WEST VIRGINIA CODE CHAPTER 46a

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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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§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 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

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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, 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.

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(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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§46A-2-102. Assignee subject to claims and defenses.

The following provisions shall be applicable to instruments, contracts or other writings, other than negotiable instruments, evidencing an obligation arising from a consumer credit sale or consumer lease, other than a sale or lease primarily for an agricultural purpose: (1) Notwithstanding any term or agreement to the contrary or the provisions of article two, chapter forty-six of this code or section two hundred six, article nine of said chapter forty-six, an assignee of any such instrument, contract or other writing shall take and hold such instrument, contract or other writing subject to all claims and defenses of the buyer or lessee against the seller or lessor arising from that specific consumer credit sale or consumer lease of goods or services but the total of all claims and defenses which may be asserted against the assignee under this subsection or subsection (3) or subsection (4) of this section shall not exceed the amount owing to the assignee at the time of such assignment except (i) 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 amount of the original obligation under the instrument, contract or other writing and (ii) for any excess charges and penalties recoverable under section one hundred one, article five of this chapter.

(2) For the purpose of determining the amount owing to an assignee of any such instrument, contract or other writing 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.

(3) A claim or defense which a buyer or lessee may assert against an assignee of such instrument, contract or other writing under the provisions of this section may be asserted only as a matter of defense to or setoff against a claim by the assignee: 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 assignee were such assignee 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 instrument, contract or other writing 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

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or lessee at any time, subject to the provisions of this code relating to limitation of actions.

(4) Notwithstanding any provisions of this section, an assignee shall be subject to any claim or defense based upon lack or failure of consideration.

(5) 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.

(6) Nothing contained in this section shall be construed in any manner as affecting any assignment of any such instrument, contract or other writing, made prior to the operative date of this chapter.

(7) Notwithstanding any provisions of this section, an assignee 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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§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.

(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

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

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§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 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

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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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§46A-2-104. Notice to cosigners.

(a) No person shall be held liable as cosigner, or be charged with personal liability for payment in a consumer credit sale, consumer lease or consumer loan unless that person, in addition to and before signing any instrument evidencing the transaction, signs and receives a separate notice which clearly explains his liability in the event of default by the consumer and also receives a copy of any disclosure required by the "Federal Consumer Credit Protection Act."

(b) Such notice shall be sufficient in a consumer credit sale or consumer loan if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract that makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.

(c) Such notice shall be sufficient in a consumer lease transaction if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this lease. Think carefully before you do. If the lessee doesn't pay, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount if the lessee does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the lessee. The creditor can use the same collection methods against you that can be used against the lessee, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

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"This notice is not the contract which makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.

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§46A-2-105. Balloon payments.

(1) With respect to a consumer credit sale or a consumer loan in which the initial total amount payable is less than $1,500, other than one primarily for an agricultural purpose or one pursuant to a revolving charge account or revolving loan account, if any scheduled payment is more than twice as large as the average of earlier scheduled payments, the consumer has the right to refinance the amount of that payment, hereinafter in this section referred to as a balloon payment, at the time it is due without penalty.

(2) With respect to a consumer credit sale or consumer loan whenever any scheduled payment is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, any writing purporting to contain the agreement of the parties shall contain language in form and substance substantially similar to the following: THIS CONTRACT IS NOT PAYABLE IN INSTALLMENTS OF EQUAL AMOUNTS: Followed, if there is only one installment which is at least twice as large as the smallest of all earlier scheduled payments other than any down payment, by: AN INSTALLMENT OF $..... WILL BE DUE ON .....

or, if there is more than one such installment, by: LARGER INSTALLMENTS WILL BE DUE AS FOLLOWS:

(The amount of every such installment and its due date shall be inserted).

(3) The provisions of this section shall not apply to the extent that the payment schedule is adjusted to the seasonal or irregular income of the consumer.

(4) Notwithstanding the foregoing provisions of this section, the commissioner may, by rules and regulations, if necessary to further protect consumers, otherwise regulate or control agreements to be entered into in a consumer credit sale or consumer loan transaction which provide for a balloon payment or prohibit parties from entering into any agreement in a consumer credit sale or consumer loan transaction which provides for a balloon payment.

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§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

After a consumer has been in default on any installment obligation or any other secured obligation for five days for failure to make a scheduled payment or otherwise perform pursuant to such a consumer credit sale, consumer lease or consumer loan other than with respect to a covenant to provide insurance for or otherwise to protect and preserve the property covered by a security interest, the creditor may give him or her notice of such fact in the manner provided for herein. Actual delivery of such notice to a consumer or delivery or mailing of same to the last known address of the consumer is sufficient for the purpose of this section. If given by mail, notice is given when it is deposited in a mailbox properly addressed and postage prepaid. Notice shall be in writing and shall conspicuously state the name, address and telephone number of the creditor to whom payment or other performance is owed, a brief description of the transaction, the consumer's right to cure such default and the amount of payment and other required performance and date by which it must be paid or accomplished in order to cure the default. A copy of the notice required by this section shall be: (i) Delivered or mailed to the last known address of any cosigner of the obligation in the manner set forth in this section unless the cosigner has waived in writing his or her right to receive copies of the notice: Provided, That a waiver of notice contained in the consumer credit sales agreement or consumer loan agreement does not constitute effective waiver of notice of the cosigner's right to receive notice of the consumer's default for purposes of this section; (ii) retained by the creditor; (iii) certified in the manner prescribed by this section by an officer or other authorized representative of such creditor; and (iv) notarized by a person licensed as a notary under the laws of the State of West Virginia or any other state or territory of the United States. The certification required by this section shall substantially conform to the following language:

"I, _____ (name of person certifying),

the _____ (title of person certifying)

of _____ (creditor's name), hereby certify that the notice of the consumer's right to cure default on which this certification appears (or to which this certification is attached) was on this _____ day of _____, 19_____, mailed to the person(s) whose name(s) appear herein (therein) at the address(es) set forth herein (therein).

_____"

(Signature)

Failure to send notice to a cosigner as required by this section does not, in and of itself, give rise to a cause of action against the creditor.

Except as hereinafter provided in this section, after a default on any installment obligation or any other secured obligation other than with respect to a covenant to provide insurance

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for or otherwise to protect and preserve the property covered by a security interest or lease, a creditor may not accelerate maturity of the unpaid balance of any such installment obligation or any other such secured obligation, commence any action or demand or take possession of collateral on account of default until ten days after notice has been given to the consumer of his or her right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure such default. Any such cure shall restore a consumer to all his or her rights under the agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default under this section even though previous defaults have been cured and his or her creditor's right to proceed against him or her and his or her collateral shall not be impaired or limited in any way by this section. There shall be no acceleration of the maturity of all or part of any amount owing in such a consumer credit sale, consumer lease or consumer loan, except where nonperformance specified in the agreement as constituting default has occurred.

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§46A-2-107. Security in sales or leases.

(1) With respect to a consumer credit sale, a seller or issuer of a seller credit card may take a security interest in the property sold. In addition, a seller or issuer of a seller credit card may take a security interest in goods upon which services are performed or in which goods sold are installed or to which they are annexed, or in land to which the goods are affixed or which is maintained, repaired or improved as a result of the sale of the goods or services, if in the case of a security interest in land the debt secured is $1,500 or more, or, in the case of a security interest in goods the debt secured is $300 or more. The seller or issuer of a seller credit card may also take a security interest in any property of the buyer to secure the debt arising from a consumer credit sale primarily for an agricultural purpose. Except as provided with respect to cross-collateral in connection with consolidated debts, a seller or issuer of a seller credit card may not otherwise take a security interest in property of the buyer to secure the debt arising from a consumer credit sale.

(2) With respect to a consumer lease other than a lease primarily for an agricultural purpose, a lessor may not take a security interest in property of the lessee to secure the debt arising from the lease.

(3) A security interest taken in violation of this section is void.

(4) "Security interest" as used in this section means a security interest arising by agreement of the parties and does not include a lien arising by operation of law. Any such agreement must contain a description of the security interest retained and must contain a clear identification of each particular item of collateral, including if appropriate, the name of the manufacturer of such item and its make, model and serial number. If the item is a used or rebuilt sample or demonstrator, such fact shall also be stated in the security agreement.

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§46A-2-108. Cross-collateral.

In addition to contracting for a security interest pursuant to the provisions on security in sales or leases, a seller or issuer of a seller credit card in a consumer credit sale may secure the debt arising from the sale by contracting for a security interest in other property if as a result of a prior sale the seller or issuer of a seller credit card has an existing security interest in the other property and such debts are consolidated. The seller or issuer of a seller credit card may also contract for a security interest in the property sold in the subsequent sale as security for the previous debt if such debts are consolidated.

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§46A-2-109. Debt secured by cross-collateral.

(1) If debts arising from two or more consumer credit sales, other than sales primarily for an agricultural purpose or pursuant to a revolving charge account, are secured by cross-collateral and consolidated into one debt payable on a single schedule of payments, and the debt is secured by security interests taken with respect to one or more of the sales, payments received by the seller after the taking of the cross- collateral and the consolidation are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been first applied to the payment of the debts arising from the sales first made. To the extent debts are paid according to this section, security interests in items of property terminate as the debts originally incurred with respect to each item are paid.

(2) Payments received by the seller upon a revolving charge account are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first 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 to the account showing the debts were made.

(3) If the debts consolidated arose from two or more sales made on the same day, payments received by the seller are deemed, for the purpose of determining the amount of the debt secured by the various security interests, to have been applied first to the payment of the smallest debt.

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§46A-2-110. Referral sales or leases.

With respect to a consumer credit sale or consumer lease, the seller or lessor may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the buyer or lessee as an inducement for a sale or lease in consideration of his giving to the seller or lessor the names of prospective purchasers or lessees, or otherwise aiding the seller or lessor in making a sale or lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the buyer or lessee agrees to buy or lease. If a buyer or lessee is induced by a violation of this section to enter into a consumer credit sale or consumer lease, the agreement is unenforceable by the seller or lessor and the buyer or lessee, at his option, may rescind the agreement or retain the goods delivered and the benefit of any services performed, without any obligation to pay for them.

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§46A-2-111. Consumer leases; information to be furnished.

With respect to a consumer lease the lessor shall give to the lessee the following information:

(1) Brief description or identification of the goods;

(2) Amount of any payment required at the inception of the lease;

(3) Amount paid or payable for official fees, registration, title privilege, certificate of title or license fees or taxes;

(4) Amount of other charges not included in the periodic payment and a brief description of the charges;

(5) Brief description of insurance to be provided or paid for by the lessor, including the types and amounts of the coverages;

(6) Number of periodic payments, the amount of each payment, the due date of the first payment, the due dates of subsequent payments or interval between payments, and the total amount payable by the lessee;

(7) Statement of the conditions under which the lessee may terminate the lease prior to the end of the term; and

(8) Statement of the liabilities the lease imposes upon the lessee at the end of the term.

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§46A-2-112. Restriction on liability in consumer lease.

The obligation of a lessee upon expiration of a consumer lease, other than one primarily for an agricultural purpose, may not exceed twice the average payment allocable to a monthly period under the lease. This limitation does not apply to charges for damages to the leased property or for other default.

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§46A-2-113. Notice of assignment.

A consumer is authorized to pay the original creditor until he receives notification of assignment of rights to payment pursuant to a consumer credit sale, consumer lease or a consumer loan and that payment is to be made to the assignee. A notification which does not reasonably identify the rights assigned is ineffective. If requested by the consumer, the assignee must seasonably furnish reasonable proof that the assignment has been made and unless he does so the consumer may pay the original creditor.

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§46A-2-114. Receipts; statements of account; evidence of payment.

(1) The creditor shall deliver or mail to the consumer, without request, a written receipt for each payment by coin or currency on an obligation pursuant to a consumer credit sale, consumer lease or consumer loan. A periodic statement showing a payment received complies with this subsection.

(2) Upon written request of a consumer, the person to whom an obligation is owed pursuant to a consumer credit sale, consumer lease or consumer loan, other than one pursuant to a revolving charge account or revolving loan account, shall provide a written statement of the dates and amounts of payments made within the past twelve months and the total amount unpaid. The requested statement shall be provided without charge once during each year of the term of the sale, lease or loan. If additional statements are requested the creditor may charge not in excess of $3 for each additional statement.

(3) After a consumer has fulfilled all obligations with respect to a consumer credit sale, consumer lease or consumer loan, other than one pursuant to a revolving charge account or revolving loan account, the person to whom the obligation was owed shall, upon the request of the consumer, deliver or mail to the consumer written evidence acknowledging payment in full of all obligations with respect to the transaction.

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§46A-2-115. Limitation on default charges.

(a) Except for reasonable expenses, including costs and fees authorized by statute incurred in realizing on a security interest, the agreements that evidence a consumer credit sale or a consumer loan may not provide for charges as a result of default by the consumer other than those authorized by this chapter.

(b) With respect to this subsection:

(1) The phrase "consumer loan" shall mean a consumer loan secured by real property: (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the Farmers Home Administration, the Veterans Administration or the Department of Housing and Urban Development.

(2) Except as provided in subdivision (3) of this subsection, the agreements that evidence a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B) an appraisal fee; (C) all costs incidental to a title examination including professional fees, expenses incident to travel and copies of real estate and tax records; (D) expenses incidental to notice made to lienholders and other parties and entities having an interest in the real property to be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to a pending trustee's sale of the real property securing the consumer loan.

(3) For purposes of the charges expressly authorized by this subsection, no charge may be assessed and collected from a consumer unless: (A) Each charge is reasonable in its amount; (B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each charge is actually incurred after the last day allowed for cure of the consumer's default pursuant to section one hundred six of this article and before the consumer reinstates the consumer loan or otherwise cures the default; (D) the holder of the consumer loan and the consumer have agreed to cancel any pending trustee's sale or other foreclosure on the real property securing the consumer loan; and (E) in the case of an appraisal fee, no appraisal fee has been charged to the consumer within the preceding six months.

(c) All payments made to a creditor in accordance with the terms of any consumer credit sale or consumer loan shall be credited upon receipt against payments due: Provided, That amounts received and applied during a cure period will not result in a duty to provide a new notice of right to cure: Provided, however, That partial amounts received during the period set forth in subdivision (3) subsection (b) of this section do not create an automatic duty to reinstate and may be returned by the creditor. Default charges shall be accounted for separately. Those recoverable charges set forth in said subsection arising during the period described therein may be added to principal.

(d) At least once every twelve months, the holder or servicer of each consumer loan secured

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by real property against which the creditor assesses any default charge, and: (1) Not serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a federal home loan bank, the federal National Mortgage Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home Administration, the Veterans Administration, Department of Housing and Urban Development, shall transmit to the consumer an accounting of every default charge assessed within the previous twelve months, including the date, amount and nature of the cost.

This subsection does not apply to delinquency charges permitted under sections one hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit fees; deferral charges permitted under section one hundred fourteen of said article; collateral protection insurance permitted under section one hundred nine-a of said article; and advances to pay taxes.

(e) A provision in violation of this section is unenforceable. The amendments to this section by acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall be retroactively applied to all agreements in effect on the date of passage of the amendments, except where controversies arising under those agreements are pending prior to the date of passage of the amendments.

(f) Nothing in this section limits the expenses incidental to a trustee’s sale of real property that are recoverable pursuant to section seven, article one, chapter thirty-eight of this code.

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§46A-2-116. Assignment of earnings.

(1) The maximum part of the aggregate disposable earnings of an individual for any workweek which may be subjected to any one or more assignments of earnings for the payment of a debt or debts arising from one or more consumer credit sales, consumer leases, or consumer loans, or one or more sales as defined in §46A-6-102 of this code, may not exceed 25 percent of his or her disposable earnings for that week.

(2) As used in this section:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Assignment of earnings" includes all forms of assignments, deductions, transfers, or sales of earnings to another, either as payment or as security, and whether stated to be revocable or nonrevocable, and includes any deductions authorized under the provisions of §21-5-3 of this code, except deductions for union, labor organization, or club dues or fees, pension plans, payroll savings plans, charities, stock purchase plans, and any form of insurance offered by an employer.

(3) Any assignment of earnings and any deduction under §21-5-3 of this code shall be revocable by the employee at will at any time, notwithstanding any provision to the contrary.

(4) The priority of multiple assignments of earnings shall be according to the date and time of each such assignment.

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§46A-2-117. Authorization to confess judgment prohibited.

A consumer may not authorize any person to confess judgment on a claim arising out of a consumer credit sale, consumer lease or a consumer loan. An authorization in violation of this section is void. The provisions of this section shall not be construed as in any way impliedly authorizing a confession of judgment in any other type of transaction.

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§46A-2-118. No garnishment before judgment.

Prior to entry of judgment in an action against the debtor for debt arising from a consumer credit sale, consumer lease or a consumer loan, the creditor may not attach unpaid earnings of the debtor by garnishment or like proceedings. The provisions of this section shall not be construed as in any way impliedly authorizing garnishment before judgment in any other type of transaction.

WV Legislature

§46A-2-119. Restrictions on deficiency judgments.

(1) This section applies to a deficiency on a consumer credit sale of goods or services and on a consumer loan in which the lender is subject to claims and defenses arising from sales.

(2) If the seller repossesses or voluntarily accepts surrender of goods which were the subject of the sale and in which he has a security interest and the balance owed for the goods repossessed or surrendered was at the time of such repossession or surrender $1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale of the goods, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code."

(3) If the seller repossesses or voluntarily accepts a surrender of goods which were not the subject of the sale but in which he has a security interest to secure a debt arising from a sale of goods or services or a combined sale of goods and services and the balance owed on such debt was at the time of such repossession or surrender $1,000 or less, the buyer is not personally liable to the seller for the unpaid balance of the debt arising from the sale, and the seller's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code."

