid as of the beginning of that day all purchases and other debits and deducting all payments and other credits made or received as of that day.

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(6) The "cash price" of goods, services or an interest in land means the price at which the goods, services or interest in land are offered for sale by the seller to cash buyers in the ordinary course of business, and may include: (a) Applicable sales, use, privilege, and excise and documentary stamp taxes; (b) the cash price of accessories or related services such as delivery, installation, servicing, repairs, alterations and improvements; and (c) amounts actually paid or to be paid by the seller for registration, certificate of title or license fees.

(7) "Closing costs" with respect to a debt secured by an interest in land include:

(a) Fees or premiums for title examination, title insurance or similar purposes including surveys;

(b) Fees for preparation of a deed, deed of trust, mortgage, settlement statement or other documents;

(c) Escrows for future payments of taxes and insurance;

(d) Official fees and fees for notarizing deeds and other documents;

(e) Appraisal fees; and

(f) Credit reports.

(8) "Code" means the official Code of West Virginia, 1931, as amended.

(9) "Commercial facsimile transmission" means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.

(10) "Commissioner" means the commissioner of banking of West Virginia.

(11) "Conspicuous": A term or clause is conspicuous when it is so written that a reasonable person against whom it is to operate ought to have noticed it. Whether a term or clause is conspicuous or not is for decision by the court.

(12) "Consumer" means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan, or debt or other obligations pursuant to a consumer lease.

(13) (a) Except as provided in paragraph (b), "consumer credit sale" is a sale of goods, services or an interest in land in which:

(i) Credit is granted either by a seller who regularly engages as a seller in credit transactions of the same kind or pursuant to a seller credit card;

(ii) The buyer is a person other than an organization;

(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;

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(iv) Either the debt is payable in installments or a sales finance charge is made; and

(v) With respect to a sale of goods or services, the amount financed does not exceed $45,000 or the sale is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(b) "Consumer credit sale" does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(14) (a) "Consumer lease" means a lease of goods:

(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;

(ii) In which the total of payments under the lease, excluding payments for options to renew or buy, do not exceed $45,000 or in which the lease is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code; and

(iii) Which is for a term exceeding four months.

(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:

(a) The debtor is a person other than an organization;

(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;

(c) Either the debt is payable in installments or a loan finance charge is made; and

(d) Either the principal does not exceed $45,000 or the debt is secured by an interest in land or a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(16) "Cosigner" means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer's obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a "cosigner" whether or not the person is designated as such on the credit

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obligation.

(17) "Credit" means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(18) "Earnings" means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(19) "Facsimile device" means a machine that receives and copies reproductions or facsimiles of documents or photographs that have been transmitted electronically or telephonically over telecommunications lines.

(20) "Federal Consumer Credit Protection Act" means the "Consumer Credit Protection Act" (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(21) "Goods" includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(22) "Home solicitation sale" means a consumer credit sale in excess of $25 in which the buyer receives a solicitation of the sale at a place other than the seller's business establishment at a fixed location and the buyer's agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller's business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the federal Truth in Lending Act (being Title I of the federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for, in whole or in part, by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.

(23) Except as otherwise provided, "lender" includes an assignee of the lender's right to payment but use of the term does not in itself impose on an assignee any obligation of the lender.

(24) "Lender credit card or similar arrangement" means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit or other credit confirmation or identification in transactions out of which debt arises:

(a) By the lender's honoring a draft or similar order for the payment of money drawn or

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accepted by the consumer;

(b) By the lender's payment or agreement to pay the consumer's obligations; or

(c) By the lender's purchase from the obligee of the consumer's obligations.

(25) "Loan" includes:

(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;

(b) The creation of debt by a credit to an account with the lender upon which the consumer is entitled to draw immediately;

(c) The creation of debt pursuant to a lender credit card or similar arrangement; and

(d) The forbearance of debt arising from a loan.

(26) (a) "Loan finance charge" means the sum of: (i) All charges payable directly or indirectly by the debtor and imposed directly or indirectly by the lender as an incident to the extension of credit, including any of the following types of charges which are applicable: Interest or any amount payable under a point, discount or other system of charges, however denominated, premium or other charge for any guarantee or insurance protecting the lender against the consumer's default or other credit loss; and (ii) charges incurred for investigating the collateral or credit worthiness of the consumer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable, unless the lender had no notice of the charges when the loan was made. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges.

