WEST VIRGINIA CODE CHAPTER 46a ARTICLE 3

WV Legislature

§46A-3-101. Finance charges generally.

(1) With respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on that part of the unpaid balance of the amount financed which is $1,500 or less and twelve percent per year on that part of the unpaid balance of the amount financed which is in excess of $1,500 calculated according to the actuarial method.

(2) This section does not limit or restrict the manner of calculating the sales finance charge, whether by way of add-on, discount, or otherwise, so long as the rate of the sales finance charge does not exceed that permitted by this section. If the sale is precomputed:

(a) The sales finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation, contained in section one hundred eleven of this article.

(3) For the purposes of this section, the term of a sale agreement commences on the date the credit is granted or, if goods are delivered or services performed ten days or more after that date, with the date of commencement of delivery or performance. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifications and differentiations the seller may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(4) Subject to classifications and differentiations the seller may reasonably establish, he may make the same sales finance charge on all amounts financed within a specified range. A sales finance charge so made does not violate subsection (1) if:

(a) When applied to the median amount within each range, it does not exceed the maximum permitted by subsection (1); and

(b) When applied to the lowest amount within each range, it does not produce a rate of sales finance charge exceeding the rate calculated according to subdivision (a) by more than eight percent of the rate calculated according to subdivision (a).

(5) Notwithstanding subsection (1), the seller may contract for and receive a minimum sales finance charge of not more than $5 when the amount financed does not exceed $75, or $7.50 when the amount financed exceeds $75.

(6) Notwithstanding any provision of this section to the contrary, with respect to a consumer credit sale involving a motor vehicle or a mobile home or a consumer credit sale from the

WV Legislature

same seller of both a mobile home and the real estate upon which such mobile home is or will be located, or a consumer credit sale of a mobile home where a security interest in real estate owned by the buyer is given to the seller as collateral, a seller may from the effective date of this section until and including July 1, 1982, contract for and receive a sales finance charge not exceeding eighteen percent per year on the unpaid balance calculated according to the actuarial method: Provided, That the quantity of real estate involved with the consumer credit sale of a mobile home upon which such finance charge is contracted for and received shall not exceed one acre.

(7) As an alternative to the loan finance charge allowed by section one hundred one, subsection (1) of this article, from the effective date of this subsection until and including July 1, 1982, with respect to a consumer credit sale, other than a sale of real estate subject to the provisions of section one hundred two of this article or a sale pursuant to a revolving charge account, a seller may contract for and receive a sales finance charge not exceeding eighteen percent per year on the unpaid balance of the amount financed calculated according to the actuarial method.

WV Legislature

§46A-3-102. Sales finance charge for certain consumer credit sales of real estate.

With respect to a consumer credit sale of real estate, other than a sale involving a mobile home and real estate as referred to in section one hundred one of this article or goods which become fixtures, where title is retained or there is created or retained by agreement a purchase money lien against the real estate, the seller may contract for and receive a sales finance charge not exceeding the interest permitted by section five, article six, chapter forty-seven of this code.

In addition to the sales finance charge permitted by this section with respect to such sale, a seller may also contract for and receive additional charges, delinquency charges, and deferral charges and compute rebates upon prepayment, refinancing or consolidation as defined and authorized by this chapter.

WV Legislature

§46A-3-103. Sales finance charge for revolving charge accounts other than certain sales of real estate.

(1) With respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to section one hundred two of this article, the parties may contract for the payment by the buyer of a sales finance charge not exceeding that permitted in this section.

(2) A sales finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

(a) The average daily balance of the account, or

(b) The balance of the account at the beginning of the first day of the billing cycle, less all payments on and credits to such account during such billing cycle and excluding all charges to such account during such billing cycle, or

(c) The median amount within a specified range within which the average daily balance of the account or the balance of the account at the beginning of the first day of the billing cycle, less all payments on and credits to such account during such billing cycle and excluding all charges to such account during such billing cycle, is included. A charge may be made pursuant to this paragraph only if the seller, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

(3) If the billing cycle is monthly, the sales finance charge may not exceed one and one-half percent on the first $750 of unpaid balance and one percent on the unpaid balance in excess of $750. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the sales finance charge is applied, the seller may contract for and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly.