(4) If the lender takes possession or voluntarily accepts a surrender of goods in which he has a security interest to secure a debt arising from a consumer loan in which the lender may be subject to claims and defenses arising from sales and the balance owed on the net proceeds of the loan paid to or for the benefit of the borrower was at the time of such repossession or surrender $1,000 or less, the borrower is not personally liable to the lender for the unpaid balance of the debt arising from the loan and the lender's duty to dispose of the collateral is governed by the provisions on disposition of collateral of the "Uniform Commercial Code."

(5) For the purpose of determining the unpaid balance of consolidated debts or debts pursuant to revolving charge accounts or revolving loan accounts, the allocation of payments to a debt shall be determined in the same manner as provided for determining the amount of debt secured by various security interests.

(6) The consumer may be liable in damages to the creditor if the consumer has wrongfully damaged the collateral or if after default and demand, the consumer has wrongfully failed to make the collateral available to the creditor.

(7) If the creditor elects to bring an action against the consumer for a debt arising from a consumer credit sale of goods or services or from a consumer loan in which the lender is subject to claims and defenses arising from sales, when under this section he would not be entitled to a deficiency judgment if he took possession of the collateral, and obtains judgment:

(a) He may not take possession of the collateral, and

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(b) The collateral is not subject to levy or sale on execution or similar proceedings pursuant to the judgment.

WV Legislature

§46A-2-119a. Secured transaction; use of price guide value in calculating deficiency or surplus.

****Clerk's NOTE: This section was amended to bring it into conformity with the newly enacted article nine, chapter forty-six, which will take effect July 1, 2001.****

(a) This section applies to the following transactions:

(1) Transactions in which a purchase money security interest is taken in collateral which is being purchased primarily for a personal, family, household or agricultural purpose;

(2) Transactions in which a security interest is taken in collateral which was used primarily for a personal, family, household or agricultural purpose prior to the giving the security interest; or

(3) Transactions in which a security interest is taken in collateral for a debt that was incurred primarily for a personal, family, household or agricultural purpose.

(b) This section takes effect on July 1, 2002, and is applicable notwithstanding the provisions of:

(1) Section six hundred ten, article nine, chapter forty-six of this code, providing that disposition may only be by certain public or private sale, lease or license procedures;

(2) Section six hundred ten, article nine, chapter forty-six of this code, requiring that those procedures be commercially reasonable;

(3) Section six hundred fifteen, article nine, chapter forty-six of this code, providing for the application of the proceeds;

(4) Section six hundred twenty, article nine, chapter forty-six of this code, requiring disposition by sale, lease or license in certain circumstances; and

(5) Section six hundred two, article nine, chapter forty-six of this code, providing that these sections may not be waived or varied by agreement.

(c) For purposes of this section, the term "debtor" shall be deemed to refer collectively to each person who is indebted to a secured creditor in connection with a consumer lease or consumer loan, whether the person's obligation arises as a comaker, endorser or guarantor of the lease or loan.

(d) After a default by the debtor and after the secured creditor takes or receives possession of collateral or makes collateral unusable as provided in section six hundred nine, article nine, chapter forty-six of this code, the secured creditor may send a written proposal to the debtor setting forth a value for the secured creditor's collateral which value, less any expenses of taking and holding the collateral, shall be credited against the debtor's

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obligation to the secured creditor. The written proposal must explain that:

(1) The proposal becomes effective only if the debtor agrees to it in writing but the debtor is not required to agree to the written proposal;

(2) If the debtor does not agree to the proposal in writing, then the goods which are the subject of the written proposal will be disposed of in a "commercially reasonable" manner by the secured creditor in accordance with applicable law, and the amount received from the disposition of the collateral, less the expenses of taking and holding the collateral, preparing the collateral of the sale or lease, and selling the collateral, will be the amount credited against the debtor's obligation to the secured creditor when calculating the deficiency owed by the debtor to the secured creditor or the surplus owed by the secured creditor to the debtor;

(3) If the debtor agrees to the written proposal, then the debtor will thereby release and waive any claims against the secured creditor that the disposition of the collateral was not commercially reasonable or was otherwise improper; and

(4) The written proposal may set forth a date and time by which the debtor's written agreement must be received by secured creditor in order for the agreement to become effective.

(5) The following form, when reproduced on a single sheet of paper with no other statements or agreements and accurately completed, meets the requirements of this section even if it contains typographical or other minor errors that are not misleading:

[*Name and address of secured party*]

[*Date*]

TO: [*Name and address of debtor*]

OFFER TO CREDIT PRICE GUIDE VALUE

We have possession of your [*describe collateral*] ("property") (or we have made it unusable by you), because you broke the terms of our agreement.

By law, we may sell, lease or license this property in any commercially reasonable manner. If we choose to sell the property at a public sale we will give you notice of the date, time and place of the sale and you may attend the sale and bring bidders if you want. If we choose to sell the property at a private sale we will give you notice of the date after which the sale will take place. From the money we are paid from the sale of the property, we may subtract our expenses in getting the property from you, storing it, preparing and selling, leasing or licensing it. The sale money left over after these expenses are subtracted will then be subtracted from what you owe us. If we receive less money than you owe, you will still owe us the difference. If we receive more money than you owe, you will get the extra money back

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(unless we are required to pay it to someone else).

Instead of selling, leasing or licensing this property, we are now offering to subtract the amount of $ [*enter amount*] from what you owe us. We have calculated this amount by adding the retail value of the property of $ [*insert retail value*] and the [*insert other value pursuant to § 46A-2-119a(5)*] value of the property of $ [*enter amount*] and dividing that total by 2 ("value amount"). These values were obtained from _____, a price guide in general use as of the date we got possession of or rendered the property unusable by you. From the value amount we have subtracted our expenses of $ [*enter amount*] in taking back the property from you, and our expenses of $ [*enter amount*] for storing the property through the date below by which you must respond to this offer.

You do not have to accept this offer. To agree to our offer, you must sign this notice at the bottom no sooner than one day after the date on which you received this offer and deliver it or have it delivered to us before [*enter date by which the secured party determines the offer must be accepted*] . If you agree to this offer, you are giving up any right to hold us liable for the way that we sell, lease or otherwise dispose of the property and account for the proceeds.

You can get the property back at any time before you accept this offer or we sell, lease or license the property by paying us the full amount you owe (not just the past due payments), including our expenses so far. To learn the exact amount you must pay, you may call us at [*telephone number*] . If you want us to explain to you in writing how we calculated the amount that you owe us, you may call us at [*telephone number*] or write us at [*secured party's address*] and request a written explanation.

[We are sending this notice to the following other people who owe money under our agreement. They will also have to agree to our offer or we will sell the property as we normally do.

[*Names of all other debtors and obligors, if any*]]

I accept the offer:

Signed _____

Date of signature _____

[End of Form]

(e) (1) The value of the collateral set forth in the written proposal shall be determined from any price guide used generally by persons who are not purchasers or lessees of that type of collateral and who insure, lend money for the purchase of, lease or otherwise deal in goods of the same type as the collateral when it would be to the advantage of the user for the price guide to have higher values.

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(2) The value of the collateral set forth in the written proposal shall be determined as of the date the secured party took possession of the collateral, received possession of the collateral or rendered the collateral unusable.

(3) For a motor vehicle, as that term is defined by section one, article one, chapter seventeen-a of this code, the value of the motor vehicle collateral shall be calculated by adding together the retail value and the trade-in value for the motor vehicle and dividing that sum by two.

(4) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by the debtor, an obligor or a person related to the debtor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for the manufactured home that is moved for resale, mobile home or house trailer and dividing that sum by two.

(5) For a manufactured home, mobile home or house trailer, as those terms are defined in section one, article six, chapter seventeen-a of this code, which at the time of default was located on a lot owned by a person or organization in the business of renting or leasing lots or on a lot owned by a person who is not the debtor, an obligor or a person related to the debtor or obligor, the value of the manufactured home, mobile home or house trailer collateral shall be calculated by adding together the retail value and the wholesale value designated for collateral that is offered for sale without moving the collateral from its current location, and dividing that sum by two.

(6) For other personal property, the value of the collateral shall be calculated by adding together the used retail value and the highest listed wholesale value for the property and dividing that sum by two.

(f) If the debtor agrees in writing to the written proposal within the time period prescribed by the secured creditor, then:

(1) The collateral value as calculated in subsection (e) above, less any expenses of taking and holding the collateral, shall be applied to the indebtedness as provided in section six hundred fifteen, article nine, chapter forty-six of this code;

(2) Any expenses incurred by the secured creditor in the actual sale or lease of the collateral or preparing the collateral for sale or lease may not be charged to the debtor but must be born by the secured creditor; and

(3) The secured creditor is not required to dispose of the collateral in a commercially reasonable manner and is not liable for any failure to comply with any law of this state relating to the disposition of the collateral or application of the proceeds.

(g) The written agreement of the debtor is not valid unless it is signed by the debtor on or

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after the next calendar day after it is received by the debtor or the second calendar day after it was sent to the debtor.

(h) If the debtor is more than one person, then the secured creditor must send the proposal described in subsection (d) of this section to all such persons. If any one of the persons indebted to a secured creditor on a consumer lease or consumer loan does not agree in writing to the proposal or does not respond timely to the proposal, then the secured creditor must proceed with a sale or other disposition of its collateral as provided in article nine, chapter forty-six of this code.

(i) If a person other than the debtor has a recorded ownership interest in property securing the debtor's obligation to a secured creditor and such other person is not also indebted to the secured creditor on such obligation, then the secured creditor must send a copy of the proposal described in subsection (d) of this section to such other person but is not required to obtain such other person's consent or agreement to the proposal in order to effect the proposal.

(j) Upon receipt of the debtor's executed acceptance of a written proposal described in subsection (d) of this section, title to the collateral described in the proposal shall be deemed to pass to the secured creditor unless such collateral is a vehicle, manufactured home, mobile home or house trailer.

(k) Upon presentation of the debtor's executed acceptance of a written proposal described in subsection (d) of this section to the department of motor vehicles and a certificate of title to the debtor's vehicle, manufactured home, mobile home or house trailer described in the written proposal, the department of motor vehicles shall issue a new certificate of title to the vehicle, manufactured home, mobile home or house trailer in the name of the secured creditor as the owner thereof.

(l) Nothing in this section may be construed to create, directly or indirectly, or impose a duty on the secured creditor to make a written offer or give notice under this section. A secured creditor's failure to make a written proposal shall not subject the secured creditor to any liability to the debtor or any other person.

(m) The provisions of this section may not be waived or varied.

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§46A-2-120. Extortionate extensions of credit.

(1) If the court finds as a matter of fact that it was the understanding of the creditor and the consumer at the time an extension of credit was made that delay in making repayment or failure to make repayment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the repayment of the extension of credit is unenforceable through civil judicial process against the consumer.

(2) If a court finds as a matter of fact that an extension of credit was made at a rate in excess of that permitted for such transaction by the provisions of this chapter and that the creditor then had a reputation for the use or threat of use of violence or other criminal means to cause harm to the person, reputation or property of any person to collect extensions of credit or to punish the nonrepayment thereof, there is prima facie evidence that the extension of credit was unenforceable under subsection (1).

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§46A-2-121. Unconscionability; inducement by unconscionable conduct.

(a) With respect to a transaction which is or gives rise to a consumer credit sale, consumer lease or consumer loan, if the court as a matter of law finds:

(1) The agreement or transaction to have been unconscionable at the time it was made, or to have been induced by unconscionable conduct such as affirmative misrepresentations, active deceit or concealment of a material fact, the court may refuse to enforce the agreement; or

(2) Any term or part of the agreement or transaction to have been unconscionable at the time it was made, the court may refuse to enforce the agreement, or may enforce the remainder of the agreement without the unconscionable term or part, or may so limit the application of any unconscionable term or part as to avoid any unconscionable result.

(b) If it is claimed or appears to the court that the agreement or transaction or any term or part thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to present evidence as to its setting, purpose and effect to aid the court in making the determination.

(c) For the purpose of this section, a charge or practice expressly permitted by this chapter is not unconscionable.

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§46A-2-122. Definitions.

For the purposes of this section and sections one hundred twenty-three, one hundred twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one hundred twenty-eight, one hundred twenty-nine and one hundred twenty-nine-a of this article, the following terms shall have the following meanings:

(a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt and includes any duly appointed personal representative of the estate of a natural person obligated or allegedly obligated to pay any debt.

(b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction is primarily for personal, family or household purposes, whether or not such obligation has been reduced to judgment.

(c) "Debt collection" means any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.

(d) "Debt collector" means any person or organization engaging directly or indirectly in debt collection. The term includes any person or organization who sells or offers to sell forms which are, or are represented to be, a collection system, device or scheme, and are intended or calculated to be used to collect claims. The term excludes attorneys representing creditors provided the attorneys are licensed in West Virginia or otherwise authorized to practice law in the state of West Virginia and handling claims and collections in their own name as an employee, partner, member, shareholder or owner of a law firm and not operating a collection agency under the management of a person who is not a licensed attorney.

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§46A-2-123. Practice of law by debt collectors.

Unless a licensed attorney in this state, no debt collector shall engage in conduct deemed the practice of law. Without limiting the general application of the foregoing, the following conduct is deemed the practice of law:

(a) The performance of legal services, furnishing of legal advice or false representation, direct or by implication, that any person is an attorney;

(b) Any communication with consumers in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

(c) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

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§46A-2-124. Threats or coercion.

No debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion or attempt to coerce. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use, or express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation or property of any person;

(b) The accusation or threat to accuse any person of fraud, any crime, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule, or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(c) False accusations made to another person, including any credit reporting agency, that a consumer is willfully refusing to pay a just debt, or the threat to so make false accusations;

(d) The threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;

(e) The threat that nonpayment of an alleged claim will result in the:

(1) Arrest of any person; or

(2) Garnishment of any wages of any person or the taking of other action requiring judicial sanction, without informing the consumer that there must be in effect a judicial order permitting such garnishment or such other action before it can be taken; and

(f) The threat to take any action prohibited by this chapter or other law regulating the debt collector's conduct.

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§46A-2-125. Oppression and abuse.

No debt collector shall unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(b) Engaging any person in telephone conversation without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(c) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication; and

(d) Calling any person more than thirty times per week or engaging any person in telephone conversation more than ten times per week, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number. In determining whether a debt collector's conduct violates this section, the debt collector's conduct will be evaluated from the standpoint of a reasonable person. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after eight o'clock antemeridian and before nine o'clock postmeridian, local time at the consumer's location.

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§46A-2-126. Unreasonable publication.

No debt collector shall unreasonably publicize information relating to any alleged indebtedness or consumer. For purposes of this section, a debt collector does not unreasonably publicize information relating to any alleged indebtedness by identifying themselves to the debtor by name, identifying the debt collector's employer by name, if expressly requested by the debtor, or by providing a telephone number or other contact information to the debtor. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The communication to any employer or his agent before judgment has been rendered of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(b) The disclosure, publication or communication of information relating to a consumer's indebtedness to any relative or family member of the consumer if such person is not residing with the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(c) The disclosure, publication or communication of any information relating to a consumer's indebtedness to any other person other than a credit reporting agency, by publishing or posting any list of consumers, commonly known as "deadbeat lists", except lists to prevent the fraudulent use of credit accounts or credit cards, by advertising for sale any claim to enforce payment thereof, or in any manner other than through proper legal action, process or proceeding; and

(d) The use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address and phone number of the debt collector.

Nothing in this chapter shall prohibit a creditor or debt collector from communicating with any person other than the consumer for the purpose of acquiring or confirming the consumer's location information provided they do so in a manner consistent with the provisions of 15 U. S. C. § 1692b, as the same may be amended from time to time. For purposes of this section, "communication" or "communicating" or any derivation of those terms shall not include the filing of a complaint or other document, pleading or filing with any court.

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§46A-2-127. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company or organization;

(b) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(c) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(d) Any false representation or implication of the character, extent or amount of a claim against a consumer, or of its status in any legal proceeding;

(e) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;

(f) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(g) Any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(h) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

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§46A-2-128. Unfair or unconscionable means.

No debt collector may use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(a) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt except where such affirmation is obtained pursuant to applicable bankruptcy law;

(c) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered: Provided, That attorney's fees, court costs and other reasonable collection costs and charges necessary for the collection of any amount due upon delinquent educational loans made by any institution of higher education within this state may be recovered when the terms of the obligation so provide. Recovery of attorney's fees and collection costs may not exceed thirty-three and one-third percent of the amount due and owing to any such institution: Provided, however, That nothing contained in this subsection shall be construed to limit or prohibit any institution of higher education from paying additional attorney fees and collection costs as long as such additional attorney fees and collection costs do not exceed an amount equal to five percent of the amount of the debt actually recovered and such additional attorney fees and collection costs are deducted or paid from the amount of the debt recovered for the institution or paid from other funds available to the institution;

(d) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating or modifying the obligation and by statute or regulation;

(e) Any communication with a consumer made more than three business days after the debt collector receives written notice from the consumer or his or her attorney that the consumer is represented by an attorney specifically with regard to the subject debt. To be effective under this subsection, such notice must clearly state the attorney's name, address and telephone number and be sent by certified mail, return receipt requested, to the debt collector's registered agent, identified by the debt collector at the office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the debt collector's principal place of business. Communication with a consumer is not prohibited under this subsection if the attorney fails to answer correspondence, return phone calls or discuss the obligation in question, or if the attorney consents to direct communication with the consumer. Regular account statements provided to the consumer

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and notices required to be provided to the consumer pursuant to applicable law shall not constitute prohibited communications under this section; and

(f) When the debt is beyond the statute of limitations for filing a legal action for collection, failing to provide the following disclosure informing the consumer in all written communication with such consumer that:

(1) When collecting on a debt that is not past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U. S. C. 1681c: "The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) cannot sue you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report it to the credit reporting agencies as unpaid"; and

(2) When collecting on debt that is past the date for obsolescence provided for in Section 605(a) of the Fair Credit Reporting Act, 15 U. S. C. 1681c: "The law limits how long you can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) cannot sue you for it and (INSERT OWNER NAME) cannot report it to any credit reporting agencies."