(b) If a lender makes a loan to a consumer by purchasing or satisfying obligations of the consumer pursuant to a lender credit card or similar arrangement, and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the loan finance charge.

(27) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.

(28) "Official fees" means:

(a) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting, releasing, terminating or satisfying a security interest related to a consumer credit sale or consumer loan; or

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(b) Premiums payable for insurance or fees escrowed in a special account for the purpose of funding self-insurance or its equivalent in lieu of perfecting a security interest otherwise required by the creditor in connection with the sale, lease or loan, if such premium or fee does not exceed the fees and charges described in paragraph (a) of this subdivision which would otherwise be payable.

(29) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(30) "Payable in installments" means that payment is required or permitted by agreement to be made in: (a) Two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made; (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made; or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is "payable in installments".

(31) "Person" or "party" includes a natural person or an individual, and an organization.

(32) "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 means: (a) A person directly or indirectly controlling, controlled by or under common control with the organization; (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization; (c) the spouse of a person related to the organization; and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him

(33) "Precomputed loan". A loan, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the principal and the amount of the loan finance charge computed in advance; or

(B) The loan is expressed in terms of the principal amount; the loan installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the loan or at its final payment as a result of the actual installment payment dates.

(34) "Precomputed sale". A sale, refinancing or consolidation is "precomputed" if:

(A) The debt is expressed as a sum comprising the amount financed and the amount of the sales finance charge computed in advance; or

(B) The debt is expressed in terms of the principal amount; the debt installment payments are a scheduled, fixed amount including principal and interest and assume payment on the installment due date; and interest payments will not vary or result in an adjustment during the term of the debt or at its final payment as a result of the actual installment payment dates.

(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

(36) "Principal" of a loan means the total of:

(a) The net amount paid to, receivable by or paid or payable for the account of the debtor;

(b) The amount of any discount excluded from the loan finance charge; and

(c) To the extent that payment is deferred:

(i) Amounts actually paid or to be paid by the lender for registration, certificate of title or license fees if not included in paragraph (a) of this subdivision; and

(ii) Additional charges permitted by this chapter.

(37) "Regulated consumer lender" means a person authorized to make or take assignments of regulated consumer loans.

(38) "Regulated consumer loan" means a consumer loan, including a loan made pursuant to a revolving loan account, in which the rate of the loan finance charge exceeds eighteen percent per year as determined according to the actuarial method, except where the loan qualifies for federal law preemption from state interest rate limitations, including federal law bank parity provisions, or where the lender is specifically permitted by state law other than article four of this chapter to make the loan at that rate without a requirement the lender hold a regulated consumer lender license.

(39) "Revolving charge account" means an agreement between a seller and a buyer by which: (a) The buyer may purchase goods or services on credit or a seller credit card; (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account; (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time; and (d) there is the privilege of paying the balances in installments.

(40) "Revolving loan account" means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which:

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(a) The lender may permit the consumer to obtain loans from time to time; (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account; (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer's account from time to time; and (d) there is the privilege of paying the balances in installments.

(41) "Sale of goods" includes any agreement in the form of a bailment or lease of goods if the bailee or lessee agrees to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the goods involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the goods upon full compliance with his obligations under the agreement.

(42) "Sale of an interest in land" includes a lease in which the lessee has an option to purchase the interest and all or a substantial part of the rental or other payments previously made by him are applied to the purchase price.

(43) "Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(44) "Sales finance charge" means the sum of: (a) All charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(45) Except as otherwise provided, "seller" includes an assignee of the seller's right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(46) "Seller credit card" means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(47) "Services" includes: (a) Work, labor and other personal services; (b) privileges with

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respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and (c) insurance.

(48) "Supervised financial organization" means any organization, corporation or person, other than an insurance company or other organization primarily engaged in an insurance business, which is required under state law to register or obtain a license from the commissioner of banking before conducting business in this state; or which is authorized under federal law to make consumer loans without a license from the state commissioner of banking, provided such loans are subject to supervision and examination by an official or agency of the United States.

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§46A-1-103. Effect of chapter on powers of persons making consumer credit sales and consumer loans, and others; consumer protection generally.