(5) As an alternative to the loan finance charge allowed by section one hundred three, subsection (3) of this article, from the effective date of this subsection until and including July 1, 1982, with respect to a consumer credit sale made pursuant to a revolving charge account, other than sales of real estate pursuant to section one hundred two of this article, if

WV Legislature

the billing cycle is monthly, the sales finance charge may not exceed one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

WV Legislature

§46A-3-104. Finance charge for loans other than loans made pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

(1) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account: (a) A bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code, or that allowed under section two, article seven, chapter thirty-one-c of this code; (b) a regulated consumer lender may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by section one hundred seven, article four, chapter forty-six-a of this code or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code; (c) a credit union, as defined in section one, article one, chapter thirty-one-c of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section two, article seven, chapter thirty-one-c of this code, or by the provisions of section five, article six, chapter forty-seven of this code; and (d) any other lender may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code.

(2) This section does not limit or restrict the manner of calculating the loan finance charge, whether by way of add-on, discount or otherwise, so long as the rate of loan finance charge does not exceed that permitted by this section.

(3) If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and

(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

(4) Notwithstanding subsection (1) of this section, the lender may contract for and receive a minimum loan finance charge of not more than $5 when the amount loaned does not exceed $75, or $75.50 when the amount loaned exceeds $75.

(5) An assignee of a consumer credit sale contract may collect, receive or enforce the sales finance charge provided in said contract, and any such charge so collected, received or enforced by an assignee shall not be deemed usurious or in violation of this chapter or any other provision of this code if such sales finance charge does not exceed the limits permitted to be charged by a seller under the provisions of this chapter.

(6) Notwithstanding subsection (5) of this section, a resident lender who is the assignee of a consumer credit sales contract from a credit grantor in another state, and said contract was

WV Legislature

executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

WV Legislature

§46A-3-105. Maximum rate on loans and credit sales guaranteed or insured by United States or agency thereof.

Nothing contained in this chapter or other law of this state shall be taken or construed as limiting the permissible interest rates or finance charges upon loans or credit sales evidenced by notes, bonds or other obligations secured by mortgages, deeds of trust or other security instruments insured or guaranteed by the federal housing commissioner or United States administrator of veterans' affairs or by any other officer, department, agency or instrumentality of the United States or evidenced by notes, bonds, debentures and other obligations and securities issued by, insured by, or guaranteed by the federal housing commissioner, federal national mortgage association, government national mortgage association, small business administration or other federal officer, department, agency or instrumentality.

WV Legislature

§46A-3-106. Loan finance charge for revolving loan accounts.

(1) With respect to a consumer loan made pursuant to a revolving loan account, a supervised financial organization permitted to establish revolving loan accounts may contract for and receive a loan finance charge not exceeding that permitted in this section.

(2) A loan finance charge may be made in each billing cycle which is a percentage of an amount not exceeding the greatest of:

(a) The average daily balance of the debt,

(b) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, or

(c) The median amount within a specified range within which the average daily balance of the debt or the balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during such billing cycle, is included. A charge may be made pursuant to this subdivision only if the lender, subject to classifications and differentiations he may reasonably establish, makes the same charge on all balances within the specified range and if the percentage when applied to the median amount within the range does not produce a charge exceeding the charge resulting from applying that percentage to the lowest amount within the range by more than eight percent of the charge on the median amount.

(3) If the billing cycle is monthly, the loan finance charge may not exceed one and one-half percent on the first $750 of unpaid principal balance and one percent on the unpaid principal balance in excess of $750. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

(4) Notwithstanding subsection (3), if there is an unpaid balance on the date as of which the loan finance charge is applied the lender may contract for and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer, or the pro rata part of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subsection if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(5) As an alternative to the loan finance charge allowed by section one hundred six, subsection (3) of this article, from the effective date of this subsection until and including July 1, 1982, with respect to a consumer loan made pursuant to a revolving loan account, if the billing cycle is monthly, a supervised financial organization permitted to establish

WV Legislature

revolving loan accounts may contract for and receive a loan finance charge not exceeding one and one-half percent on the unpaid principal balance. If the billing cycle is not monthly, the maximum charge is that percentage which bears the same relation to the applicable monthly percentage as the number of days in the billing cycle bears to thirty. A billing cycle is monthly if the billing statement dates are on the same day each month or do not vary by more than four days therefrom.