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§46A-2-129. Postal violations.

No debt collector shall use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.

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§46A-2-129a. Deceptive or oppressive telephone calls.

No debt collector shall place a telephone call or otherwise communicate by telephone with a consumer or third party, at any place, including a place of employment, falsely stating that the call is "urgent" or an "emergency".

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§46A-2-130. Limitation on garnishment.

(1) For the purposes of the provisions in this chapter relating to garnishment:

(a) "Disposable earnings" means that part of the earnings of an individual remaining after the deduction from those earnings of amounts required by law to be withheld; and

(b) "Garnishment" means any legal or equitable procedure through which the earnings of an individual are required to be withheld for payment of a debt.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment to enforce payment of a judgment arising from a consumer credit sale or consumer loan may not exceed the lesser of:

(a) Twenty percent of his or her disposable earnings for that week, or

(b) The amount by which his or her disposable earnings for that week exceed fifty times the federal minimum hourly wage prescribed by section 6(a) (1) of the "Fair Labor Standards Act of 1938," U.S.C. Title 19, Sec. 206(a)(1), in effect at the time the earnings are payable.

(c) In the case of earnings for a pay period other than a week, the commissioner shall prescribe by rule a multiple of the federal minimum hourly wage equivalent in effect to that set forth in subdivision (b), subsection (2) of this section.

(3) No court may make, execute or enforce an order or process in violation of this section. Any time after a consumer's earnings have been executed upon pursuant to article five-a or article five-b, chapter thirty-eight of this code by a creditor resulting from a consumer credit sale, consumer lease or consumer loan, such consumer may petition any court having jurisdiction of such matter or the circuit court of the county wherein he or she resides to reduce or temporarily or permanently remove such execution upon his or her earnings on the grounds that such execution causes or will cause undue hardship to him or her or his or her family. When such fact is proved to the satisfaction of such court, it may reduce or temporarily or permanently remove such execution.

(4) No garnishment governed by the provisions of this section will be given priority over a voluntary assignment of wages to fulfill a support obligation, a garnishment to collect arrearages in support payments, or a notice of withholding from wages of amounts payable as support, notwithstanding the fact that the garnishment in question or the judgment upon which it is based may have preceded the support-related assignment, garnishment, or notice of withholding in point of time or filing.

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§46A-2-131. No discharge or reprisal because of garnishment.

No employer shall discharge or take any other form of reprisal against an employee for the reason that a creditor of the employee has subjected or attempted to subject unpaid earnings of the employee to garnishment or like proceedings directed to the employer for the purpose of paying a judgment arising from a consumer credit sale, consumer lease or consumer loan.

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§46A-2-132. Home solicitation; buyer's right to cancel; notice.

In addition to any other right to revoke an offer, a buyer shall have the right to cancel a home solicitation sale until midnight of the third business day after the day on which he has signed an agreement or offer to purchase. Cancellation shall become effective when the buyer gives written notice of his intention to cancel to the seller at the address stated in the agreement or offer to purchase. Notice of such cancellation, if given by mail, is given when it is deposited in a mailbox properly addressed and postage prepaid. Such notice of cancellation given by the buyer need not take any particular form and shall be sufficient if it indicates by any form of written expression the intention of the buyer not to be bound by the home solicitation sale. Notwithstanding any above-mentioned provision, a buyer may not cancel a home solicitation sale where he has requested and the seller has provided goods or services without delay because of a bona fide emergency and either the seller has in good faith made a substantial beginning of performance of the agreement before the buyer has given notice of cancellation, or in the case of goods, such goods cannot be returned to the seller in substantially as good condition as when they were received by the buyer.

WV Legislature

§46A-2-133. Form of agreement or offer to purchase; statement of buyer's rights.

In every home solicitation sale in this state, except where a buyer has requested a seller to provide goods or services without delay because of an emergency, the seller shall present to the buyer a written agreement or offer to purchase which designates as the date of the transaction the day on which the buyer has signed it and which contains a statement of the buyer's rights as hereinafter provided for. No such written agreement or offer to purchase shall be effective until after it has been signed by the buyer and he has written the date of such signature in his own handwriting. The statement must appear under the conspicuous caption:"BUYER'S RIGHT TO CANCEL" and read as follows:"If this agreement was solicited at a place other than the seller's business establishment at a fixed location and you decide you do not want these goods or services, you may cancel this agreement by mailing a notice to the seller. The notice must say that you do not want the goods or services and must be mailed before midnight of the third business day after you sign this agreement. The notice must be mailed to: (Name and mailing address of seller)." Until the seller has fully complied with this section, the buyer may cancel the home solicitation sale, by notifying the seller of his intention to cancel in any manner. Any written agreement or offer to purchase which contains the form and content of notice of cancellation required by the federal trade commission and which provides information substantially similar to that required by this section shall be deemed to comply fully with this section.

WV Legislature

§46A-2-134. Restoration of down payment.

Within ten days after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the seller shall tender to the buyer any payment made by the buyer to him and any note or other evidence of indebtedness taken in the transaction. A provision permitting the seller to keep all or part of any payment, note or other evidence of indebtedness is in violation of this section and unenforceable. If any down payment included goods traded in, the seller shall return the goods in substantially as good a condition as when he received them. If a seller has failed to tender goods as required by this section, the buyer may elect to recover an amount equal to the trade-in allowance on such goods as stated in the agreement. Until a seller has complied with all the obligations imposed by this section, a buyer may keep any goods delivered to him by the seller and he is hereby given a lien on such goods for the purpose of making any recovery to which he is entitled by this section.

WV Legislature

§46A-2-135. Buyer's duty; seller's right; no compensation for certain services.

Within a reasonable time after a home solicitation sale has been cancelled or an offer to purchase has been revoked, the seller may demand and receive any goods delivered by him to the buyer as the result of the home solicitation sale. The buyer shall not be obligated to tender such goods to the seller at any place other than the buyer's residence. If the seller fails to demand possession of goods within such reasonable time, such goods shall become the buyer's property without any obligation to pay for them. For the purposes of this section, twenty days shall be presumed to be a reasonable time. The buyer shall take reasonable care of such goods in his possession before cancellation or revocation and for a reasonable time thereafter, during which time the goods are otherwise at the seller's risk. Where the seller has performed any service pursuant to a home solicitation sale prior to its cancellation or prior to giving the statement required in section one hundred thirty-three of this article, he shall not be entitled to any compensation for such performance.

WV Legislature

§46A-2-136. Personal property exemptions.

Any consumer residing in this state may set apart and hold personal property to be exempt from execution or other judicial process resulting from consumer credit transactions or consumer leases, except for the purchase money due on such property, in such amounts as follows: Children's books, pictures, toys and other such personal property of children; all medical health equipment used for health purposes by the consumer, his or her spouse and any dependent of such consumer; and personal property set apart and held as exempt pursuant to section one, article eight, chapter thirty-eight of this code. When a consumer claims personal property as exempt under the provisions of this section, he or she shall deliver a list containing all the personal property owned or claimed by him or her and all items of such property he or she claims as exempt hereunder, with the value of each separate item listed according to his or her best knowledge, to the officer holding the execution or other such process. Such list shall be sworn to by affidavit. If the value of the property named in such list exceeds the amounts specified in this section, the consumer shall state at the foot thereof what part of such property he or she claims as exempt. If such value does not exceed the amounts specified in this section, the claim of exemption shall be held to extend to the whole thereof without stating more and, if no appraisement is demanded, the property so claimed shall be set aside as exempt. Where the consumer owning exempt property is absent or incapable of acting or neglects or declines to act hereunder, the claim of exemption may be made, the list delivered and the affidavit made by his or her spouse or by or on behalf of a dependent of the consumer, with the same effect as if the owner had done so. Upon receipt of such a list, the officer to whom it is given shall immediately exhibit such list to the creditor or his or her agent or attorney. The rights granted and procedures provided in article eight, chapter thirty-eight of this code shall apply to any proceeding under this section, except that the provisions of section three of such article shall not apply.

WV Legislature

§46A-2-137. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who takes or holds any negotiable instrument, nonnegotiable instrument, or contract or other writing, arising from a consumer credit sale or consumer lease which is subject to the provisions of this article, other than a sale or lease primarily for an agricultural purpose, or who is a lender subject to the provisions of section one hundred three of this article, shall be conclusively presumed to have appointed the Secretary of State as his attorney-in-fact with authority to accept service of notice and process in any action or proceeding brought against him arising out of such consumer credit sale, consumer lease or consumer loan. A person shall be considered a nonresident hereunder if he is a nonresident at the time such service of notice and process is sought. No act of such person appointing the Secretary of State shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Secretary of State with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Secretary of State shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, to such person at his address, which address shall be stated in such process or notice: Provided, That after receiving verification from the United States postal service that acceptance of process or notice has been signed, the Secretary of State shall notify the clerk's office of the court from which the process or notice was issued by a means which may include electronic notification. If the process or notice was refused or undeliverable by the United States postal service the Secretary of State shall return refused or undeliverable mail to the clerk's office of the court from which the process or notice was issued. But no process or notice shall be served on the Secretary of State or accepted fewer than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceeding.The provisions for service of process or notice herein are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.

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§46A-2-138. Buyer's right to cancel certain subscriptions and other obligations.

(a) When a buyer has become indebted or paid cash on a contract for future deliveries of a correspondence course, on any contract entered into after the effective date of this section for truck driver, modeling or any other occupational or business course with a private proprietary school, or a multiple magazine subscriptions contract, other than for single subscriptions direct with the publisher thereof, the buyer may cancel and terminate such contract at any time by mailing a notice of cancellation by first class United States mail to the person to whom the indebtedness is owed, or with whom the contract was made, or his assignee, which notice shall forthwith terminate and cancel any financial obligation for goods or services not received by the buyer prior to the mailing of such notice of cancellation. The indebtedness for correspondence course materials received and not returned shall not exceed the reasonable store purchase price of such materials. In addition thereto, in regard to a correspondence course contract (in part or wholly by correspondence) the state Board of Education is hereby empowered and directed to promulgate rules and regulations setting forth policy for the refund of tuition fees or other indebtedness and cancellation in whole or in part of such a contract by a buyer, with regard to goods and services not fully delivered. Such rules and regulations shall include, but not be limited to, provisions for allowing such cancellation by a buyer by mailing notice of intent to cancel and returning all materials received, and that the seller shall return any moneys due buyer within twenty days upon receipt of the notice of cancellation.

(b) Any buyer not receiving a refund of all moneys paid and due within twenty days of cancellation of any contract under this section has a direct cause of action upon any bond filed with the Department of Education or board of regents to secure performance of legal obligation pursuant to the provisions of section ten, article two, chapter eighteen of this code.

(c) Notwithstanding any other provision of law to the contrary, with respect to contracts which are the subject of or are intended to become the subject of a transaction as provided for in this section, no seller shall:

(1) Exclude, modify or otherwise attempt to limit any provision addressed under this section; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available under this section.

Any such exclusion, modification or attempted limitation shall be void.

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§46A-2-139. Unlawful commercial facsimile transmission; right of action for injunction, damages.

(a) No person or organization may initiate an unsolicited commercial facsimile transmission from within this state to another person or organization within this state after the initiator has been given notice that the recipient does not wish to receive such unsolicited commercial facsimile transmissions.

(b) A recipient of an unsolicited commercial facsimile transmission initiated in violation of subsection (a) of this section may bring an action to recover actual damages for any injury sustained by the receipt of unsolicited commercial facsimile transmissions. In lieu of actual damages, a minimum damage assessment of $300 may be recovered for violations of this section. Punitive damages may be awarded for the willful failure to cease initiating unsolicited commercial facsimile transmissions. Court costs and reasonable attorney fees may be awarded for violations of this section.

(c) A recipient of an unsolicited commercial facsimile transmission initiated in violation of subsection (a) of this section may bring an action to enjoin the initiator from sending any further unsolicited commercial facsimile transmissions to the recipient. Any court costs or other costs incident to such action including reasonable attorney fees may be awarded.

(d) In any proceeding under this section, an unsolicited commercial facsimile transmission may be deemed to have been committed either at the place of initiation or at the place of receipt of such transmission.

(e) For purposes of this section, notice shall be sufficient which conveys to the initiator of the unsolicited commercial transmission a desire on the part of the recipient to receive no further unsolicited commercial facsimile transmissions and shall be served by certified mail, return receipt requested, or by facsimile transmission.

WV Legislature

§46A-2-140. Pleadings not to be the basis of a cause of action.

Nothing contained in or omitted from a pleading filed in a court of this state shall be the basis of a cause of action under this chapter, nor shall the act of filing a civil action be the basis of a cause of action under this chapter unless the pleading or the filing of the civil action constitutes a material violation of sections 124(f), 127(d), 128(c), or 128(d) of this article: Provided, That demand in a pleading to award costs authorized by the applicable rules of civil procedure shall not be the basis of a cause of action under this chapter. For purposes of this section, a pleading shall have the same definition as provided in the Rules of Civil Procedure applicable in the court where the action is filed. Further, nothing contained in this section is intended to abrogate or abolish common law causes of action for malicious prosecution, abuse of process, harassment or frivolity, but in no case shall the contents of pleadings in a civil action nor the institution of a civil action in any court be the basis for a claim of a violation of the West Virginia Consumer Credit and Protection Act except as set forth above.

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§46A-2A-101. Definitions.

As used in this article:

(1) "Breach of the security of a system" means the unauthorized access and acquisition of unencrypted and unredacted computerized data that compromises the security or confidentiality of personal information maintained by an individual or entity as part of a database of personal information regarding multiple individuals and that causes the individual or entity to reasonably believe that the breach of security has caused or will cause identity theft or other fraud to any resident of this state. Good faith acquisition of personal information by an employee or agent of an individual or entity for the purposes of the individual or the entity is not a breach of the security of the system, provided that the personal information is not used for a purpose other than a lawful purpose of the individual or entity or subject to further unauthorized disclosure.

(2) "Entity" includes corporations, business trusts, estates, partnerships, limited partnerships, limited liability partnerships, limited liability companies, associations, organizations, joint ventures, governments, governmental subdivisions, agencies or instrumentalities, or any other legal entity, whether for profit or not for profit.

(3) "Encrypted" means transformation of data through the use of an algorithmic process to into a form in which there is a low probability of assigning meaning without use of a confidential process or key or securing the information by another method that renders the data elements unreadable or unusable.

(4) "Financial institution" has the meaning given that term in Section 6809(3), United States Code Title 15, as amended.

(5) "Individual" means a natural person.

(6) "Personal information" means the first name or first initial and last name linked to any one or more of the following data elements that relate to a resident of this state, when the data elements are neither encrypted nor redacted:

(A) Social security number;

(B) Driver's license number or state identification card number issued in lieu of a driver's license; or

(C) Financial account number, or credit card, or debit card number in combination with any required security code, access code or password that would permit access to a resident's financial accounts.

The term does not include information that is lawfully obtained from publicly available information, or from federal, state or local government records lawfully made available to the general public.

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(7) "Notice" means:

(A) Written notice to the postal address in the records of the individual or entity;

(B) Telephonic notice;

(C) Electronic notice, if the notice provided is consistent with the provisions regarding electronic records and signatures, set forth in Section 7001, United States Code Title 15, Electronic Signatures in Global and National Commerce Act.

(D) Substitute notice, if the individual or the entity required to provide notice demonstrates that the cost of providing notice will exceed $50,000 or that the affected class of residents to be notified exceeds one hundred thousand persons or that the individual or the entity does not have sufficient contact information or to provide notice as described in paragraph (A), (B) or (C). Substitute notice consists of any two of the following:

(i) E-mail notice if the individual or the entity has e-mail addresses for the members of the affected class of residents;

(ii) Conspicuous posting of the notice on the website of the individual or the entity if the individual or the entity maintains a website; or

(iii) Notice to major statewide media.

(8) "Redact" means alteration or truncation of data such that no more than the last four digits of a social security number, driver's license number, state identification card number or account number is accessible as part of the personal information.

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§46A-2A-102. Notice of breach of security of computerized personal information.

(a) An individual or entity that owns or licenses computerized data that includes personal information shall give notice of any breach of the security of the system following discovery or notification of the breach of the security of the system to any resident of this state whose unencrypted and unredacted personal information was or is reasonably believed to have been accessed and acquired by an unauthorized person and that causes, or the individual or entity reasonably believes has caused or will cause, identity theft or other fraud to any resident of this state. Except as provided in subsection (e) of this section or in order to take any measures necessary to determine the scope of the breach and to restore the reasonable integrity of the system, the notice shall be made without unreasonable delay.

(b) An individual or entity must give notice of the breach of the security of the system if encrypted information is accessed and acquired in an unencrypted form or if the security breach involves a person with access to the encryption key and the individual or entity reasonably believes that such breach has caused or will cause identity theft or other fraud to any resident of this state.

(c) An individual or entity that maintains computerized data that includes personal information that the individual or entity does not own or license shall give notice to the owner or licensee of the information of any breach of the security of the system as soon as practicable following discovery, if the personal information was or the entity reasonably believes was accessed and acquired by an unauthorized person.

(d) The notice shall include:

(1) To the extent possible, a description of the categories of information that were reasonably believed to have been accessed or acquired by an unauthorized person, including social security numbers, driver's licenses or state identification numbers and financial data;

(2) A telephone number or website address that the individual may use to contact the entity or the agent of the entity and from whom the individual may learn:

(A) What types of information the entity maintained about that individual or about individuals in general; and

(B) Whether or not the entity maintained information about that individual.

