WEST VIRGINIA CODE: §46a-2-101

§46A-2-101. Holders of negotiable instruments subject to claims and defenses.

(1) The following limitations shall be applicable to negotiable instruments, other than a currently dated check, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose, made on the date this chapter becomes operative or within a period of one year thereafter;

(a) Notwithstanding any term or agreement to the contrary or the provisions of section three hundred five, article three, chapter forty-six of this code, a holder in due course of any such negotiable instrument shall take and hold such instrument subject to all claims and defenses arising from that specific consumer credit sale or consumer lease which the buyer or lessee has against the seller or lessor but the holder's liability shall not exceed the amount owing to the holder at the time the holder receives notice of the claims or defenses, if such claims and defenses are asserted by the buyer or lessee by written notice given to the holder within a period of one hundred eighty days after the holder has delivered or mailed to the buyer or lessee a written notice of negotiation complying with the requirements of subdivision (b) of this subsection (1).

(b) The notice of negotiation from the holder to the buyer or lessee contemplated in subdivision (a) of this subsection (1) shall be in writing, identify the negotiable instrument, briefly describe the goods or services, state the name and address of the holder, state the initial deferred balance of such negotiable instrument payable by the buyer or lessee and the number, amount and due dates of installments, the amount currently payable by the buyer or lessee, and inform the buyer or lessee in a conspicuous manner that he has one hundred eighty days from a specified date (which date shall be the date the notice was delivered or mailed to the buyer or lessee) within which to notify the holder in writing of any claims and defenses he may have against the seller or lessor arising from that specific consumer credit sale or consumer lease; and that if written notification of any such claims and defenses is not given to the holder within such one hundred eighty day period, the holder will have the right to enforce the instrument free of any such claims and defenses the buyer or lessee may have against the seller or lessor. Such notice of negotiation, if given by mail, is given when it is mailed to the buyer's or lessee's last-known address by registered or certified mail, return receipt requested.

(c) In order to preserve all of his claims and defenses against a holder under subdivision (a) of this subsection (1), the buyer or lessee must, after receiving the written notice of negotiation provided for in subdivision (b) of this subsection (1), and before the expiration of a period of one hundred eighty days, notify such holder in writing as to any claims and defenses he has against the seller or lessor arising from that specific consumer credit sale or consumer lease. The notice by the buyer or lessee need not take any particular form and shall be sufficient if it indicates the claims and defenses which the buyer or lessee has against the seller or lessor in a manner sufficient to apprise the holder of the nature of such

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claims and defenses. Such notice, if given by mail, is given when it is mailed to the holder's last-known address by registered or certified mail, return receipt requested. All claims and defenses of the buyer or lessee against the seller or lessor arising out of a consumer credit sale or consumer lease shall be valid against the holder unless the notice of negotiation is given pursuant to this subsection (1).

(d) In a consumer credit sale or consumer lease when goods or services cannot be delivered or completed immediately after the sale or lease or when the rendition of future services constitutes a material part of the sale or lease agreement, the notice of negotiation contemplated in subdivision (a) of this subsection (1) shall not be given to the buyer or lessee until the seller or lessor has furnished a certificate to the buyer or lessee which indicates that delivery of such goods has been made or such services completed and such certificate has been duly executed by the buyer or lessee and, in the case of future services, until the buyer or lessee shall forward to the holder a written reaffirmation of the completion of such future services which are the subject of such sale or lease. Such reaffirmation shall not be made until execution by the buyer or lessee of the certificate of completion. Such reaffirmation shall be forwarded directly by United States mail to the holder by the buyer or lessee. If the seller or lessor directly or indirectly obtains such reaffirmation, it shall be void and have no force or legal effect. A completion certificate need not take any particular form, but shall indicate the names and addresses of the parties to the consumer credit sale or consumer lease, the goods delivered or the services completed and the date on which actual delivery was made or actual performance was completed.

(e) Whenever any such negotiable instrument, and an instrument, contract or other writing (other than a negotiable instrument) executed in connection with such negotiable instrument, are negotiated and assigned to the same person, either the notices contemplated and provided for in this subsection (1) or the notices contemplated and provided for in section one hundred two of this article need by given, and it shall not be necessary for notices to be given pursuant to both this subsection (1) and said section one hundred two.

(2) Notwithstanding any provisions of this section, a holder shall be subject to any claim or defense based upon lack or failure of consideration.

(3) Nothing contained in this section shall be construed as affecting any buyer's or lessee's right of action, claim or defense which is otherwise provided for in this code or at common law.

(4) Nothing contained in this section shall be construed in any manner as affecting any negotiation of any negotiable instrument made prior to the operative date of this chapter.

(5) With respect to a consumer credit sale or consumer lease made or entered into more than one year after the operative date of this chapter, other than a sale or lease primarily for an agricultural purpose, the seller or lessor may not take a negotiable instrument other than a currently dated check as evidence of the obligation of the buyer or lessee. The holder in due course of a negotiable instrument taken in violation of this subsection shall,

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notwithstanding the provisions of section three hundred five, article three, chapter forty-six of this code, be subject to all claims and defenses arising from that specific consumer credit sale or consumer lease which the buyer or lessee has against the seller or lessor.

(6) For the purpose of determining the amount owing to a holder in due course of a negotiable instrument evidencing an obligation of a buyer or lessee arising from a consumer credit sale or consumer lease:

(a) Payments received after the consolidation of two or more consumer credit sales, other than pursuant to a revolving charge account, are deemed to have been first applied to the payment of the sales first made; if the sales consolidated arose from sales made on the same day, payments are deemed to have been first applied to the smaller or smallest sale or sales;

(b) Payments received upon a revolving charge account are deemed to have been first applied to the payment of sales finance charges in the order of their entry to the account and then to the payment of debts in the order in which the entries of the debts are made to the account.

(7) A claim or defense which a buyer or lessee may assert against a holder in due course of a negotiable instrument under the provisions of this section may be asserted only as a matter of defense to or setoff against a claim by the holder: Provided, That if a buyer or lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or setoff against a claim by the holder in due course of a negotiable instrument were such holder to assert such claim against the buyer or lessee, then such buyer or lessee shall have the right to institute and maintain an action or proceeding seeking to obtain the cancellation in whole or in part of the indebtedness evidenced by such negotiable instrument or the release in whole or in part of any lien upon real or personal property securing the payment thereof: Provided, however, That any claim or defense founded in fraud, lack or failure of consideration or a violation of the provisions of this chapter as specified in section one hundred one, article five of this chapter, may be asserted by a buyer or lessee at any time, subject to the provisions of this code relating to limitation of actions.

(8) Notwithstanding any provisions of this section, a holder shall not be subject to any claim or defense arising from or growing out of personal injury or death resulting therefrom or damage to property.

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