WV Legislature

§46A-3-107. Sales finance charges and loan finance charges on refinancing.

With respect to a consumer credit sale or consumer loan, refinancing or consolidation, the seller or lender may by agreement with the consumer refinance the unpaid balance owed to such seller or lender and may contract for and receive the applicable sales finance charge or loan finance charge, as the case may be, based on the amount financed of a sale or principal of a loan resulting from the refinancing at a rate not exceeding that permitted by the provisions on sales finance charge for consumer credit sales or loan finance charge for consumer loans, as the case may be. For the purpose of determining the sales finance charge or loan finance charge permitted, the amount financed or principal resulting from the refinancing comprises the following:

(1) If the transaction was not precomputed, the total of the unpaid balance and the accrued charges on the date of refinancing or, if the transaction was precomputed, the amount which the consumer would have been required to pay upon refinancing pursuant to the provisions on rebate upon refinancing on the date of refinancing except that for the purpose of computing this amount no minimum sales finance charge or minimum loan finance charge shall be allowed;

(2) Appropriate additional charges, payment of which is deferred; and

(3) Accumulated unpaid delinquency or deferral charges.

WV Legislature

§46A-3-108. Sales finance charges and loan finance charges on consolidation.

(1) If a consumer owes an unpaid balance to a creditor with respect to a consumer credit sale or consumer loan, refinancing or consolidation, and becomes obligated on another consumer credit sale or consumer loan, refinancing or consolidation, with the same creditor, the parties may agree to a consolidation resulting in a single schedule of payments. If the previous consumer credit sale or consumer loan was not precomputed, the parties may agree to add the unpaid amount of the amount financed or principal and accrued charges on the date of consolidation to the amount financed or principal with respect to the subsequent consumer credit sale or consumer loan. If the previous consumer credit sale or consumer loan, refinancing or consolidation, was precomputed, the parties may agree to refinance the unpaid balance pursuant to the provisions on refinancing and to consolidate the amount financed or principal resulting from the refinancing by adding it, together with any accumulated delinquency or deferral charges, to the amount financed or principal, with respect to the subsequent consumer credit sale or consumer loan. In either case the creditor may contract for and receive a finance charge based on the aggregate amount financed or principal resulting from the consolidation, as specified in subsection (2) of this section.

(2) If the debts consolidated arise exclusively from consumer credit sales owed to such creditor, the transaction is a consolidation with respect to a consumer credit sale and the amount of the sales finance charge is governed by the provisions on sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts. If the debts consolidated arise exclusively from consumer loans owed to such creditor, the transaction is a consolidation with respect to a consumer loan and the amount of the loan finance charge is governed by the provisions on loan finance charges for consumer loans. If the debts consolidated include both a debt arising from a consumer credit sale or sales owed to such creditor and a debt arising from a consumer loan or loans owed to such creditor, then the creditor may contract for and receive a finance charge not in excess of that permitted for a consumer credit sale based on that portion of the consolidation attributable to such consumer credit sale or sales and may contract for and receive a finance charge not in excess of that permitted for a consumer loan based on that portion of the consolidation attributable to a consumer loan or loans.

(3) If a consumer owes an unpaid balance to a creditor with respect to a consumer credit transaction arising out of a consumer credit sale, and becomes obligated on another consumer credit transaction arising out of another consumer credit sale made by the same seller, the parties may agree to the consolidation resulting in a single schedule of payments either pursuant to subsection (2) or by adding together the unpaid balances with respect to the two sales.

(4) If a consumer credit sale subject to the provisions of section one hundred two of this article is consolidated with any other consumer credit sale or consumer loan owed to the same creditor, the sales finance charge or loan finance charge on the aggregate amount financed or principal resulting from the consolidation shall be at the lower rate.