(3) The toll-free contact telephone numbers and addresses for the major credit reporting agencies and information on how to place a fraud alert or security freeze.

(e) Notice required by this section may be delayed if a law-enforcement agency determines and advises the individual or entity that the notice will impede a criminal or civil investigation or homeland or national security. Notice required by this section must be made without unreasonable delay after the law-enforcement agency determines that notification will no longer impede the investigation or jeopardize national or homeland security.

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(f) If an entity is required to notify more than one thousand persons of a breach of security pursuant to this article, the entity shall also notify, without unreasonable delay, all consumer reporting agencies that compile and maintain files on a nationwide basis, as defined by 15 U.S.C. §1681a (p), of the timing, distribution and content of the notices. Nothing in this subsection shall be construed to require the entity to provide to the consumer reporting agency the names or other personal identifying information of breach notice recipients. This subsection shall not apply to an entity who is subject to Title V of the Gramm Leach Bliley Act, 15 U.S.C. 6801, et seq.

(g) The notice required by this section shall not be considered a debt communication as defined by the Fair Debt Collection Practice Act in 15 U.S.C. §1692a.

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§46A-2A-103. Procedures deemed in compliance with security breach notice requirements.

(a) An entity that maintains its own notification procedures as part of an information privacy or security policy for the treatment of personal information and that are consistent with the timing requirements of this article shall be deemed to be in compliance with the notification requirements of this article if it notifies residents of this state in accordance with its procedures in the event of a breach of security of the system.

(b) A financial institution that responds in accordance with the notification guidelines prescribed by the Federal Interagency Guidance on Response Programs for Unauthorized Access to Customer Information and Customer Notice is deemed to be in compliance with this article.

(c) An entity that complies with the notification requirements or procedures pursuant to the rules, regulation, procedures or guidelines established by the entity's primary or functional regulator shall be in compliance with this article.

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§46A-2A-104. Violations.

(a) Except as provided by subsection (c) of this section, failure to comply with the notice provisions of this article constitutes an unfair or deceptive act of practice in violation of section one hundred four, article six, chapter forty-six-a of this code, which may be enforced by the Attorney General pursuant to the enforcement provisions of this chapter.

(b) Except as provided by subsection (c) of this section, the Attorney General shall have exclusive authority to bring action. No civil penalty may be assessed in an action unless the court finds that the defendant has engaged in a course of repeated and willful violations of this article. No civil penalty shall exceed $150,000 per breach of security of the system or series of breaches of a similar nature that are discovered in a single investigation.

(c) A violation of this article by a licensed financial institution shall be enforceable exclusively by the financial institution's primary functional regulator.

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§46A-2A-105. Applicability.

This article shall apply to the discovery or notification of a breach of the security of the system that occurs on or after the effective date of this article.

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§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

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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.

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§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.

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§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

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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.

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§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

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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.

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§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.

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§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

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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.

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§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.

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§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.

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§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

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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.

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§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

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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

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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

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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).

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§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.

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§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.

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§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.

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§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.

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§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.

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§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

§46A-4-101. Authority to make loans.

Unless a person has first obtained a license from the commissioner authorizing the person to make regulated consumer loans, he or she may not engage in the business of:

(1) Making regulated consumer loans; or

(2) Taking assignments of or undertaking direct collection of payments from or enforcement of rights against consumers arising from regulated consumer loans: Provided, That the licensing provisions of this act do not pertain to any "collection agency" as defined in, and licensed by, the "Collection Agency Act of 1973" at W. Va. Code §§47-16-1 et seq.

WV Legislature

§46A-4-102. License to make regulated consumer loans.

(1) The commissioner shall receive and act on all applications for licenses to make regulated consumer loans under this chapter. Applications shall be under oath, be filed in the manner prescribed by the commissioner and contain the information the commissioner requires to make an evaluation of the financial responsibility, experience, character and fitness of the applicant and the findings required of him or her before he or she may issue a license. At the time of the filing of the application, the sum of $750 shall be paid to the commissioner as an investigation fee.

(2) A license may not be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state or to one licensed under the provisions of the West Virginia Mortgage Loan Act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one-a of this code. A license will not be granted to any office located outside this state: Provided, That the limitation of licensing contained in this subsection does not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. A license may not be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the officers and directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least $10,000 in capital and has, for each specified location of operation, assets of at least $2,000.

(3) Upon written request, the applicant is entitled to a hearing on the question of his or her qualifications for a license if: (a) The commissioner has notified the applicant in writing that his or her application has been denied; or (b) the commissioner has not issued a license within sixty days after the application for the license was filed. A request for a hearing may not be made more than fifteen days after the commissioner has mailed a writing to the applicant notifying him or her that the application has been denied and stating in substance the commissioner's findings supporting denial of the application.

(4) Not more than one place of business shall be maintained under the same license, but the commissioner may issue more than one license to the same licensee upon compliance with all the provisions of this article governing an original issuance of a license for each such new license. Each license shall remain in full force and effect until surrendered, forfeited, suspended or revoked.

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a municipality to any other location within that same municipality; or (b) change the location of any place of business located outside of a municipality to a location no more than five miles from the originally

licensed location, but in no case may a licensee move any place of business located outside a municipality to a location within a municipality. A licensee may not move the location of any place of business located within a municipality to any other location outside of that municipality.

(6) A licensee may conduct the business of making regulated consumer loans only at or from a place of business for which he or she holds a license and not under any other name than that stated in the license.

(7) A license issued under the provisions of this section shall not be transferable or assignable.

(8) A licensee must be incorporated under the laws of this state. The licensee may, however, be a subsidiary of an out-of-state company or financial institution.

(9) All mortgage loan originators, as defined in article seventeen-a, chapter thirty-one of this code, who are employed by a licensed regulated consumer lender must be licensed or registered and issued a unique identifier by the Nationwide Mortgage Licensing System and Registry pursuant to the requirements provided in article seventeen-a, chapter thirty-one of this code.

(10) All regulated consumer lenders must file with the commissioner a bond in favor of the state for the benefit of consumers or for a claim by the commissioner for an unpaid civil administrative penalty or an unpaid examination invoice in the amount of $100,000 for licensees with West Virginia mortgage loan originations of $0 to $3 million, $150,000 for West Virginia mortgage loan originations greater than $3 million and up to $10 million, and $200,000 for West Virginia mortgage loan originations over $10 million in a form and with conditions as the commissioner may prescribe and executed by a surety company authorized to do business in this state.

(11) All regulated consumer lenders shall notify the commissioner of any merger or acquisition which may result in a change of control or a change in principals of the regulated consumer lender within fifteen days of announcement or publication of the proposal, or its occurrence, whichever is earlier. Upon notice of these circumstances by a corporate licensee, the commissioner may require all information necessary to determine whether it results in a transfer or assignment of the license and thus if a new application is required in order for the company to continue doing business under this article. A licensee that is an entity other than a corporation shall in these circumstances submit a new application for licensure at the time of notice.

WV Legislature

§46A-4-103. Revocation, suspension or forfeiture of license.

(a) The commissioner may issue to a person licensed to make regulated consumer loans an order to show cause why his or her license should not be revoked or should not be suspended for a period not in excess of six months. The order shall state the place for a hearing and set a time for the hearing that is no less than ten days from the date of the order. After the hearing the commissioner shall revoke or suspend the license if he or she finds that:

(1) The licensee has repeatedly and willfully violated this chapter or any rule or order lawfully made or issued pursuant to this article;

(2) The licensee has failed to remit their required annual assessment, or to maintain their status as a business in good standing with the office of the Secretary of State, notwithstanding notification in writing by the commissioner sent by certified mail to the licensee's last known address providing for thirty days to rectify such failure;

(3) The licensee has forfeited their license by failing to remain open for regulated consumer lending business in conformity with the rules or order of the commissioner; or

(4) Facts or conditions exist which would clearly have justified the commissioner in refusing to grant a license had these facts or conditions been known to exist at the time the application for the license was made.

(b) No revocation or suspension of a license under this article is lawful unless prior to institution of proceedings by the commissioner notice is given to the licensee of the facts or conduct which warrant the intended action, and the licensee is given an opportunity to show compliance with all lawful requirements for retention of the license.

(c) If the commissioner finds that probable cause for revocation of a license exists and that enforcement of this article requires immediate suspension of the license pending investigation, he or she may, after a hearing upon five days' written notice, enter an order suspending the license for not more than thirty days.

(d) Nothing in this section limits the authority of the commissioner to take action against a regulated consumer lender pursuant to chapter thirty-one-a of this code.

(e) Whenever the commissioner revokes or suspends a license, he or she shall enter an order to that effect and forthwith notify the licensee of the revocation or suspension. Within five days after the entry of the order he or she shall mail by registered or certified mail or deliver to the licensee a copy of the order and the findings supporting the order.

(f) Any person holding a license to make regulated consumer loans may relinquish the license by notifying the commissioner in writing of its relinquishment, but this relinquishment shall not affect his or her liability for acts previously committed.

WV Legislature

(g) No revocation, suspension, forfeiture or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

(h) The commissioner may reinstate a license, terminate a suspension or grant a new license to a person whose license has been revoked or suspended if no fact or condition then exists which clearly would have justified the commissioner in refusing to grant a license.

(i) In addition to the authority authorized by this section, the commissioner may impose a fine or penalty not exceeding $2,000 upon any regulated consumer lender required to be licensed under this article who violates this chapter, chapter thirty-one-a or any other law or rule that the Division of Banking is authorized to enforce with respect to companies licensed under this article. For the purposes of this section, each day, excluding Sundays and holidays, that an unlicensed person engages in the business or holds himself or herself out to the general public as a licensed consumer lender is a separate violation and, as such, each day is subject to the maximum fine of $2,000 per day. Any fine or penalty imposed under this subsection may be contested by the licensee pursuant to article five, chapter twenty-nine-a of this code.

WV Legislature

§46A-4-104. Records; annual reports.

(1) Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner which will enable the commissioner to determine whether the licensee is complying with the provisions of this article. The record-keeping system of a licensee shall be sufficient if he makes the required information reasonably available. The records need not be kept in the place of business where regulated consumer loans are made, if the commissioner is given free access to the records wherever located. The records pertaining to any loan need not be preserved for more than two years after making the final entry relating to the loan, but in the case of a revolving loan account such two-year period is measured from the date of each entry.

(2) On or before February 15 each year, every licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to all regulated consumer loans made by him and showing in detail the actual financial condition and the amount of the assets and liabilities of such financial institution. The commissioner shall consult with comparable officials in other states for the purpose of making the kinds of information required in annual reports uniform among the states. Information contained in annual reports shall be confidential and may be published only in composite form.

WV Legislature

§46A-4-105. Examinations; assessments and investigations.

(1) The commissioner shall examine at least every eighteen months the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the Attorney General or the commissioner may at any time investigate the loans, business and records of any regulated consumer lender. For these purposes he shall have free and reasonable access to the offices, places of business and records of the lender.

(2) If the lender's records are located outside this state, the lender at his option shall make them available to the commissioner at a convenient location within this state, or pay the reasonable and necessary expenses for the commissioner or his representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) For the purposes of this section, the commissioner may administer oaths or affirmations, and upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(4) Upon failure without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the commissioner may apply to any circuit court of this state for an order compelling compliance.

(5) The commissioner of banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the State Treasury for the department of banking an annual assessment payable on July 1, computed upon the total outstanding gross loan balances and installment sales contract balances net of unearned interest as is set out in section eight, article two, chapter thirty-one-a of this code.

WV Legislature

§46A-4-106. Application of Administrative Procedures Act.

Except as otherwise provided, the provisions of chapter twenty-nine-a of this code apply to and govern all administrative action taken by the commissioner pursuant to the provisions of this article.

WV Legislature

§46A-4-107. Loan finance charge for regulated consumer lenders.

(1) With respect to a regulated consumer loan, including a revolving loan account, a regulated consumer lender may contract for and receive a loan finance charge not exceeding that permitted by this section.

(2) On a loan of $3,500 or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 31 percent per year on the unpaid balance of the principal amount.

(3) On a loan greater than $3,500 but less than or equal to $15,000, or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed 27 percent per year on the unpaid balance of the principal amount: Provided, That the loan finance charge on any loan greater than $15,000 may not exceed 18 percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.

(4) Where the loan is nonrevolving and is greater than $3,500, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points, or investigation fee: Provided, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points, or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within 24 months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges is permissible and does not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended is, for purposes of this subsection, the amount financed. Other than herein provided, no points, origination fee, investigation fee, or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by §46A-3-109 of this code, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. 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 §46A-3-111 of this code.

WV Legislature

(5) For the purposes of this section, the term of a loan commences on the date the loan is made. 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 licensee may reasonably establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15 days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

(a) A charge may be made by a regulated consumer lender in each monthly billing cycle which is one-twelfth of the maximum annual rates permitted by this section computed on an amount not exceeding the greatest of:

(i) The average daily balance of the debt; or

(ii) 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 the billing cycle.

For the purpose of this subdivision, 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.

(b) If the billing cycle is not monthly, the maximum loan finance charge which may be made by a regulated consumer lender is that percentage which bears the same relation to an applicable monthly percentage as the number of days in the billing cycle bears to 30.

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer or the pro rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual charge for the same period as permitted by the provisions on additional charges.

(7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this section, a regulated consumer lender may on a loan not secured by real estate of $3,500 or less contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of not more than two percent of the amount financed: Provided, That no other finance charges are imposed on the loan. The processing fee permitted under this subsection shall be included in the calculation of the loan finance charge and the financing of the fee shall be permissible and may not constitute charging interest on interest.

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property

WV Legislature

located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive, and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.

WV Legislature

§46A-4-108. Use of multiple loan agreements.

A regulated consumer lender may not use multiple loan agreements with intent to obtain a higher loan finance charge than would otherwise be permitted by the provisions of this article. A regulated consumer lender uses multiple loan agreements if, with intent to obtain a higher loan finance charge than would otherwise be permitted, he allows any person, or husband and wife, to become obligated in any way under more than one loan agreement with the regulated consumer lender for a regulated consumer loan under this article.

The excess amount of the loan finance charge provided for in agreements in violation of this section is an excess charge for the purposes of the provisions on effect of violations on rights of parties.

WV Legislature

§46A-4-109. Restrictions on interest in land as security; assignment of earnings to regulated consumer lender prohibited; when security interest on household furniture goods not valid; prohibitions as to renegotiation of loan discharged in bankruptcy; limiting fees on real property loan refinancings; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents prohibitions on residential mortgage loans; providing civil remedy.

(1) No consumer loan of $2,000 or less may be secured by an interest in land, other than a purchase money loan for that land, unless the lender is licensed in this state as a regulated consumer lender or as a mortgage lender, or is a federally insured depository institution permitted to conduct lending in West Virginia. A security interest taken in violation of this subsection is void.

(2) Notwithstanding the provisions of section one hundred sixteen, article two of this chapter, no regulated consumer lender shall take any assignment of or order for payment of any earnings to secure any loan made by any regulated consumer lender under this article. An assignment or order taken in violation of this subsection is void. This subsection does not prohibit a court from ordering a garnishment to affect recovery of moneys owed by a borrower to a lender as part of a judgment in favor of said lender.

(3) Other than for a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower. Where federal law permits a security interest in certain nonpurchase items deemed not to be household goods, the security agreement creating such security interest must be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have been living separate and apart for a period of at least five months prior to the making of such security agreement. A security interest taken in violation of this subsection is void.

(4) A regulated consumer lender may not renegotiate the original loan, or any part thereof, or make a new contract covering the original loan, or any part thereof, with any borrower, who has received a discharge in bankruptcy of the original loan or any balance due thereon at the time of said discharge from any court of the United States of America exercising jurisdiction in insolvency and bankruptcy matters, unless said regulated consumer lender shall pay to and deliver to the borrower the full amount of the loan shown on said note, promise to pay, or security, less any deductions for charges herein specifically authorized.

(5) In making any loan secured by any encumbrance on residential property, no lender may, and no such lending transaction may contain terms which:

(A) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a duplicate fee or points to act as both broker and lender for the same mortgage loan; collect a fee for a product or service where the product or service is not actually provided; or, misrepresent the amount charged by or paid to a third party for a product or service;

WV Legislature

(B) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of the real estate that is to be encumbered;

(C) Make or assist in making any loan secured by any encumbrance on residential property with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: Provided, That this subdivision shall not apply to reverse mortgages obtained under the provisions of article twenty-four, chapter forty-seven of this code;

(D) Allow or require a loan secured by any encumbrance on residential property to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(E) Require or contain terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: Provided, That the provisions of this subdivision shall not apply to reverse mortgage loans obtained under article twenty-four, chapter forty-seven of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of another residential dwelling, or commercial loans for multiple residential purchases;

(F) Secure a residential mortgage loan in a principal amount, that when added to the aggregate total of the outstanding principal balances of all other residential mortgage loans secured by the same property, exceeds the fair market value of the property on the date that the latest residential mortgage loan is made. For purposes of this paragraph, a lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, or other evidence of fair market value, if the lender does not have actual knowledge that the value is incorrect; or

(G)(1) Require compulsory arbitration which does not comply with federal law; (2) contain a document with blank or blanks to be filled in after the consummation of the loan; (3) contain a power of attorney to confess judgment; (4) contain any provision whereby the borrower waives any rights accruing to him or her under the provisions of this article; (5) contain any requirement that more than one installment be payable in any one installment period; or (6) contain any assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned; or

(H) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction.

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§46A-4-110. Conduct of business other than making loans.

