WEST VIRGINIA CODE: §46a-2-103

§46A-2-103. Lender subject to claims and defenses arising from sales.

(a) The following provisions shall be applicable to claims and defenses of borrowers, arising from consumer sales, with respect to consumer loans:

A lender, other than the issuer of a lender credit card or a lender of a student loan made on or after July 1, 1992, in accordance with the federal higher education act of 1965, as amended, who, with respect to a particular transaction, makes a consumer loan for the purpose of enabling a borrower to buy goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the borrower against the seller arising from that specific sale of goods or services if the lender participates in or is connected with the sales transaction. A lender is considered to be connected with such sales transaction if:

(i) The lender and the seller have arranged for a commission or brokerage or referral fee for the extension of credit by the lender;

(ii) The lender is a person related to the seller unless the relationship is remote or is not a factor in the transaction;

(iii) The seller guarantees the loan or otherwise assumes the risk of loss by the lender upon the loan other than a risk of loss arising solely from the seller's failure to perfect a lien securing the loan;

(iv) The lender directly supplies the seller with documents used by the borrower to evidence the transaction or the seller directly supplies the lender with documents used by the borrower to evidence the transaction;

(v) The loan is conditioned upon the borrower's purchase of the goods or services from the particular seller, but the lender's payment of proceeds of the loan to the seller does not in itself establish that the loan was so conditioned;

(vi) The seller in such sale has specifically recommended such lender by name to the borrower and the lender has made ten or more loans to borrowers within a period of twelve months within which period the loan in question was made, the proceeds of which other ten or more loans were used in consumer credit sales with the seller or a person related to the seller, if in connection with such other ten or more loans, the seller also specifically recommended such lender by name to the borrowers involved; or

(vii) The lender was the issuer of a credit card other than a lender credit card which may be used by the borrower in the sales transaction as a result of a prior agreement between the issuer and the seller.

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(b) The total of all claims and defenses which a borrower is permitted to assert against a lender under the provisions of this section shall not exceed that portion of the loan used for that sale, except (1) as to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud arising on or after July 1, 1990, the total sought shall not exceed the original amount of the sale and (2) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(c) An agreement may not limit or waive the claims and defenses of a borrower under this section.

(d) "Lender credit card" as used in this section means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using the credit card in transactions which entitles the user thereof to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card, out of which debt arises:

(1) By the lender's honoring a draft or similar order for the payment of money drawn or accepted by the consumer;

(2) By the lender's payment or agreement to pay the consumer's obligation; or

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

(e) A claim or defense which a borrower may assert against a lender under the provisions of this section may be asserted only as a defense to or setoff against a claim by the lender: Provided, That if a borrower 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 lender were such lender to assert such claim against the borrower, then the borrower 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 a negotiable instrument or other 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 borrower at any time, subject to the provisions of this code relating to limitation of actions.

(f) Nothing contained in this section shall be construed in any manner as affecting any loan made prior to the operative date of this chapter.

(g) Notwithstanding any provisions of this section, a lender 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.

(h) Nothing contained in this section shall be construed as affecting any buyer's or lessee's

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right of action, claim or defense which is otherwise provided for in this code or at common law.

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