WV Legislature

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

(1) Official fees and taxes;

(2) Charges for insurance as described in subsection (b) of this section: Provided, That nothing contained in this section with respect to insurance in any way limits the power and jurisdiction of the Insurance Commissioner of this state in the premises;

(3) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(4) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, That as to insurance, the policy as distinguished from a certificate of coverage thereunder may only be issued by an individual licensed under the laws of this state to sell the insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the Insurance Commissioner of this state;

(5) Reasonable closing costs with respect to a debt secured by an interest in land; and

(6) Documentary charge or any other similar charge for documentary services in relation to securing a title, so long as said charge is applied equally to cash customers and credit customers and there is a reasonable relationship between said charge and the benefit conferred on the customer.

(b) A creditor may take, obtain or provide reasonable insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, reasonable insurance on any real or personal property offered as security subject to the provisions of this subsection and section one hundred nine-a of this article and vendor's or creditor's single interest insurance with respect to which the insurer has no right of subrogation. Only one policy of life insurance and/or one policy of health and accident insurance and/or one policy of accident insurance and/or one policy of loss of income insurance on any one consumer may be in force with respect to any one contract or

WV Legislature

agreement at any one time, but one policy may cover both a consumer and his or her spouse:

(1) The amount, terms and conditions of property insurance shall have a reasonable relation to the existing hazards or risk of loss, damage or destruction and be reasonable in relation to the character and value of the property insured or to be insured; and the term of the insurance shall be reasonable in relation to the terms of credit: Provided, That nothing may prohibit the consumer from obtaining, at his or her option, greater coverages for longer periods of time if he or she so desires;

(2) Life insurance shall be in an initial amount not to exceed the total amount repayable under the consumer credit agreement, and where a consumer credit sale or consumer loan is repayable in installments, such insurance may at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Life insurance authorized by this subdivision shall provide that the benefits be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for the insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then the excess is payable to the estate of the consumer. The initial term of the life insurance in connection with a consumer credit sale, other than a sale pursuant to a revolving charge account, or in connection with a consumer loan, other than a loan pursuant to a revolving loan account, may not exceed the scheduled term of the consumer credit agreement by more than fifteen days. The aggregate amount of periodic benefits payable by credit accident and health insurance in the event of disability, as defined in the policy, and loss of income insurance in the event of involuntary loss of employment, as defined in the policy, may not exceed the unpaid amount of such indebtedness; periodic benefits payable in connection with a consumer credit sale pursuant to a revolving charge account or of a consumer loan pursuant to a revolving loan account may be based upon the authorized credit limit;

(3) When the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan or deduct from the proceeds of any consumer loan the premium or, in the case of group insurance, the identifiable charge. The premium or identifiable charge for the insurance required or obtained by a creditor may equal, but may not exceed the premium rate filed by the insurer with the Insurance Commissioner. In any case when the creditor collects the entire premium for such insurance in advance, the premium shall be remitted by the creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or after the end of the month in which the collection was made;

(4) With respect to insurance against loss of or damage to property or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor setting forth the cost of the insurance if obtained from or through the creditor and stating that the debtor may choose the person through whom the insurance is to be obtained;

(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor may require a consumer to purchase the insurance or to

purchase the insurance from the creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;

(6) When a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving the payment shall inform the debtor of the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage and advise the debtor of the application of any unearned premiums to the loan balance. Notices required by this subdivision shall be made in the following manner:

(A) If the insurance was not sold or provided by the creditor, the creditor receiving the payment shall notify the debtor that he or she may have the right to receive a refund of unearned premiums from any other seller or provider of the insurance and advise the debtor of his or her obligation to notify any other insurer of the payment of the loan balance and the cancellation of the consumer credit insurance and request a refund or credit of unearned premiums, if applicable. Such notice shall be sent on a form as prescribed by the Insurance Commissioner as provided in chapter twenty-nine-a of this code and shall contain the name and address of the seller and the insurer; or

(B) If the creditor was the seller or provider of the consumer credit insurance, the creditor shall:

(i) Notify the insurer or shall cause the insurer to be notified of the cancellation of such insurance; and

(ii) Notify the debtor of the cancellation of the insurance and of the application of any unearned premiums to the loan balance, which notice may be on a form consistent with the general course of business of the creditor;

(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel the insurance effective no later than thirty days from the date of receipt of the notice. Within forty-five days following the date of notification of cancellation of the insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and

(8) An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff is liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided by section one hundred nine, article seven of this chapter.