(1) No licensee shall conduct the business of making loans under the provisions of this article within any office, room or place of business in which any other business is solicited or engaged in, or in association or conjunction therewith, except as may be authorized in writing by the commissioner upon his finding that the character of such other business is sufficiently related to that of a financial institution and is such that the granting of such authority would not facilitate evasions of this article or of the rules lawfully made hereunder, except nothing herein shall prohibit the licensee from purchasing installment sales contracts or the sale or provision of insurance authorized by section one hundred nine, article three of this chapter, or from making loans authorized under the provisions of the West Virginia secondary mortgage loan act as set forth in article seventeen, chapter thirty-one of this code, or from engaging in any business previously approved by the commissioner prior to September 1, 1996.

(2) A licensee may purchase, hold and convey real property as follows:

(a) As shall be necessary for the convenient transaction of its business;

(b) As is mortgaged to it in good faith by way of security for loans made by or money due to such regulated consumer lender;

(c) As is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

(d) As is acquired by the sale on execution or judgment or decree of any court in its favor.

(3) A licensee shall not purchase, hold or convey any real property in any other case or for any other purpose whatsoever. Real property shall be conveyed only by authority of the board of directors of any such regulated consumer lender. No real property acquired upon foreclosure in the cases contemplated in subdivision (b), or acquired under subdivisions (c) and (d) of this section shall be held for a longer time than ten years, unless such period shall be extended by the commissioner of banking.

WV Legislature

§46A-4-110a. Prohibited conduct.

(1) A regulated consumer lender shall not:

(a) Accept or receive deposits or sell or offer for sale its secured or unsecured evidences or certificates of indebtedness;

(b) Pay any fees, bonuses, commissions, rewards or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used: Provided, That nothing herein prevents a regulated consumer lender from agreeing in connection with a loan to pay a broker fee, finders fee or dealer participation fee, or to split the origination fee or points paid: Provided, however, That the fee or fee split is disclosed to the borrower and where proper is included in the finance charge; or

(c) Fail to disclose the amount of a payoff of an existing loan within three business days of receiving a request for such information from either the borrower or an agent acting on behalf of the borrower.

(2) Unless preempted by federal law, no consumer loan by a regulated consumer lender may contain any scheduled balloon payment as set forth in this chapter. Nor may any regulated consumer lender loan contain terms of repayment which result in negative amortization: Provided, That nothing herein prevents unequal payment schedules resulting from a variable rate loan or a revolving line of credit.

(3) A regulated consumer lender may not make revolving loans for the retail purchase of consumer goods and services by use of a lender credit card.

WV Legislature

§46A-4-111. Disclosure of higher annual percentage rate upon refinancing of a loan not secured by real estate at higher rate; requiring documentation of a reasonable net tangible benefit to the borrower of any refinancing of a real estate secured loan.

(1) Any nonrevolving consumer loan or consumer credit sale that is not secured by residential real estate that is refinanced or consolidated with a new loan under this article after September 1, 2009, at a higher annual percentage rate than the consumer loan or consumer credit sale being refinanced must provide the consumer the following disclosures:

"If you do agree to refinance or consolidate your existing obligation, you will be paying an annual percentage rate of _____% on the existing balance of $_____, instead of the annual percentage rate of _____% which you are now paying.

I acknowledge receipt of this information _____ (initials of borrower)."

Nothing in this subsection shall prohibit the receipt of goods or services by the borrower at the time the consolidated loan agreement is made, nor shall this subsection prohibit or pertain to any loan where the refinancing or consolidation results in the consumer paying the same or a lower annual percentage rate.

(2) No nonrevolving consumer loan or consumer credit sale that is secured by residential real estate may be refinanced or consolidated with a new loan secured by residential real estate and made under this article unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower's circumstances. The reasonable, tangible net benefit shall be documented in writing on a form prescribed by the commissioner and maintained in the loan file.

WV Legislature

§46A-4-112. Code reference to supervised lenders and industrial loan companies; authority of the commissioner.

All references in this code to supervised loans, supervised lenders, industrial loans, industrial loan companies and licensees thereof, as well as to article seven, chapter thirty-one of this code, shall, after the operative date of this chapter and despite the repeal of said statute, be read, construed and understood to mean and to have reference, respectively, to regulated consumer loans, regulated consumer lenders, regulated consumer lender licensees and to this article.

All authority vested by this chapter in the commissioner shall be considered to be in addition to, and not in limitation of, the authority vested in the commissioner of banking by provisions contained in other chapters of this code.

WV Legislature

§46A-4-113. Continuation of licensing.

All persons licensed under the provisions of article seven, chapter thirty-one of this code, or as supervised lenders under the prior provisions of this article on the operative date of this chapter, are licensed to make regulated consumer loans under the provisions of this article, and all provisions of this article shall after the operative date of this chapter apply to the persons so previously licensed, including, without limitation, the provisions governing notification contained in article seven of this chapter.

The commissioner may, but is not required to, deliver evidence of licensing to the persons so previously licensed. Persons holding both supervised lender and industrial loan company licenses, or operating such a licensed business in the same office will be combined and provided a single regulated lender license.

WV Legislature

§46A-4-114. Permitting licensee to conduct business at remote location.

(a) Notwithstanding any provision of this article to the contrary, but subject to the requirements of this section, employees of a West Virginia licensee located in West Virginia may perform work for the licensee at their residence: *Provided*, That such a residence is located within 100 miles of a licensed West Virginia corporation or branch office: *Provided, however*, That nothing in this subsection restricts employees of the licensee from participating in regulated consumer lending activities at other locations for limited periods of time. Any regulated consumer lender activity conducted by an employee of the West Virginia licensee shall be considered, reported, and regulated as loans of the West Virginia licensee, regardless of the employee's location during the activity.

(b) A licensee, prior to authorizing work by employees at a location other than the licensee's designated place of business, shall ensure the following:

(1) No in-person customer interactions will be conducted at the other location;

(2) The other location is not designated as a business location to consumers or customers;

(3) Appropriate data security and privacy safeguards are in place for licensee and consumer data, information, and records at the other location, including, but not limited to, the use and maintenance of secure virtual private networks and maintenance of appropriate security updates, patches, or other alterations to ensure the security of electronic devices;

(4) Appropriate risk-based monitoring and oversight processes of work performed by the employees of a licensee at the other location are in place, and records of such monitoring and processes are maintained;

(5) No consumer information or records are maintained at the other location;

(6) All consumer and licensee information and records remain accessible and available for regulatory oversight and examinations;

(7) Employees are trained and keep confidential all conversations about, and with, consumers that may be conducted at the other location; and

(8) The other location is a safe and secure workplace for employees.

(c) A licensee, prior to authorizing work at a location other than the licensee's designated place of business, shall establish written policies and procedures to ensure compliance with the requirements of subsection (b) of this section.

(d) A licensee that authorizes work at another location pursuant to this section shall:

(1) Periodically review and document compliance with the provisions of this section and the written policies and procedures established pursuant to subsection (c) of this section as it

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relates to every employee who works at another location; and

(2) Certify annually to the commissioner that the provisions of this section have been met as to each employee working at another location.

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§46A-5-101. Effect of violations on rights of parties; limitation of actions.

(1) If a creditor or debt collector has violated the provisions of this chapter applying to collection of excess charges, security in sales and leases, disclosure with respect to consumer leases, receipts, statements of account and evidences of payment, limitations on default charges, assignment of earnings, authorizations to confess judgment, illegal, fraudulent or unconscionable conduct, any prohibited debt collection practice, or restrictions on interest in land as security, assignment of earnings to regulated consumer lender, security agreement on household goods for benefit of regulated consumer lender, and renegotiation by regulated consumer lender of a loan discharged in bankruptcy, the consumer has a cause of action to recover: (a) Actual damages; and (b) a right in an action to recover from the person violating this chapter a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness. With respect to violations arising from consumer credit sales, consumer leases or consumer loans, or from sales as defined in article six of this chapter, no action pursuant to this subsection may be brought more than four years after the violations occurred: Provided further, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after the foreclosure sale is final.

(2) If a creditor has violated the provisions of this chapter respecting authority to make regulated consumer loans, the loan is void and the consumer is not obligated to pay either the principal or the loan finance charge. If he has paid any part of the principal or of the finance charge, he has a right to recover in an action the payment from the person violating this chapter or from an assignee of that person’s rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from regulated consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the violation occurred. With respect to violations of the provisions of this chapter respecting the authority to make arising from other regulated consumer loans, no action pursuant to this subsection may be brought more than four years after the violation occurred: Provided, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after the foreclosure sale is final.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter and if he has paid an excess charge, he has a right to a refund. A refund may be made by reducing the consumer’s obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or from an assignee of that person’s rights who undertakes direct collection of payments from or

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enforcement of rights against the consumer arising from the debt.

(4) If a creditor or debt collector has contracted for or received a charge in excess of that allowed by this chapter, the consumer may, in addition to recovering such excess charge, also recover from the creditor or the person liable in an action a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness: Provided further, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after said foreclosure sale is final.

(5) Except as otherwise provided, a violation of this chapter does not impair rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge, the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) A creditor or debt collector has no liability for a penalty under subsection (1) or (4) of this section if, after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error: (a) Within fifteen days if the error affects no more than two persons; or (b) within sixty days if the error affects more than two persons. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(8) If the creditor or debt collector establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2) and (4) of this section and the validity of the transaction is not affected.

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§46A-5-102. Assertion of rights.

Rights granted by this chapter may be asserted as a claim for setoff or defense to an action against a consumer without regard to any limitation of actions. Any counterclaim is subject to the appropriate limitation of actions set forth in this chapter.

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§46A-5-103. Willful violations.

(1) A regulated consumer lender who willfully makes charges in excess of those permitted by the provisions of article four of this chapter, pertaining to regulated consumer lenders, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $500, or imprisoned not more than one year, or both fined and imprisoned.

(2) A person who willfully engages in the business of making regulated consumer loans without a license in violation of the provisions of article four of this chapter applying to authority to make regulated consumer loans shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $5,000, or imprisoned not more than one year, or both fined and imprisoned.

(3) A person who willfully engages in the business of making consumer credit sales or consumer loans, or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of section one hundred fifteen, article seven of this chapter, concerning notification, shall be guilty of a misdemeanor and, upon conviction, shall be fined not more than $100.

(4) Any person who willfully violates any of the provisions of sections one hundred twenty-three through one hundred twenty-eight, inclusive, article two of this chapter, by committing any of the specifically described and enumerated acts contained therein, shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in the county jail not more than one year, or both fined and imprisoned.

WV Legislature

§46A-5-104. Attorney's fees.

(a) Except as provided in §46A-5-108 and §46A-5-109 of this code, in any cause of action brought under this chapter, the court may award reasonable attorney's fees and expenses to the consumer upon examination of the following factors:

(1) The time and labor required;

(2) The novelty and difficulty of the questions;

(3) The skill requisite to perform the legal service properly;

(4) Preclusion of other employment by the attorney due to acceptance of the case;

(5) The customary fee;

(6) Whether the fee is fixed or contingent;

(7) Time limitations imposed by the client or the circumstances;

(8) The amount involved and the amount of the judgment and any nonmonetary relief obtained;

(9) The experience, reputation, and ability of the attorneys;

(10) The undesirability of the case;

(11) The nature and length of the professional relationship with the client; and

(12) Awards in similar cases.

(b) Upon a finding by the court that a claim brought under this chapter was brought in bad faith and for the purposes of harassment, the court may award reasonable attorney's fees and expenses to the defendant under an analysis of the factors set forth in subsection (a) of this section.

WV Legislature

§46A-5-105. Willful violations.

If a creditor has willfully violated the provisions of this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, in addition to the remedy provided in section one hundred one of this article, the court may cancel the debt when the debt is not secured by a security interest.

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§46A-5-106. Adjustment of damages for inflation.

In any claim brought under this chapter applying to illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court may adjust the damages awarded pursuant to section one hundred one of this article to account for inflation from 12:01 a.m. on September 1, 2015, to the time of the award of damages in an amount equal to the consumer price index. Consumer price index means the last consumer price index for all consumers published by the United States Department of Labor.

WV Legislature

§46A-5-107. Venue.

Any civil action or other proceeding brought by a consumer to recover actual damages or a penalty, or both, from creditor or a debt collector, founded upon illegal, fraudulent or unconscionable conduct, or prohibited debt collection practice, or both, shall be brought either in the circuit court of the county in which the plaintiff has his or her legal residence at the time of the civil action, the circuit court of the county in which the plaintiff last resided in the state of West Virginia, or in the circuit court of the county in which the creditor or debt collector has its principal place of business or, if the creditor or debt collector is an individual, in the circuit court of the county of his or her legal residence. With respect to causes of action arising under this chapter, the venue provisions of this section shall be exclusive of and shall supersede the venue provisions of any other West Virginia statute or rule.

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§46A-5-108. Right to cure.

(a) An action may not be brought pursuant to this article and §46A-2-1 *et seq*., §46A-3-1 *et seq*., §46A-4-1 *et seq*., and §46A-6-1 *et seq*. of this code until 45 days after the consumer has informed the creditor, debt collector, seller, or lessor in writing and by certified mail, return receipt requested, to the creditor's, debt collector's, seller's, or lessor's registered agent identified by the creditor, debt collector, seller, or lessor at the Office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the creditor's, debt collector's, seller's, or lessor's principal place of business, of the alleged violation and the factual basis for the violation. Upon receiving the notice of alleged violation, the creditor, debt collector, seller, or lessor 45 days from receipt by the agent or at the principal place of business referenced in this subsection of the notice of violation but 20 days in the case a cause of action has already been filed to make a cure offer, which shall be provided to the consumer's counsel or, if unrepresented, to the consumer by certified mail, return receipt requested: *Provided*, That the consumer has 20 days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn. When a claim under the provisions set forth in §46A-1-101 of this code is presented as a counterclaim, cross-claim, or third-party claim, the notice of right to cure shall be served with the counterclaim, cross-claim, or third-party claim in any manner permitted by the Rules of Civil Procedure.

(b) If a cure offer is accepted, the creditor, debt collector, seller, or lessor has 20 days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.

(c) Any applicable statute of limitations is tolled for the 45-day period set forth in subsection (a) of this section or for the period the effectuation of the cure offer is being performed, whichever is longer.

(d) Nothing in this section prevents a consumer that has accepted a cure offer from bringing a civil action against a creditor, debt collector, seller, or lessor for failing to timely effect the cure offer.

(e) Where an action is brought under this article or §46A-2-1 *et seq*., §46A-3-1 *et seq*., §46A-4-1 *et seq*., and §46A-6-1 *et seq*. of this code, it is a complete defense that a cure offer was made, accepted, and the agreed upon cure was performed. If the court determines that the cure offer was accepted and the agreed upon cure performed, the creditor, debt collector, seller, or lessor is entitled to reasonable attorney's fees and costs attendant to defending the action.

(f) A cure offer is not admissible in any proceeding initiated pursuant to the provisions of this article, except that if the cure offer is timely delivered by the creditor, debt collector, seller, or lessor, then the cure offer may be introduced in a proceeding before the court to determine an award of attorney's fees and expenses, if any, following entry of a judgment. The creditor, debt collector, seller, or lessor is not liable for the consumer's attorney's fees and court costs incurred following delivery of the cure offer unless the actual damages, civil

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penalties, and any other monetary or equitable relief provided for under this article and §46A-2-1 *et seq.*, §46A-3-1 *et seq.*, §46A-4-1 *et seq.*, and §46A-6-1 *et seq*. of this code are found to have been sustained and awarded, without consideration of attorney's fees and court costs, exceed the value of the cure offer.

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§46A-5-109. Offers to settle or of judgment; damages for frivolous claims or defenses.

(a) In a private cause of action under this chapter, at any time more than 30 days after the service of a summons and complaint on a party but not less than 30 days (or 20 days if it is a counteroffer) before trial, either party may serve upon the other party, but shall not file with the court, a written offer to settle a claim under this chapter for the money specified in the offer and to enter into an agreement dismissing the claim or to allow judgment to be entered accordingly. An offer must:

(1) Be in writing and state that it is being made pursuant to this section;

(2) Identify the party or parties making the proposal and the party or parties to whom the proposal is being made;

(3) Identify with specificity the claim or claims the proposal is attempting to resolve;

(4) State with particularity any relevant conditions;

(5) State the total amount of the proposal and, if it includes attorney's fees and expenses, specify the amount offered for the fees and expenses provided that counsel for the plaintiff has provided an estimate of fees and costs to counsel for the defendant upon request;

(6) Include a certificate of service and be served by certified mail, return receipt requested, postage prepaid or by overnight delivery using a nationally recognized carrier.

(b) If a defendant makes an offer under this section which is rejected by the plaintiff, the plaintiff is not entitled to recover attorney's fees or expenses from the date of the offer through the entry of judgment if the final judgment is one of no liability or if the final judgment obtained by the plaintiff, exclusive of attorney's fees and expenses, but inclusive of actual damages, civil penalties, and any other monetary or equitable relief provided for under this chapter, is less than 75 percent of the offer: *Provided*, That if the amount of attorney's fees and expenses were not separately specified in an offer of settlement or judgment, the court may consider any award of attorney's fees and costs earned through the date of the offer in determining whether the total award exceeds 75 percent of the offer. If the judgment entered does not exceed 75 percent of the offer, the defendant may petition the court for reasonable fees and expenses incurred from the date of the offer to the entry of final judgment. Upon petition, the court may award reasonable fees and expenses if it finds that the plaintiff acted without substantial justification or without good faith in rejecting the defendant's offer. If attorney's fees and expenses were specified in the offer, the court may consider whether the defendant's offer concerning plaintiff's attorney's fees and expenses was made in bad faith when determining either party's petition for fees and expenses.

(c) Any offer made under this section shall remain open for 14 days unless sooner withdrawn by a writing served on the offeree prior to acceptance by the offeree. A counteroffer shall be

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considered a rejection but may serve as an offer under subsection (a) of this section if it is denominated as an offer and meets the requirements of subsection (a) of this section. Acceptance or rejection of the offer by the offeree must be in writing and served upon the offeror. An offer that is neither withdrawn nor accepted within 14 days shall be considered rejected. The fact that an offer is made but not accepted does not preclude no more than two amended offers. If an offer is made or amended under this section, all prior offers made by that party, including any cure offer made under §46A-5-108 of this code, are null and void. Evidence of an offer is not admissible except in proceedings to enforce a settlement or to determine reasonable attorney's fees and expenses under this section.

