WEST VIRGINIA CODE: §46a-2-103A

§46A-2-103a. Lessor subject to claims and defenses arising from leases.

(a) The following provisions shall be applicable to claims and defenses of lessees arising from finance leases which are consumer leases or arising from sale and lease back agreements which include consumer leases:

(1) A lessor, other than the issuer of a credit card who, with respect to a particular transaction, makes a consumer lease for the purpose of enabling a lessee to lease goods or services, other than primarily for an agricultural purpose, is subject to all claims and defenses of the lessee against the supplier arising from that specific lease of goods or services if the lessor participates in or is connected with the lease transaction. A lessor is considered to be connected with the lease transaction if:

(A) The lessor and the supplier have arranged for a commission or brokerage or referral fee for the agreement to lease by the lessor;

(B) The lessor is a person related to the supplier unless the relationship is remote or is not a factor in the transaction;

(C) The supplier guarantees the payments or otherwise assumes the risk of loss by the lessor upon the lease other than a risk of loss arising solely from the lessor's failure to perfect a lien if necessary;

(D) The lessor directly supplies the supplier with documents used by the lessee to evidence the transaction, or the supplier directly supplies the lessor with documents used by the lessee to evidence the transaction;

(E) The lease is conditioned upon the lessee's lease of the goods or services from the particular supplier, but the lessor's payment of proceeds of the lease to the supplier does not in itself establish that the lease was so conditioned;

(F) The supplier in such sale has specifically recommended such lessor by name to the lessee, and the lessor has made ten or more leases to lessees within a period of twelve months, within which period the lease in question was made, for goods or services supplied by the supplier or a person related to the supplier, if in connection with such other ten or more leases, the supplier also specifically recommended such lessor by name to the lessees involved; or

(G) The supplier was the issuer of a credit card other than a lender credit card which may be used by the lessee in the transaction as a result of a prior agreement between the issuer and the supplier.

(b) The total of all claims and defenses which a lessee is permitted to assert against a lessor

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under the provisions of this section shall not exceed the sums due to the lessor for that lease, except (1) As to any claim or defense founded in fraud: Provided, That as to any claim or defense founded in fraud, the total sought shall not exceed the total sum due or payable under the lease, 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 lessee 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 entitle 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 lessee may assert against a lessor under the provisions of this section may be asserted only as a defense to or setoff against a claim by the lessor: Provided, That if a lessee shall have a claim or defense which could be asserted under the provisions of this section as a matter of defense to or set off against a claim which is asserted by the lessor, then the 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 obligation evidenced by the lease agreement 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 in 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 lessee 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 transaction entered into prior to the operative date of this chapter.

(g) Notwithstanding any provisions of this section, a lessor 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 lessee's right of action, claim or defense which is otherwise provided in this code or at common law.

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