(c) The Insurance Commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance and the authority of the Insurance Commissioner to promulgate the rules is exclusive notwithstanding any other provisions of this code to the contrary.

WV Legislature

§46A-3-109a. Collateral protection insurance.

(a) As used in this section:

(1) "Collateral" means any or all property pledged to secure payment, repayment or performance under a credit agreement, whether personal property, real property, fixtures, inventory, receivables, rights, privileges or otherwise.

(2) (A) "Collateral protection insurance" means insurance coverage that: (i) Is purchased unilaterally by a creditor subsequent to the date of a consumer credit agreement; (ii) provides monetary protection against loss of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and (iii) is purchased according to the terms of a credit agreement as a result of a consumer's failure to provide evidence of insurance or failure to maintain adequate insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges imposed by the creditor in connection with the placement of the collateral protection insurance, payable by the consumer. Collateral protection insurance includes insurance coverage that is purchased to protect only the interest of the creditor and insurance coverage that is purchased to protect both the interest of the creditor and some or all of the interest of the consumer. The term of a collateral protection insurance policy may, but need not, extend to the full term of the credit transaction.

(B) Collateral protection insurance does not include insurance coverage that is: (i) Purchased by the creditor for which the consumer is not charged; (ii) purchased at the inception of a credit transaction to which the consumer is a party or agrees, whether or not the costs are included in any payment plan under the credit transaction; (iii) purchased by the creditor following foreclosure, repossession, or a similar event wherein the creditor gains possession or control over the collateral; (iv) maintained by the creditor for the protection of any or all collateral which may come into the possession or control of the creditor through foreclosure, repossession or a similar event; (v) credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the consumer or any other insurance maintained to cover the inability or failure of the consumer to make payment under the credit agreement; (vi) title insurance; or (vii) flood insurance required to be placed by creditors by 42 U.S.C. §4012(a), as amended, pursuant to the National Flood Insurance Reform Act of 1994.

(3) "Credit agreement" means the written document or documents that set forth the terms of the credit transaction.

(4) "Credit transaction" means any consumer credit transaction, the terms of which require the payment or repayment of money, goods, services, property, rights or privileges, which is to be made on one or more future dates, where the obligation is secured by collateral.

(5) "Creditor" shall mean, for purposes of this section only, an institution, the deposits of which are insured by the federal deposit insurance agency, the national credit union share

WV Legislature

insurance fund, or a subsidiary of such an institution, or a subsidiary of a holding company owning such an institution, and this section applies and is available only to such creditors.

(b) A creditor may place collateral protection insurance if the following conditions are met:

(1) The consumer has entered into a credit transaction with the creditor;

(2) The credit transaction has been reduced to a credit agreement and the credit agreement requires the consumer to maintain insurance on the collateral; and

(3) A notice substantially similar to the following has been included in the credit agreement or on a separate document provided to the consumer and to any cosigner, guarantor or other person liable with the consumer for the obligation, at the time the credit agreement is entered:

"Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own."

(c) (1) Within thirty calendar days following the placement of collateral protection insurance, the creditor shall mail to the consumer and to any cosigner, guarantor or other person liable with the consumer for the obligation, at the last known address of the person, a notice entitled "Notice of Placement of Insurance" in a form substantially similar to the following:

"NOTICE OF PLACEMENT OF INSURANCE

Your credit agreement with us requires you to maintain adequate insurance on your collateral until you pay off your loan. You have not given us proof that you have adequate insurance on your collateral. Under the terms of your credit agreement, we have purchased insurance at your expense to protect our interests in your collateral.

The insurance we purchased will pay claims made by us as the creditor. The insurance we purchased may not pay any claims made by you or against you in connection with your collateral.

You are responsible for the costs of this insurance, including interest and any other charges we may impose in connection with the purchase of this insurance. The costs of this insurance

WV Legislature

may be more than insurance you can buy on your own.

You still may obtain insurance on your own choosing on the collateral. If you provide us with proof that you have obtained adequate insurance on your collateral, we will cancel the insurance that we purchased and refund or credit any unearned premiums to you.