(d) If an appeal is taken from the judgment, the court shall order payment of reasonable attorney's fees and expenses of litigation only upon order affirming the judgment, or in which the person or entity seeking attorney's fees and expenses otherwise substantially prevail on appeal.

(e) Upon motion by the prevailing party at the time that the verdict or judgment is rendered, the moving party may request that the court determine whether the opposing party presented a frivolous claim or defense. In that event, the court shall hold a separate bifurcated hearing in which the court shall make a determination of whether the frivolous claims or defenses were asserted and to award damages, if any, against the party presenting the frivolous claims or defenses. Under this subsection:

(1) Frivolous claims shall include, but are not limited to, the following:

(A) A claim, defense, or other position that lacks substantial justification or that is not made in good faith or that is made with malice or a wrongful purpose;

(B) A claim, defense, or other position with respect to which there existed such a complete absence of any justiciable issue of law or fact that it could not be reasonably believed that a court would accept the asserted claim, defense, or other position; and/or

(C) A claim, defense, or other position that was interposed for delay or harassment;

(2) Damages awarded may include reasonable attorney's fees and expenses of litigation.

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§46A-6-101. Legislative declarations; statutory construction.

(1) The Legislature hereby declares that the purpose of this article is to complement the body of federal law governing unfair competition and unfair, deceptive and fraudulent acts or practices in order to protect the public and foster fair and honest competition. It is the intent of the Legislature that, in construing this article, the courts be guided by the policies of the Federal Trade Commission and interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act (15 U. S. C. § 45(a)(1)), as from time to time amended, and to the various other federal statutes dealing with the same or similar matters. To this end, this article shall be liberally construed so that its beneficial purposes may be served.

(2) It is, however, the further intent of the Legislature that this article not be construed to prohibit acts or practices which are reasonable in relation to the development and preservation of business or which are not injurious to the public interest, nor does this article repeal by implication the provisions of articles eleven, eleven-a and eleven-b, chapter forty-seven of this code.

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§46A-6-102. Definitions.

When used in this article, the following words, terms and phrases, and any variations thereof required by the context, shall have the meaning ascribed to them in this article except where the context indicates a different meaning:

(1) "Advertisement" means the publication, dissemination or circulation of any matter, oral or written, including labeling, which tends to induce, directly or indirectly, any person to enter into any obligation, sign any contract or acquire any title or interest in any goods or services and includes every word device to disguise any form of business solicitation by using such terms as "renewal", "invoice", "bill", "statement" or "reminder" to create an impression of existing obligation when there is none or other language to mislead any person in relation to any sought-after commercial transaction.

(2) "Consumer" means a natural person to whom a sale or lease is made in a consumer transaction and a "consumer transaction" means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose.

(3) "Cure offer" means a written offer of one or more things of value, including, but not limited to, the payment of money, that is made by a merchant or seller and that is delivered by certified mail to a person claiming to have suffered a loss as a result of a transaction or to the attorney for such person.

(4) "Merchantable" means, in addition to the qualities prescribed in section three hundred fourteen, article two, chapter forty-six of this code, that the goods conform in all material respects to applicable state and federal statutes and regulations establishing standards of quality and safety of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods are in good working order and will operate properly in normal usage for a reasonable period of time.

(5) "Sale" includes any sale, offer for sale or attempt to sell any goods for cash or credit or any services or offer for services for cash or credit.

(6) "Trade" or "commerce" means the advertising, offering for sale, sale or distribution of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the people of this state.

(7) "Unfair methods of competition and unfair or deceptive acts or practices" means and includes, but is not limited to, any one or more of the following:

(A) Passing off goods or services as those of another;

(B) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship, approval or certification of goods or services;

(C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or

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association with or certification by another;

(D) Using deceptive representations or designations of geographic origin in connection with goods or services;

(E) Representing that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation or connection that he does not have;

(F) Representing that goods are original or new if they are deteriorated, altered, reconditioned, reclaimed, used or secondhand;

(G) Representing that goods or services are of a particular standard, quality or grade, or that goods are of a particular style or model if they are of another;

(H) Disparaging the goods, services or business of another by false or misleading representation of fact;

(I) Advertising goods or services with intent not to sell them as advertised;

(J) Advertising goods or services with intent not to supply reasonably expectable public demand, unless the advertisement discloses a limitation of quantity;

(K) Making false or misleading statements of fact concerning the reasons for, existence of or amounts of price reductions;

(L) Engaging in any other conduct which similarly creates a likelihood of confusion or of misunderstanding;

(M) The act, use or employment by any person of any deception, fraud, false pretense, false promise or misrepresentation, or the concealment, suppression or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any goods or services, whether or not any person has in fact been misled, deceived or damaged thereby;

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is necessary to make the statements therein not false, misleading or deceptive;

(O) Representing that any person has won a prize, one of a group of prizes or any other thing of value if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon

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mandatory attendance by the person at a promotion or sales presentation at the seller's place of business or any other location: Provided, That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of the item or items are clearly and conspicuously disclosed along with the person's obligations upon accepting the item or items; such description and disclosure shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate; or

(P) Violating any provision or requirement of article six-b of this chapter.

(8) "Warranty" means express and implied warranties described and defined in sections three hundred thirteen, three hundred fourteen and three hundred fifteen, article two, chapter forty-six of this code and expressions or actions of a merchant which assure the consumer that the goods have described qualities or will perform in a described manner.

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§46A-6-103. Rules and regulations.

The Attorney General of the State of West Virginia may make rules and regulations interpreting and defining the provisions of section one hundred two of this article. Such rules and regulations shall conform as nearly as practicable with the rules, regulations and decisions of the federal trade commission and the federal courts in interpreting the provisions of the "Federal Trade Commission Act," as from time to time amended.

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§46A-6-104. Unlawful acts or practices.

Unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce are hereby declared unlawful.

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§46A-6-105. Exempted transactions.

(a) This article does not apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised goods or services.

(b) This article does not apply to time, savings, or demand deposit accounts provided by a bank as defined in §31A-1-2 of this code.

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§46A-6-106. Private causes of action.

(a) Subject to subsection (b) of this section, any person who purchases or leases goods or services and thereby suffers an ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of a method, act, or practice prohibited or declared to be unlawful by the provisions of this article may bring an action in the circuit court of the county in which the seller or lessor resides or has his or her principal place of business or is doing business, or as provided for in §46A-1-1 and §46A-1-2 of this code, to recover actual damages or $200, whichever is greater. The court may, in its discretion, provide such equitable relief it considers necessary or proper. Any party to an action for damages under this subsection has the right to demand a jury trial.

(b) An award of damages in an action pursuant to subsection (a) of this section may not be made without proof that the person seeking damages suffered an actual out-of-pocket loss that was proximately caused by a violation of this article. If a person seeking to recover damages for a violation of this article alleges that an affirmative misrepresentation is the basis for his or her claim then he or she must prove that the deceptive act or practice caused him or her to enter into the transaction that resulted in his or her damages. If a person seeking to recover damages for a violation of this article alleges that the concealment or omission of information is the basis for his or her claim, then he or she must prove that the person's loss was proximately caused by the concealment or omission.

(c) Any permanent injunction, judgment, or order of the court under §46A-7-108 of this code for a violation of §46A-6-104 of this code is prima facie evidence in an action brought pursuant to the provisions of this section that the respondent used or employed a method, act, or practice declared unlawful by §46A-6-104 of this code.

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§46A-6-107. Disclaimer of warranties and remedies prohibited.

(a) Except as otherwise provided in subsection (b) of this section, with respect to goods which are the subject of or are intended to become the subject of a consumer transaction, no merchant may:

(1) Exclude, modify, or otherwise attempt to limit any warranty, express, or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express, or implied.

(b) A consumer who purchases a used manufactured home may waive the warranties of merchantability and fitness for a particular purpose, or waive a warranty as to a particular defect or malfunction which the merchant has identified and disclosed in writing to the consumer, if the used manufactured home is not being sold for human habitation: Provided, That notice be posted on the front door of the used manufactured home that it is not being sold for human habitation: Provided, however, That the waiver is not effective unless the waiver:

(1) Is in writing;

(2) Is conspicuous and is in plain language;

(3) Identifies with particularity the disclosed defect or malfunction, if any, in the used manufactured home for which the warranty is to be waived;

(4) Describes any additional defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used manufactured home or discoverable by the merchant after an inspection of the used manufactured home;

(5) States that the warranty being waived applies only to the disclosed defect or malfunction, if any, to the extent the merchant intends to waive a warranty as to a specific defect;

(6) Acknowledges that the used manufactured home will not be used for human habitation: Provided, That the consumer shall sign or initial such provision in order to evidence the consumer's acknowledgment thereof; and

(7) Is signed by both the consumer and the merchant before the sales contract is executed.

For purposes of this subsection, "used manufactured home" means a manufactured home, as defined in §21-9-2 of this code, that is more than four years old from its date of production and has previously been occupied, used, or sold for purposes other than resale.

WV Legislature

§46A-6-107a. Used motor vehicles sold "as is".

(a) Notwithstanding the provisions of §46A-6-107 of this code, a used motor vehicle may be sold "as is" if:

(1) The vehicle is inoperable and a total loss;

(2) The vehicle has been custom built or modified for show purposes or racing; or

(3) The vehicle is the following:

(A) Sold for less than $4,000;

(B) Driven more than 100,000 miles at the time sold; or

(C) Seven years of age or older as calculated from January 1 of the designated model year of the vehicle.

(b) A buyer who purchases a vehicle "as is" that meets the criteria set out in the provisions of §46A-6-107a(a)(3) of this code shall have the right to cancel the sale by the end of the dealer's third business day following the sale. To cancel the sale, the "as is" vehicle must have a significant mechanical issue or issues that can be reasonably expected to have existed at the time of the sale. Cancellation shall become effective when the buyer returns the "as is" vehicle to the point of sale by the end of the dealer's third business day following the sale.

(c) For the purposes of this section, a used motor vehicle is a "total loss" only if:

(1) There is material damage to the vehicle's frame, unitized structure, or suspension system; and

(2) The projected cost of repairing the damage exceeds the market value of the vehicle at the time of the incident causing it to be declared a total loss.

(d) If a used motor vehicle is sold "as is" pursuant to this section, a merchant shall satisfy the following disclaimer requirements:

(1) A disclaimer must appear on the front page of the contract of sale;

(2) The disclaimer shall read as follows:

"AS IS"

THIS VEHICLE IS SOLD "AS IS". THIS MEANS THAT YOU WILL LOSE YOUR IMPLIED WARRANTIES. YOU WILL HAVE TO PAY FOR ANY REPAIRS NEEDED AFTER THE SALE. IF WE HAVE MADE ANY PROMISES TO YOU, THE LAW SAYS WE MUST KEEP OUR PROMISES EVEN IF WE SELL "AS IS". TO PROTECT YOURSELF, ASK US TO PUT ALL

WV Legislature

PROMISES IN WRITING. YOU MAY HAVE THE RIGHT TO CANCEL THIS SALE BY THE END OF THE DEALER'S THIRD BUSINESS DAY FOLLOWING THE SALE IF THE VEHICLE HAS SIGNIFICANT MECHANICAL ISSUE THAT CAN BE REASONABLY EXPECTED TO HAVE EXISTED AT THE TIME OF THE SALE.

(3) The text of the disclaimer must be printed in 12-point boldfaced type, except the heading, which must be in 16-point extra boldfaced type;

(4) The entire disclaimer must be boxed;

(5) The consumer shall sign and date within the box containing the disclaimer prior to the sale;

(6) The merchant shall describe in writing any defects or malfunctions, if any, disclosed to the merchant by a previous owner of the used motor vehicle or discoverable by the merchant after an inspection of the used motor vehicle; and

(7) The merchant shall provide the consumer a copy of a nationally recognized vehicle history report for the used motor vehicle.

(e) An "as is" sale of a used motor vehicle waives implied warranties, but does not waive any express warranties, either oral or written, upon which the consumer relied in entering into the transaction.

(f) The provisions of this section do not apply to motor vehicles sold as surplus by a state agency.

(g) The provisions of this section only apply to sales directly to consumers.

WV Legislature

§46A-6-108. Breach of warranty; privity abolished.

(a) Notwithstanding any other provision of law to the contrary, no action by a consumer for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall fail because of a lack of privity between the consumer and the party against whom the claim is made. An action against any person for breach of warranty or for negligence with respect to goods subject to a consumer transaction shall not of itself constitute a bar to the bringing of an action against another person.

(b) Notwithstanding any other provision of law to the contrary with respect to goods which are the subject of or intended to become the subject of a consumer transaction, no manufacturer may fail to honor a manufacturer's warranty if the consumer has complied with applicable warranty registration provisions but the merchant from whom such goods were purchased has not complied with or registered the warranty, and in such case the manufacturer shall honor the warranty.

(c) When a merchant or manufacturer has failed to honor a warranty which is valid under the laws of this state and which the manufacturer is bound to honor, if the goods have been replaced or repaired by the merchant or a repairperson, as the case may be, such merchant, repairperson or consumer, in addition to any other remedy provided by law, shall have a cause of action against the manufacturer for the reasonable cost of such replacement or repair.

WV Legislature

§46A-6-109. The use of plain language in consumer transactions.

(a) Every written agreement entered into by a consumer after April 1, one thousand nine hundred eighty-two, for the purchase or lease of goods or services in consumer transactions, whether for the rental of space to be occupied for residential purposes or for the sale of goods or services for personal, family, household or agricultural purposes, must: (1) Be written in a clear and coherent manner, using words with common and everyday meanings; (2) use type of an easily readable size and ink which adequately contrasts with the paper; and (3) be appropriately organized and captioned by its various sections to be easily understood.

(b) A violation of the provisions of this section shall not render any agreement void or voidable: Provided, That if a consumer at the time of entering into a consumer transaction or anytime thereafter, requests of the other party thereto that the agreement evidencing the consumer transaction be changed or written in a manner to conform with this section, and that request is refused, then a consumer shall have a cause of action to require a consumer agreement not in conformity with the provisions of this section to be reformed. This section shall not be construed to prohibit the use of words or phrases specifically required or specifically permitted by state or federal law, rule or regulation. This section shall not be construed to preclude a consumer from asserting a claim or defense which would have been available to the consumer if this provision were not in effect. A consumer may not waive the rights provided by this section, and any attempted waiver shall be void.

WV Legislature

§46A-6-110. Solicitation or cashing of postdated checks; penalties.

(a) No person may:

(1) Solicit or accept a postdated check with the intent of presenting it for payment prior to the date listed on the check; or

(2) Represent in any manner that postdating a check will prevent its payment from the account of the maker of the check prior to the date listed on the check; and either (A) present the check or cause the check to be presented for payment before the date on the check either intentionally, or (B) in the case of a payee that is an organization, present the check or cause the check to be presented without reasonable procedures to prevent such presentment.

(b) When a check is presented for payment from the account of the maker before the date of the check, no payee who knowingly accepted a postdated check may refuse, upon request of the maker of the postdated check, to immediately return the funds to the maker of the postdated check, to pay the fees and other costs incurred by the maker as a result of the early presentment of the check.

(c) If a person has violated the provisions of subsection (a) or (b) of this section, the maker has a cause of action to recover from that person the amount of the check, any fees or costs incurred and, in addition, a civil penalty, in an amount determined by the court, of not less than one hundred nor more than $1,000.

WV Legislature

§46A-6A-1. Legislative declarations.

(1) The Legislature hereby finds and declares as a matter of public policy that the purpose of this article is to place upon the manufacturers of motor vehicles the duty to meet their obligations and responsibilities under the terms of the express warranties extended to the consumers in this state. The Legislature further finds as a matter of public policy that the manufacturer shall bear the total cost of performing any duty or responsibility imposed by their warranties and the provisions of this article.

(2) The Legislature further finds that any agreement under the provisions of article six-a, chapter seventeen-a of this code, or any agreement hereafter amended or entered into between a dealer and manufacturer which would transfer to the dealer any duty, or all or any part of the cost of performing any duty imposed on the manufacturer by the provisions of this article, or which would directly or indirectly charge the dealer for or reduce the payment or reimbursement due the dealer for performing work or furnishing parts required by this article to be provided by either the dealer or manufacturer, so as to shift to the dealer all or any part of the cost of the manufacturer's compliance with this article, to be against public policy, void and unenforceable.

WV Legislature

§46A-6A-2. Definitions.

When used in this article, the following words, terms, and phrases shall have the meaning ascribed to them, except where the context indicates a different meaning:

(1) "Consumer" means:

(A) The purchaser, other than for purposes of resale, of a new motor vehicle used primarily for personal, family, or household purposes, a person to whom the new motor vehicle is transferred for the same purposes during the duration of an express warranty applicable to the motor vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty; or

(B) The purchaser, other than for purposes of resale, of a new vehicle described in paragraph (B), subdivision (4) of this section a person to whom the new vehicle is transferred during the duration of an express warranty applicable to the vehicle, and any other person entitled by the terms of the warranty to enforce the obligations of the warranty;

(2) "Manufacturer" means a person engaged in the business of manufacturing, assembling, or distributing motor vehicles, who will, under normal business conditions during the year, manufacture, assemble, or distribute to dealers at least 10 new motor vehicles;

(3) "Manufacturer's express warranty" and "warranty" mean the written warranty of the manufacturer of a new motor vehicle of its condition and fitness for use, including any terms or conditions precedent to the enforcement of obligations under that warranty; and

(4) "Motor vehicle" means:

(A) Any passenger automobile purchased in this state or registered and titled in this state, including any pickup truck or van registered as a Class A motor vehicle under the provisions of §17A-10-1 *et seq*. of this code, and any self-propelled motor vehicle chassis of a motor home registered as a Class A or Class B motor vehicle under the provisions of §17A-10-1 *et seq*. of this code; or

(B) Any self-propelled vehicle designed primarily for, and used in, the occupation or business of farming, with a horsepower unit of 20 or greater.