(1) This chapter prescribes maximum charges for all creditors, except lessors and those excluded, making consumer credit sales and consumer loans, and sales and loans made subject to the provisions of this chapter by agreement, and except as otherwise provided by this chapter displaces any existing limitations and provisions regulating maximum interest and charges, minimum charges, additional charges, delinquency charges, deferral charges, allocation of charges and methods of computing rebates upon prepayment, refinancing or consolidation with respect to consumer credit sales and consumer loans, and the debtors' remedies and penalties provided by this chapter displace all existing provisions relating to remedies, penalties and forfeitures for usury and usurious contracts as to transactions covered by this chapter.

(2) Except as provided in subsection (1) of this section or elsewhere in this chapter, this chapter does not displace powers or limitation on powers which supervised financial organizations are authorized to exercise under the laws of the United States or other laws of this state in effect after the operative date of this chapter.

(3) This chapter also prescribes in various articles protective measures for consumers in transactions not necessarily involving consumer credit.

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§46A-1-104. Application.

(1) This chapter applies if a consumer, who is a resident of this state, is induced to enter into a consumer credit sale made pursuant to a revolving charge account, to enter into a revolving charge account, to enter into a consumer loan made pursuant to a revolving loan account, or to enter into a consumer lease, by personal or mail solicitation, and the goods, services or proceeds are delivered to the consumer in this state, and payment on such account is to be made from this state.

(2) With respect to consumer credit sales or consumer loans consummated in another state, a creditor may not collect in an action brought in this state a sales finance charge or loan finance charge in excess of that permitted by this chapter.

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§46A-1-105. Exclusions.

(a) This chapter does not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) The sale of insurance by an insurer, except as otherwise provided in this chapter;

(3) The obligation of a property owner, lot owner, or homeowner in a planned community containing no more than 12 units which is not subject to any development rights or a planned community that provides in its declaration that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $300 as adjusted pursuant to §36B-1-114 of this code, or the efforts of property owners' associations or homeowners' associations to collect the same to pay dues, assessments, costs, or fees of any kind to a property owners' association or homeowners' association;

(4) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(5) Licensed pawnbrokers.

(b) Mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of § 31-17-1 *et seq*. of this code.

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§46A-1-106. Sales, leases or loans subject to chapter by agreement of parties.

The parties to any sale, lease or loan, other than a consumer credit sale, consumer lease or consumer loan, may agree in writing signed by the parties that the sale, lease or loan is subject to the provisions of this chapter applying to consumer credit sales, consumer leases or consumer loans. If the parties so agree, the sale, lease or loan is subject to this chapter.

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§46A-1-107. Waiver.

Except as otherwise provided in this chapter, a consumer may not waive or agree to forego rights or benefits under this chapter or under article two-a, chapter forty-six of this code.

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§46A-1-108. Records retention methods.

(a) All persons, other than banks and credit unions, who are subject to the provisions of this chapter and who are required to create or maintain records or other documents in the course of their business, may copy or reproduce those records or documents (other than notes, bonds, mortgages and other securities and investments) by any existing and generally accepted method of reproduction or retention technology which conforms to the requirements of section thirty-five, article four, chapter thirty-one-a of this code and may substitute copies or reproductions of the records or documents either in positive or negative form for the originals. A copy or reproduction in the form of a positive print is deemed to be an original counterpart of and has the same force as the original and is admissible in evidence in all courts and administrative agencies in this state for all purposes. The copies or reproductions authorized by this subsection shall be maintained pursuant to the records retention requirements applicable to the original records or documents. The original records or documents, once copied or reproduced, may be destroyed or otherwise eliminated.

(b) When copies of documents are offered in evidence, all circumstances surrounding the making or issuance of the documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions represented by the copies, may be shown to affect the weight of the documents as evidence, but not the admissibility.

(c) Any device used to copy or reproduce documents and records shall be one which correctly and accurately reproduces the original document or record in all details and any disk or film used for this purpose shall be of durable material.

(d) Banks and credit unions may reproduce and maintain records and documents in conformity with this section as long as the reproduction and maintenance methods used do not conflict with any other provisions of this code applicable to banks or credit unions or with any rule of the commissioner of banking.

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