If, within thirty days after the date this notice was sent to you, you provide us with proof that you had adequate insurance on your collateral as of the date we also purchased insurance and that you continue to have the insurance that you purchased yourself, we will cancel the insurance that we purchased without charging you any costs, interest or other charges in connection with the insurance that we purchased."

(2) The terms for repayment of the costs of the collateral protection insurance, which include interest and any other charges imposed by the creditor in connection with the placement of the collateral protection insurance, shall include one or more of the following:

(A) Full payment within thirty days after the date of the notice of placement of insurance;

(B) A final balloon payment within thirty days after the last scheduled payment required by the credit agreement; or

(C) Full amortization over the term of the credit transaction, the term of the collateral protection insurance policy, or the term for which amortization is used by the creditor.

(d) If any form of amortization is used by the creditor for the costs of collateral protection insurance and a coupon book was sent to the consumer at the inception of the credit transaction, the creditor shall send to the consumer either:

(1) Reprinted coupon book with revised calculations of the consumer's payments that includes the amortized costs of the collateral protection insurance; or

(2) Supplemental coupon book with calculations of the consumer's additional payments based upon the amortized costs of the collateral protection insurance, for use by the consumer in addition to the original coupon book.

(e) A consumer may at any time cancel the collateral protection insurance by providing proper evidence to the creditor that the consumer has obtained insurance as required by the credit agreement. If, within thirty days after notice is sent pursuant to subdivision (1), subsection (c) of this section, a consumer provides the creditor with proper evidence that the consumer had insurance on the collateral as required by the credit agreement on the date the creditor purchased insurance and that the consumer continues to have insurance on the collateral as required by the credit agreement, the creditor shall cancel the insurance that it purchased and may not charge the consumer any costs, interest or other charges in connection with the insurance.

(f) Upon cancellation or expiration of collateral protection insurance, the amount of

WV Legislature

unearned premiums, if any, as calculated in accordance with the policy, shall be refunded to the consumer. A refund of unearned premiums may be credited to the consumer's obligation under the credit agreement or distributed directly to the consumer by check or other means.

(g) Collateral protection insurance may be placed with any insurance carrier selected by the creditor that is licensed to underwrite the insurance by the division of insurance. The insurance shall be evidenced by an individual policy or a certificate of insurance.

(h) A creditor that places collateral protection insurance in substantial compliance with the terms of this section is not directly or indirectly liable in any manner to a consumer, cosignor, guarantor or any other person, in connection with the placement of the collateral protection insurance. Notices and coupon books required to be mailed to a consumer under this section are not required to be mailed to any person other than to the consumer and shall be mailed by United States mail, first class, postage prepaid, to the consumer's last known address on file with the creditor.

(i) This section does not impose a fiduciary relationship between the creditor and the consumer. Placement of collateral protection insurance is for the sole purpose of protecting the interest of the creditor when the consumer fails to insure collateral as required by the credit agreement.

(j) A creditor is not, by virtue of this section, required to purchase collateral protection insurance or to otherwise insure collateral. A creditor is not, by virtue of this section, liable to a consumer or to any other person for not purchasing collateral protection insurance, as a result of the amount or level of coverage of collateral protection insurance purchased by the creditor, or because the creditor purchased collateral protection insurance that protects only the interests of the creditor or less than all of the interests of the consumer. This section does not create a cause of action for damages on behalf of the consumer or any other person in connection with the placement of collateral protection insurance.

(k) The obligations and rights of the creditor and the consumer with respect to the collateral, as provided by the uniform commercial code, chapter forty-six of this code, are not affected by this section.

(l) Substantial compliance with the provisions of this section is mandatory for the placement of collateral protection insurance in this state by a creditor pursuant to a credit agreement entered into on or after July 1, 1999. No provision of this section may be held or applied against a creditor in connection with collateral protection insurance placed prior to July 1, 1998. A creditor that places collateral protection insurance pursuant to a credit agreement entered into prior to July 1, 1998, has available to it all of the rights provided by this section if the creditor is in substantial compliance with the provisions of this section, other than subdivision (3) of subsection (b).

WV Legislature

§46A-3-110. Right to prepay.