WVLegislature

§46A-6A-3. Manufacturer's duty to repair or replace new motor vehicles.

(a) If a new motor vehicle does not conform to all applicable express warranties and the consumer reports the nonconformity to the manufacturer, its agent or its authorized dealer during the term of the express warranties or within a period of one year following the date of original delivery of the new motor vehicle to a consumer, whichever is the longer period, the manufacturer, its agent or its authorized dealer shall make the repairs necessary to conform the vehicle to the express warranties, notwithstanding the fact that the repairs are made after the expiration of the warranty term.

(b) If the manufacturer, its agents or its authorized dealer are unable to conform the new motor vehicle to any applicable express warranty by repairing or correcting any defect or condition which substantially impairs the use or market value of the motor vehicle to the consumer after a reasonable number of attempts, the manufacturer shall replace the new motor vehicle with a comparable new motor vehicle which does conform to the warranties.

(c) No authorized dealer shall be held liable by the manufacturer for any refunds or vehicle replacements in the absence of evidence indicating that the dealership repairs have been carried out in a manner substantially inconsistent with the manufacturer's instruction. This section does not create any cause of action by a consumer against an authorized dealer.

WV Legislature

§46A-6A-3a. Dealer's duty to disclose repairs to consumer.

All authorized dealers of new motor vehicles shall provide to any consumer a written disclosure of any repairs to a new motor vehicle that have a retail value of five percent of the manufacturer's suggested retail price and were performed after shipment from the manufacturer to the dealer, including damage to the new motor vehicle while in transit.

This disclosure requirement does not apply to identical replacement of stolen or damaged accessories or their components, tires or antennae.

For purposes of this section, a motor vehicle is not a new motor vehicle when it has been previously titled or the motor vehicle has been damaged in such a manner that, were the damage not repaired, the value and usability of the motor vehicle would be substantially impaired.

WV Legislature

§46A-6A-4. Civil action by consumer.

(a) If the nonconformity results in substantial impairment to the use or market value of the new motor vehicle and the manufacturer has not replaced the new motor vehicle pursuant to the provisions of section three of this article, or if the nonconformity exists after a reasonable number of attempts to conform the new motor vehicle to the applicable express warranties, the consumer shall have a cuase of action against the manufacturer, in the circuit court of any county having venue.

(b) In any action under this section, the consumer may be awarded all or any portion of the following:

(1) Revocation of acceptance and refund of the purchase price, including, but not limited to, sales tax, license and registration fees, and other reasonable expenses incurred for the purchase of the new motor vehicle, or if there be no such revocation of acceptance, damages for diminished value of the motor vehicle;

(2) Damages for the cost of repairs reasonably required to conform the motor vehicle to the express warranty;

(3) Damages for the loss of use, annoyance or inconvenience resulting from the nonconformity, including, but not limited to, reasonable expenses incurred for replacement transportation during any period when the vehicle is not out of service by reason of the nonconformity or by reason of repair; and

(4) Reasonable attorney fees.

(c) It is an affirmative defense to any claim under this section (i) that an alleged nonconformity does not substantially impair the use or market value or (ii) that a nonconformity is the result of abuse, neglect or unauthorized modifications or alterations of a motor vehicle by anyone other than the manufacturer, its agent or its authorized dealer.

(d) An action brought under this section by the consumer must be commenced within one year of the expiration of the express warranty term.

(e) The cause of action provided for in this section shall be available only against the manufacturer.

WV Legislature

§46A-6A-5. Presumption of reasonable number of attempts; extension of warranty term when repair services unavailable.

(a) It is presumed that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties, if the same nonconformity has been subject to repair three or more times by the manufacturer, its agents or its authorized dealers within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to the consumer, whichever is the earlier date, and the nonconformity continues to exist, or the vehicle is out of service by reason of repair for a cumulative total of thirty or more calendar days during the term or during the one-year period, whichever is the earlier date.

(b)If the nonconformity results in a condition which is likely to cause death or serious bodily injury if the vehicle is driven, it is presumed that a reasonable number of attempts have been undertaken to conform the vehicle to the applicable express warranties if the nonconformity has been subject to repair at least once by the manufacturer within the express warranty term or during the period of one year following the date of original delivery of the motor vehicle to a consumer, whichever is the earlier date, and the nonconformity continues to exist.

(c) The presumption that a reasonable number of attempts have been undertaken to conform a new motor vehicle to the applicable express warranties applies against a manufacturer only if the manufacturer has received prior written notification from or on behalf of the consumer and has had at least one opportunity to cure the defect alleged.

(d) The term of an express warranty, the one-year period and the thirty-day period shall be extended by any period of time during which repair services are not available to the consumer because of a war, invasion, strike or fire, flood or other natural disaster.

WV Legislature

§46A-6A-6. Written statement to be provided to consumer.

At the time of purchase the manufacturer, either directly or through its agent or its authorized dealer, must provide the consumer a written statement on a separate piece of paper, in ten point all capital type, in substantially the following form:"IMPORTANT: IF THIS VEHICLE IS DEFECTIVE, YOU MAY BE ENTITLED UNDER STATE LAW TO REPLACEMENT OR TO COMPENSATION. HOWEVER, TO BE ENTITLED TO REPLACEMENT OR TO COMPENSATION, YOU MUST FIRST NOTIFY THE MANUFACTURER OF THE PROBLEM IN WRITING AND PROVIDE THE MANUFACTURER AN OPPORTUNITY TO REPAIR THE VEHICLE."

WV Legislature

§46A-6A-7. Resale of returned motor vehicle.

If a new motor vehicle has been returned under section three of this article or a similar statute of another state, it may not be resold in this state unless the manufacturer corrects the nonconformity and provides the consumer with a written statement on a separate piece of paper in ten point all capital type, in substantially the following form:"IMPORTANT: THIS VEHICLE WAS RETURNED TO THE MANUFACTURER BECAUSE IT DID NOT CONFORM TO THE MANUFACTURER'S EXPRESS WARRANTY AND THE NONCONFORMITY WAS NOT CURED WITHIN A REASONABLE TIME AS PROVIDED BY WEST VIRGINIA LAW.": Provided, That no manufacturer shall require by agreement or otherwise, either directly or indirectly, that any of its authorized dealers in this state accept such a motor vehicle for resale.

WV Legislature

§46A-6A-8. Third party dispute resolution process; attorney general to promulgate rules and regulations.

(a) The Attorney General of the State of West Virginia shall promulgate rules and regulations for the establishment and qualification of a third party dispute mechanism or mechanisms for the resolution of warranty disputes between the consumer and the manufacturer, its agent or its authorized dealer. Such mechanisms shall be under the supervision of the division of consumer protection in the office of the Attorney General, and shall meet or exceed the minimum requirements of the informal dispute settlement mechanism as provided by the Magnuson-Moss Warranty Federal Trade Commission Improvement Act (Public Law 93-637) and rules and regulations lawfully promulgated thereunder effective January 1, 1984.

(b) If a qualified third party dispute resolution process exists and the consumer receives timely notification in writing of the availability of the third party process with a description of its operation and effect, the cause of action under section four of this article may not be asserted by the consumer until after the consumer has initially resorted to the third party process. Notification of the availability of the third party process must be timely to the consumer. If a qualified third party dispute resolution process does not exist, or if the consumer is dissatisfied with the third party decision, or if the manufacturer, its agent or its authorized dealer fails to promptly fulfill the terms of the third party decision, the consumer may assert a cause of action under section four of this article.

(c) Any period of limitation of actions under any federal or West Virginia laws with respect to any consumer shall be tolled for the period between the date a complaint is filed with a third party dispute resolution process and the date of its decision or the date before which the manufacturer, its agent or its authorized dealer is required by the decision to fulfill its terms, whichever occurs later.

WV Legislature

§46A-6A-9. Other remedies available.

Nothing in this article shall be construed to limit any right or remedy which is otherwise available to a consumer or authorized dealer of a manufacturer under any other law.

WV Legislature

§46A-6B-1. Legislative declaration.

The Legislature hereby finds and declares as a matter of public policy that the purposes of this article are to require disclosure to motor vehicle owners of information on certain replacement crash parts for repairs to their motor vehicles and to prevent both motor vehicle body shops and insurance companies from requiring the use of aftermarket crash parts for repair unless the motor vehicle owner consents in writing at the time of the repair.

WV Legislature

§46A-6B-2. Definitions.

As used in this article, the following terms shall have the meaning defined:

(a) "Aftermarket crash parts" means crash parts:

(1) Manufactured by a person other than the original manufacturer of the motor vehicle to be repaired; and

(2) For which the original manufacturer of the motor vehicle has not authorized the use of its name or trademark by the manufacturer of the crash parts;

(b) "Code" means the Code of West Virginia, 1931, as amended;

(c) "Crash parts" means exterior or interior sheet metal or fiberglass panels and parts that form the superstructure or body of a motor vehicle, including, but not limited to, fenders, bumpers, quarter panels, door panels, hoods, grills, fire walls, permanent roofs, wheel wells and front and rear lamp display panels;

(d) "Genuine crash parts" means crash parts:

(1) Manufactured by or for the original manufacturer of the motor vehicle to be repaired; and

(2) That are authorized to carry the name or trademark of the original manufacturer of the motor vehicle;

(e) "Motor vehicle" has the meaning stated in section one, article one, chapter seventeen-a of this code; and

(f) "Motor vehicle body shop" means any person or business establishment that removes, replaces, reconditions or repairs sheet metal or fiberglass motor vehicle crash parts.

WV Legislature

§46A-6B-3. Genuine and aftermarket crash parts.

For all motor vehicles requiring repair by motor vehicle body shops in the year of their manufacture or in the two succeeding years thereafter, motor vehicle body shops must use genuine crash parts sufficient to maintain the manufacturer's warranty for fit, finish, structural integrity, corrosion resistance, dent resistance and crash performance unless the motor vehicle owner consents in writing at the time of the repair to the use of aftermarket crash parts. No insurance company may require the use of aftermarket crash parts when negotiating repairs of the motor vehicle with any repairer for a period of three years, the year the motor vehicle was manufactured and the two succeeding years thereafter, unless the motor vehicle owner consents in writing at the time of the repair to the use of aftermarket crash parts.

WV Legislature

§46A-6B-4. Notices and written statements to be provided to vehicle owner.

(a) Effective July 1, 1995, before beginning repair work on crash parts, a motor vehicle body shop shall:

(1) Provide a list to the vehicle owner of the replacement crash parts that the body shop intends to use in making repairs;

(2) Specify whether the replacement parts are genuine crash parts; and

(3) Identify the manufacturer of the parts if the replacements parts are aftermarket crash parts.

(b) If the replacement crash parts to be used by the body shop in the repair work are aftermarket crash parts, the body shop shall include with its estimate the following written statement: "THIS ESTIMATE HAS BEEN PREPARED BASED ON THE USE OF AFTERMARKET CRASH PARTS THAT ARE NOT MANUFACTURED BY THE ORIGINAL MANUFACTURER OF THE VEHICLE OR BY A MANUFACTURER AUTHORIZED BY THE ORIGINAL MANUFACTURER TO USE ITS NAME OR TRADEMARK. THE USE OF AN AFTERMARKET CRASH PART MAY INVALIDATE ANY REMAINING WARRANTIES OF THE ORIGINAL MANUFACTURER ON THAT CRASH PART."

(c) The notices and statements required under this section shall be made in writing in a clear and conspicuous manner on a separate piece of paper in ten-point capital type.

(d) This section may not be construed to replace or alter any provision under article six or any other provision of this chapter.

WV Legislature

§46A-6B-5. Other remedies available.

This article does not:

(a) Prohibit a person from filing an action for damages against a body shop; or

(b) Require a person first to exhaust any administrative remedy he may have.

WV Legislature

§46A-6B-6. Violation of article an unfair method of competition or deceptive act or practice; penalty.

A violation of any provision of this article is an unfair or deceptive act or practice within the meaning of section one hundred two, article six of this chapter and is subject to the enforcement and penalty provisions contained in this chapter.

WV Legislature

§46A-6C-1. Definitions.

(1) "Buyer" means an individual who is solicited to purchase or who purchases the services of a credit services organization as defined in section two of this article.

(2) "Consumer reporting agency" has the meaning assigned by Section 603(f), Fair Credit Reporting Act (15 U.S.C. Section 1681a(f)).

(3) "Extension of credit" means the "right to defer payment of debt or to incur debt and defer its payment offered or granted primarily for personal, family, household or agriculture purposes.

WV Legislature

§46A-6C-2. Credit services organization.

(a) A credit services organization is a person who, with respect to the extension of credit by others and in return for the payment of money or other valuable consideration, provides, or represents that the person can or will provide, any of the following services:

(1) Improving a buyer's credit record, history or rating;

(2) Obtaining an extension of credit for a buyer; or

(3) Providing advice or assistance to a buyer with regard to subdivision (1) or (2) of this subsection.

(b) The following are exempt from this article:

(1) A person authorized to make loans or extension of credit under the law of this state or the United States who is subject to regulation and supervision by this state or the United States, or a lender approved by the United States secretary of housing and urban development for participation in a mortgage insurance program under the National Housing Act (12 U. S. C. Section 1701, et seq.);

(2) A bank or savings and loan association whose deposit or accounts are eligible for insurance by the federal deposit insurance corporation or the federal savings and loan insurance corporation or a subsidiary of such a bank or savings and loan association;

(3) A credit union doing business in this state;

(4) A nonprofit organization exempt from taxation under Section 501(c)(3) of the Internal Revenue Code of 1986;

(5) A person licensed as a real estate broker or salesman under the Real Estate Brokers License Act acting within the course and scope of that license;

(6) A person licensed to practice law in this state acting within the course and scope of the person's practice as an attorney;

(7) A broker-dealer registered with the securities and exchange commission or the commodity future trading commission acting within the course and scope of that regulation;

(8) A consumer reporting agency;

(9) A person whose primary business is making loans secured by liens on real property;

(10) A person whose primary business is the retail sale of automobiles and trucks: Provided, That the person is not extending credit for a buyer, excluding assignments; and

(11) A person licensed to practice public accounting in this state acting within the course

WV Legislature

and scope of the person's practice as an accountant.

WV Legislature

§46A-6C-3. Prohibited conduct.

A credit services organization, a salesperson, agency or representative of a credit services organization or an independent contractor who sells or attempts to sell the services of a credit services organization may not:

(1) Charge a buyer or receive from a buyer money or other valuable consideration before completing performance of all services the credit services organization has agreed to perform for the buyer, unless the credit services organization has obtained in accordance with section four of this article a surety bond in the amount required by section four of this article issued by a surety company authorized to do business in this state or established and maintained a surety account at a federally insured bank or savings and loan association located in this state in which the amount required is held in trust as required by section four of this article;

(2) Charge a buyer or receive from a buyer money or other valuable consideration solely for referral of the buyer to a retail seller who will or may extend credit to the buyer if the credit that is or will be extended to the buyer is substantially the same as that available to the general public from other sources;

(3) Make or use a false or misleading representation in the offer or sale of the services of a credit services organization, including:

(A) Guaranteeing to "erase bad credit" or words to that effect unless the representation clearly discloses that this can be done only if the credit history is inaccurate or obsolete; and

(B) Guaranteeing an extension of credit regardless of the person's previous credit problem or credit history unless the representation clearly discloses the eligibility requirements for obtaining an extension of credit.

(4) Engage, directly or indirectly, in an unfair or deceptive act, practice, or course of business in connection with the offer or sale of the services of a credit services organization;

(5) Make, or advise a buyer to make a statement with respect to a buyer's credit worthiness, credit standing, or credit capacity that is false or misleading or that should be known by the exercise of reasonable care to be false or misleading, to a consumer reporting agency or to a person who has extended credit to a buyer or to whom a buyer is applying for an extension of credit;

(6) Advertise or cause to be advertised, in any manner whatsoever, the services of a credit services organization without filing a registration statement with the Secretary of State, unless otherwise provided by this chapter.

WV Legislature

§46A-6C-4. Bond; surety account.

(a) This section applies to a credit services organization required by section three of this article to obtain a surety bond or establish a surety account.

(b) If a bond is obtained, a copy of it shall be filed with the Secretary of State. If a surety account is established, notification of the depository, the trustee, and the account number shall be filed with the Secretary of State.

(c) The bond or surety account required must be in favor of the state of the benefit of any person who is damaged by any violation of this article. The bond or surety account must also be in favor of any person damaged by such a violation.

(d) Any person claiming against the bond or surety account for a violation of this article may maintain an action at law against the credit services organization and against the surety or trustee. The surety or trustee shall be liable only for damages awarded under section nine of this article and not the punitive damages permitted under that section. The aggregate liability of the surety or trustee to all persons damaged by a credit services organization's violation of this chapter may not exceed the amount of the surety account or bond.

(e) The bond or the surety account shall be in the amount of $15,000.

(f) A depository holding money in a surety account under this chapter may not convey money in the account to the credit services organization that established the account or a representative of the credit services organization unless the credit services organization or representative presents a statement issued by the Secretary of State indicating that section five of this article has been satisfied in relation to the account. The Secretary of State may conduct investigations and require submission of information as necessary to enforce this subsection.

WV Legislature

§46A-6C-5. Registration.