(1) Subject to the provisions on rebate upon prepayment, the consumer may repay in full the unpaid balance of a consumer credit sale or a consumer loan, refinancing or consolidation at any time without penalty.

(2) Notwithstanding subsection one of this section, it is permissible within the first three years of a credit extension or loan to charge a prepayment penalty of up to one percent of the original principal amount in a consumer credit sale subject to the provisions of section one hundred two of this article or on a consumer loan secured by an interest in land: Provided, That said prepayment penalty may not be imposed as part of any industrial loan company licensee or secondary mortgage lender licensee contract, and that in no event can a prepayment penalty be assessed on a refinancing within one year from the date of the prior loan.

(3) Housing loans originated by the West Virginia Housing Development Fund are exempt from the restrictions set forth in this section.

WV Legislature

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

(a) All payments made to a creditor in accordance with the terms of a precomputed consumer credit sale or consumer loan shall be applied to installments in the order in which they fall due.

(b) All payments made to a creditor which do not comply with the terms of a precomputed consumer credit sale or consumer loan may be held in a suspense or unapplied funds account. The creditor must disclose to the consumer the total amount of funds held in a suspense or unapplied funds account. On accumulation of funds sufficient to cover a full payment in accordance with terms of the precomputed consumer credit sale or consumer loan agreement, the creditor shall apply the payment in accordance with subsection (a) of this section.

(c) When the total amount is payable in substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78".

(d) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the consumer that portion of the sales finance charge or loan finance charge in the manner specified in section five-d, article six, chapter forty-seven of this code: Provided, That no rebate of less than $1 need be made.

(e) Upon prepayment in full of a precomputed or nonprecomputed consumer credit sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise, except where the loan is a purchase money loan secured by a first lien mortgage on residential property, or is made by a federally insured depository institution, the creditor shall rebate to the consumer that portion of the unearned prepaid finance charges attributable to loan or credit investigations fees, origination fees or points in the manner specified in subsection (c), section five-d, article six, chapter forty-seven of this code: Provided, That no rebate of less than $1 need be made: Provided, however, That if the loan was made in furtherance of aiding or abetting a person to whom the loan is assigned to evade this rebate, then the rebate required herein shall apply.

(f) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered and such judgment shall bear interest until paid at the rate of ten percent per annum.

WV Legislature

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

(a) Five percent of the unpaid amount of the installment, not to exceed $30; or

(b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

(2) A delinquency charge under subdivision (a), subsection (1) of this section may be collected only once on an installment however long it remains in default. No delinquency charge may be collected with respect to a deferred installment unless the installment is not paid in full within ten days after its deferred due date. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though a delinquency or deferral charge on an earlier installment may not have been paid in full.

(4) If two installments, or parts thereof, of a precomputed consumer credit sale or consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment then delinquent and thereafter may make a sales finance charge or loan finance charge as authorized by the appropriate provisions on sales finance charges or loan finance charges for consumer credit sales or consumer loans. The amount of the rebate may not be reduced by the amount of any permitted minimum charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made with respect to installments due at or after the maturity date of the delinquent installments shall be rebated and no further delinquency or deferral charges shall be made.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of delinquency charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

WV Legislature

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

(1) In addition to the continuation of the sales finance charge or loan finance charge on a delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan, refinancing or consolidation, repayable in installments, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date of five percent of the unpaid amount of the installment, not to exceed $30.

(2) A delinquency charge under subsection (1) of this section may be collected only once on an installment however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

(3) No delinquency charge may be collected on an installment which is paid in full within ten days after its scheduled or deferred installment due date, even though a delinquency or deferral charge on an earlier installment may not have been paid in full.

WV Legislature

§46A-3-114. Deferral and modification charges.

(1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or consolidation, the parties before or after default may agree in writing to a deferral of all or part of one or more unpaid installments, and the seller or lender may make and collect a deferral charge not exceeding the amount of the sales finance charge or loan finance charge attributable to the first of the deferred monthly installment periods multiplied by number of months in the deferral period (the period in which no payment is required or made by reason of a deferral): Provided, That no installment on which a delinquency charge has been collected or partial payment made shall be deferred unless the amount of the delinquency charge or partial payment is first applied to the deferral charge. If prepayment in full occurs during a deferral period, the portion of the deferral charge attributable to the unexpired full months in the deferral period shall be also rebated.

(2) The seller or lender, in addition to the deferral charge, may make appropriate additional charges, and the amount of these charges which is not paid in cash may be added to the amount deferred for the purpose of calculating the deferral charge.

(3) The parties may agree in writing at the time of a precomputed consumer credit sale or consumer loan, refinancing or consolidation that if an installment is not paid within ten days after its due date as originally scheduled or as deferred, the seller or lender may unilaterally grant a deferral and make charges as provided in this section. No deferral charge may be made for a period after the date on which the seller or lender elects to accelerate the maturity of the agreement.

(4) With respect to a real estate secured consumer credit sale or consumer loan, the parties before or after default may agree in writing to a modification or amendment of, or allonge to, the consumer credit sale or consumer loan, and the seller or lender may make and collect a modification charge equal to the greater of $250 or one percent of the outstanding balance of the consumer credit sale or consumer loan at the time of the modification, amendment or allonge: Provided, That no modification charge may be made where prohibited by federal law or regulation.

(5) The commissioner shall prescribe by rule the method or procedure for the calculation of deferral charges consistent with the other provisions of this chapter where the precomputed consumer credit sale or consumer loan is payable in unequal or irregular installments.

WV Legislature

§46A-3-115. Advances to perform covenants of consumer.

(1) If the agreement with respect to a consumer credit sale or a consumer loan, refinancing or consolidation contains covenants by the consumer to perform certain duties pertaining to insuring or preserving collateral or payment of taxes, fees or assessments and if the creditor pursuant to the agreement pays for performance of such duties on behalf of the consumer, the creditor may add the amounts so paid to the debt. Within a reasonable time after advancing any sums, he shall state to the consumer in writing the amount of the sums advanced, any charges with respect to this amount, any revised payment scheduled, and, if the duties of the consumer performed by the creditor pertain to insurance, a brief description of the insurance paid for by the creditor including the type and amount of coverages. No further information need be given.

(2) A sales finance charge or a loan finance charge may be made for sums advanced pursuant to subsection (1) at a rate not exceeding the rate stated to the consumer pursuant to the provisions of the "Federal Consumer Credit Protection Act" with respect to the sale or loan, refinancing or consolidation. With respect to a revolving charge account or revolving loan account the amount of the advance may be added to the unpaid balance of the debt and the creditor may make a sales finance charge or loan finance charge not exceeding that permitted by the appropriate provisions on sales finance charges or loan finance charges.

WV Legislature

§46A-3-116. Change in terms of revolving charge accounts or revolving loan accounts.

(1) If a creditor makes a change in the terms of a revolving charge account or revolving loan account without complying with this section, any additional cost or charge to the consumer resulting from the change is an excess charge and subject to the remedies provided in this chapter.

(2) A creditor may change the terms of a revolving charge account or revolving loan account whether or not the change is authorized by prior agreement. The creditor shall give to the consumer written notice of such change not less than fifteen days prior to the effective date of such change.

(3) The notice provided for in this section is given to the debtor when mailed to him at the address used by the creditor for mailing periodic billing statements.

(4) Under no circumstances may a change under the provisions of this section be made so as to increase a sales finance charge or loan finance charge above that permitted by the appropriate provisions on sales finance charges or loan finance charges: Provided, That a creditor may apply a higher permitted sales finance charge or loan finance charge to the account balance or debt balance unpaid as of the date the change becomes effective.

WV Legislature

§46A-3-117. Alternative finance charges authorized.

Notwithstanding any other provisions of this chapter, a person making any sale or loan subject to the provisions of this chapter, may charge a sales finance charge, loan finance charge or rate of interest for such sale or loan not exceeding the charge or interest permitted by the provisions of section thirty-a, article four, chapter thirty-one-a or section five-b, article six, chapter forty-seven of this code for the loan of money, or permitted by the provisions of section five-c, article six, chapter forty-seven of this code for the forbearance of money, or the appropriate rate authorized by this chapter for such sale or loan, whichever is greater.

WV Legislature