(a) A credit services organization shall file a registration statement with the Secretary of State before conducting business in this state. The registration statement shall contain:

(1) The name and address of the credit services organization; and

(2) The name and address of any person who directly or indirectly owns or controls ten percent or more of the outstanding shares of stock in the credit services organization.

(b) The registration statement shall also contain either:

(1) A full and complete disclosure of any litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization; or

(2) A notarized statement that states that there has been no litigation or unresolved complaint filed with a governmental authority of this state relating to the operation of the credit services organization.

(c) The credit services organization shall update the statement not later than the ninetieth day after the date on which a change in the information required in the statement occurs.

(d) Each credit services organization registering under this section shall maintain a copy of the registration statement in the files of the credit services organization. The credit services organization shall allow a buyer to inspect the registration statement on request.

(e) The Secretary of State may charge each credit services organization that files a registration statement with the Secretary of State a reasonable fee not to exceed $100 to cover the cost of filing. The Secretary of State may not require a credit services organization to provide information other than that provided in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state fund, general revenue and one-half shall be deposited in the service fees and collections account established by section two, article one, chapter fifty-nine of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(f) The bond or surety account shall be maintained until two years after the date that the credit services organization ceases operations.

WV Legislature

§46A-6C-6. Disclosure statement.

(a) Before executing a contract or agreement with a buyer or receiving money or other valuable consideration, a credit services organization shall provide the buyer with a statement in writing, containing:

(1) A complete and detailed description of the services to be performed by the credit services organization for the buyer and the total cost of the services;

(2) A statement explaining the buyer's right of proceed against the bond or surety account required by section three of this article;

(3) The name and address of the surety company that issued the bond, or the name and address of the depository and the trustee, and the account number of the surety account;

(4) A complete and accurate statement of the buyer's right to review any file on the buyer maintained by a consumer reporting agency, as provided by the Fair Credit Reporting Act. (15 U.S.C. Sec. 1681 et seq.);

(5) A statement that the buyer's file is available for review at no charge on request made to the consumer reporting agency within thirty days after the date of receipt of notice that credit has been denied, and that the buyer's file is available for a minimal charge at any other time;

(6) A complete and accurate statement of the buyer's right to dispute directly with the consumer reporting agency the completeness or accuracy of any item contained in a file on the buyer maintained by that consumer reporting agency;

(7) A statement that accurate information cannot be permanently removed from the files of a consumer reporting agency;

(8) A complete and accurate statement of when consumer information becomes obsolete, and of when consumer reporting agencies are prevented from issuing reports containing obsolete information; and

(9) A complete and accurate statement of the availability of nonprofit credit counseling services.

(b) The credit services organization shall maintain on file, for a period of two years after the date the statement is provided, an exact copy of the statement, signed by the buyer, acknowledging receipt of the statement.

WV Legislature

§46A-6C-7. Form and terms of contract.

(a) Each contract between the buyer and a credit services organization for the purchase of the services of the credit services organization must be in writing, dated, signed by the buyer, and must include:

(1) A statement in type that is boldfaced, capitalized, underlined, or otherwise set out from surrounding written materials so as to be conspicuous, in immediate proximity to the space reserved for the signature of the buyer, as follows: "You, the buyer, may cancel this contract at any time before midnight of the third day after the date of the transaction. See the attached notice of cancellation form for an explanation of this right";

(2) The terms and conditions of payment, including the total of all payments to be made by the buyer, whether to the credit services organization or to another person;

(3) A full and detailed description of the services to be performed by the credit services organization for the buyer, including all guarantees and all promises of full or partial refunds, and the estimated length of time, not to exceed one hundred eighty days, for performing the services; and

(4) The address of the credit services organization's principal place of business and the name and address of its agent in the state authorized to receive service or process.

(b) The contract must have attached two easily detachable copies of a notice of cancellation. The notice must be in boldfaced type and in the following form:

"Notice of Cancellation

You may cancel this contract, without any penalty or obligation, within three days after the date the contract is signed.

If you cancel, any payment made by you under this contract will be returned within ten days after the date of receipt by the seller of your cancellation notice.

To cancel this contract, mail or deliver a signed dated copy of this cancellation notice, or other written notice to:

(name of seller) at (address of seller) (place of business) not later than midnight (date)

I hereby cancel this transaction.

(date)

(purchaser's signature)"

(c) The credit services organization shall give to the buyer a copy of the completed contract

WV Legislature

and all other documents the credit services organization requires the buyer to sign at the time they are signed.

(d) The breach by a credit services organization of a contract under this article, or of any obligation arising from this article, is an unfair or deceptive act or practice.

WV Legislature

§46A-6C-8. Waiver.

(a) A credit services organization may not attempt to cause a buyer to waive a right under this article.

(b) A waiver by a buyer of any part of this article is void.

WV Legislature

§46A-6C-9. Action for damages.

(a) A buyer injured by a violation of this article may bring any action for recovery of damages. The damages awarded may not be less than the amount paid by the buyer to the credit services organization, plus reasonable attorney's fees and court costs.

(b) The buyer may also be awarded punitive damages.

WV Legislature

§46A-6C-10. Criminal penalty.

A person who violates the provisions of this article is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $1,000, imprisoned in the county jail not more than one year, or both fined and imprisoned.

WV Legislature

§46A-6C-11. Burden of proving exemption.

In an action under this article, the burden of proving an exemption under section two of this article is on the person claiming the exemption.

WV Legislature

§46A-6C-12. Remedies cumulative.

The remedies provided by this article are in addition to other remedies provided by law.

WV Legislature

§46A-6D-1. Short title.

This article may be cited as the "Prizes and Gifts Act".

WV Legislature

§46A-6D-2. Definitions.

As used in this article:

(a) "Anything of value", "item of value" or "item" means any item or service with monetary value.

(b) "Handling charge" means any charge, fee or sum of money which is paid by a consumer to receive a prize, gift or any item of value, including, but not limited to, promotional fees, redemption fees, registration fees or delivery costs.

(c) "Person" means any natural person, corporation, trust, partnership, association and any other legal entity.

WV Legislature

§46A-6D-3. Representation of having won a prize, gift or any item of value.

(a) Unless otherwise provided by article six of this chapter, a person may not, in connection with the sale or lease or solicitation for the sale or lease of goods, property or service, represent that another person has won anything of value or is the winner of a contest, unless all of the following conditions are met:

(1) The recipient of the prize, gift or item of value is given the prize, gift or item of value without obligation; and

(2) The prize, gift or item of value is delivered to the recipient at no expense to him or her, within ten days of the representation.

(b) The use of language that may lead a reasonable person to believe he or she has won a contest or anything of value, including, but not limited to, "Congratulations", or "You have won", or "You are the winner of", is a representation of the type governed by this section.

WV Legislature

§46A-6D-4. Representation of eligibility to win or to receive a prize, gift or item of value.

(a) A person may not represent that another person is eligible or has a chance to win or to receive a prize, gift or item of value without clearly and conspicuously disclosing on whose behalf the contest or promotion is conducted, as well as all material conditions which a participant must satisfy. In an oral solicitation all material conditions shall be disclosed prior to requesting the consumer to enter into the sale or lease. Additionally, in any written material covered by this section, each of the following shall be clearly and prominently disclosed:

(1) Immediately adjacent to the first identification of the prize, gift or item of value to which it relates; or

(2) In a separate section entitled "Consumer Disclosure" which title shall be printed in no less than ten-point bold-face type and which section shall contain only a description of the prize, gift or item of value and the disclosures outlined in paragraphs (i), (ii) and (iii) of this subdivision:

(i) The true retail value of each item or prize;

(ii) The actual number of each item, gift or prize to be awarded; and

(iii) The odds of receiving each item, gift or prize.

(b) All disclosures required by this article to be in writing shall comply with the following:

(1) All dollar values shall be stated in arabic numerals and be preceded by a dollar sign ($); and

(2) The number of each item, gift or prize to be awarded and the odds of receiving each item, gift or prize shall be stated in arabic numerals and shall be written in a manner which is clear and understandable.

(c) It is unlawful to notify a person that upon acceptance or response he or she will receive a gift, prize or item of value in connection with a promotion or otherwise that has as a condition of receiving the gift, prize or item of value the requirement that he or she pay any money, or purchase, lease or rent any goods or services, unless there has been clearly and conspicuously disclosed the nature of the charges to be incurred, including, but not limited to, any shipping charge and handling charges. Such disclosure shall be given:

(1) On the face of any written materials; or

(2) Prior to requesting or inviting the person to enter into the sale or lease in any oral notification.

WV Legislature

(d) The provisions of this section do not apply where to be eligible:

(1) Participants are asked only to complete and mail, or deposit at a local retail commercial establishment, an entry blank obtainable locally or by mail, or to call in their entry toll free by telephone or other free or local calling option; or

(2) Participants are never required to listen to a sales presentation and never requested or required to pay any sum of money for any merchandise, service or item of value.

(e) Nothing in this section creates any liability for acts by the publisher, owner, agent or employee of a newspaper, periodical, radio station, telecommunications company, television station, cable-television system or other advertising medium arising out of the publication or dissemination of any advertisement or promotion governed by this section, when the publisher, owner, agent or employee did not know that the advertisement or promotion violated the requirements of this section.

WV Legislature

§46A-6D-5. Representation of being specially selected.

(a) A person may not represent that another person has been specially selected in connection with the sale or lease or solicitation for sale or lease of goods, property or service, unless the selection process is designed to reach a particular type or types of persons.

(b) The use of any language that may lead a reasonable person to believe he has been specially selected, including, but not limited to, "Carefully Selected", or "You have been selected to receive", or "You have been chosen", is a representation of the type governed by this section.

WV Legislature

§46A-6D-6. Simulation of checks and invoices.

In connection with a consumer transaction, no person may issue any writing which simulates or resembles:

(a) A check unless the writing clearly and conspicuously disclosed its true value and purpose, and the writing would not mislead a reasonable person; or

(b) An invoice unless the intended recipient of the invoice has actually contracted for goods, property or services for which the issuer seeks proper payment.

WV Legislature

§46A-6D-7. Conditions for handling charges and shipping charges.

(a) It is unlawful to notify a person that he or she may or will receive a gift, prize or item of value and that as a condition of receiving the gift, prize or item of value he or she will be required to pay any money, or purchase or lease, including rent, any goods or services, if any one or more of the following conditions exist:

(1) The shipping charges exceeds:

(i) The cost of postage or the charge of a shipping service in the business of delivering goods of like size, weight and kind for shipping the gift, prize or item of value from the geographic area in which the gift, prize or item of value is being distributed; or

(ii) The exact amount for shipping paid to an independent fulfillment house or an independent supplier, either of which is in the business of shipping goods for shippers other than the offeror of the gift, prize or item of value.

(2) The handling charge exceeds the lesser of $5 or the actual cost of handling.

(b) This section applies to all offers of prizes, gifts or items of value covered by this article where such charges are permitted.

WV Legislature

§46A-6D-8. Action to enforce the provisions of article.

Any consumer who suffers loss by reason of a violation of any provision of this article may bring a civil action to enforce such provisions. Any consumer who is successful in an action shall recover reasonable attorney's fees and court costs incurred by bringing the action.

WV Legislature

§46A-6D-9. Enforcement; penalties.

Any violation of this article constitutes an unlawful act or practice under the provisions of article six of this chapter, regarding fraudulent acts or practices committed by a supplier in connection with a consumer transaction and shall be subject to the enforcement provisions of article seven of this chapter.

WV Legislature

§46A-6D-10. Exemptions.

The provisions of sections four through seven of this article do not apply to the sale or purchase, or solicitation or representation in connection therewith, of goods from a catalog or of books, recordings, videocassettes, periodicals and similar goods through a membership group or club which is regulated by the federal trade commission trade regulation rule concerning use of negative option plans by sellers in commerce or through a contractual plan or arrangement such as a continuity plan, subscription arrangement or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive such goods and the recipient of such goods is given the opportunity, after examination of the goods, to receive a full refund of charges for the goods, or unused portion thereof, upon return of the goods, or unused portion thereof, undamaged.

WV Legislature

§46A-6E-1. Definitions.

(a) "Assistive device" means any device enabling a person with a disability to communicate, see, hear or maneuver, which a consumer purchases or accepts transfer of in this state. This definition includes a demonstrator. Examples of assistive devices include, but are not limited to, manual and motorized wheelchairs, motorized scooters, hearing aids, telephone communication devices for the deaf (TTY), assistive listening devices, voice synthesized computer modules, optical scanners, talking software and braille printers.

(b) "Assistive device dealer" means a person who is in the business of selling assistive devices.

(c) "Assistive device lessor" means a person who leases an assistive device to a consumer, or who holds the lessor's rights, under a written lease.

(d) "Collateral costs" means expenses incurred by a consumer in connection with the repair of a nonconformity, including the costs of obtaining an alternative assistive device.

(e) "Consumer" means any of the following:

(1) The purchaser of an assistive device, if the assistive device was purchased from an assistive device dealer or manufacturer for purposes other than resale;

(2) A person to whom the assistive device is transferred for purposes other than resale, if the transfer occurs before the expiration of an express warranty applicable to the assistive device;

(3) A person who may enforce the warranty; and

(4) A person who leases an assistive device from an assistive device lessor under a written lease.

(f) "Current value of the written lease" means the total amount for which that lease obligates the consumer during the period of the lease remaining after its early termination, plus the assistive device dealer's early termination costs and the value of the assistive device at the lease expiration date if the lease sets forth that value, less the assistive device lessor's early termination savings.

(g) "Demonstrator" means an assistive device used primarily for the purpose of demonstration to the public.

(h) "Early termination cost" means any expense or obligation that an assistive device lessor incurs as a result of both the termination of a written lease before the termination date set forth in that lease and the return of an assistive device to a manufacturer pursuant to this section. Early termination cost includes a penalty for prepayment under finance arrangement.

WV Legislature

(i) "Early termination saving" means any expense or obligation that an assistive device lessor avoids as a result of both the termination of a written lease before that termination date set forth in that lease and the return of an assistive device to a manufacturer pursuant to this section. Early termination saving includes an interest charge that the assistive device lessor would have paid to finance the assistive device or, if the assistive device lessor does not finance the assistive device, the difference between the total amount for which the lease obligates the consumer during the period of the lease term remaining after the early termination and the present value of that amount at the date of the early termination.

(j) "Manufacturer" means a person who manufactures or assembles assistive devices and agents of that person, including an importer, a distributor, factory branch, distributor branch and any warrantor of the manufacturer's assistive device, but does not include an assistive device dealer.

(k) "Nonconformity" means a condition or defect that substantially impairs the use, value or safety of an assistive device and is covered by a warranty applicable to the assistive device or to a component of the assistive device.

(l) "Reasonable allowance for use" means an amount obtained by multiplying the total amount for which the lease obligates the consumer by a fraction, the denominator of which is one thousand eight hundred twenty-five and the numerator of which is the number of days that the consumer used the assistive device before first reporting the nonconformity to the manufacturer, assistive device lessor or assistive device dealer.

(m) "Reasonable attempt to repair" means within the terms of a warranty applicable to a new assistive device:

(1) A nonconformity within the manufacturer's warranty continues after three attempts at repair by the manufacturer, assistive device lessor, or any of the manufacturer's authorized assistive device dealers; or

(2) The assistive device is out of service for thirty cumulative days because of warranty nonconformity.

WV Legislature

§46A-6E-2. Express warranty requirement; express warranty duration; implied warranty.

(a) A manufacturer who sells an assistive device to a consumer, either directly or through an assistive device dealer, shall furnish the consumer with an express warranty for the assistive device. The duration of the express warranty shall be not less than one year after first delivery of the assistive device to the consumer. In the absence of an express warranty from the manufacturer, the manufacturer shall be deemed to have expressly warranted to the consumer of an assistive device that, for a period of one year from the date of first delivery to the consumer, the assistive device will be free from any condition or defect which substantially impairs the value of the assistive device to the consumer.

(b) Notwithstanding any other provision of law to the contrary with respect to assistive devices subject to the provisions of this article, no manufacturer, assistive device dealer or assistive device lessor shall:

(1) Exclude, modify or otherwise attempt to limit any warranty, express or implied, including the warranties of merchantability and fitness for a particular purpose; or

(2) Exclude, modify or attempt to limit any remedy provided by law, including the measure of damages available, for a breach of warranty, express or implied.

Any such exclusion, modification or attempted limitation shall be void.

WV Legislature

§46A-6E-3. Warranty remedies; procedures for obtaining remedies.

(a) Repair. -- If a new assistive device does not conform to an express or implied warranty and the consumer reports the nonconformity to the manufacturer, the assistive device lessor, or a manufacturer's authorized assistive device dealer and makes the assistive device available for repair on or before one year after return delivery of the assistive device to a consumer, the nonconformity shall be repaired at no charge to the consumer.

(b) Return, refund, reimbursement, replacement. -- After a reasonable attempt to repair, if the nonconformity in an assistive device is not repaired, the consumer may request remedies within this section by offering to transfer possession of the assistive device to the manufacturer. No later than thirty days after the consumer's offer, the manufacturer shall provide to the consumer as many of the following remedies as are applicable and elected by the consumer, whereupon the consumer shall return to the manufacturer the assistive device and any endorsements necessary to transfer its possession to the manufacturer:

(1) Accept return of the assistive device;

(2) Replace the assistive device with a comparable new assistive device;

(3) Refund collateral costs to the consumer;

(4) Refund to the consumer and to any holder of a perfected security interest in the assistive device the full purchase price, plus any finance charge paid by the consumer, plus collateral costs, less a reasonable allowance for use; or

(5) Refund to the lessor and to any holder of a perfected security interest in the assistive device the current value of the written lease, and refund to the consumer the amount paid by the consumer pursuant to the written lease, plus collateral costs, less a reasonable allowance for use.

WV Legislature

§46A-6E-4. Lease enforcement.

No person may enforce the lease of an assistive device against the consumer after the consumer receives a refund pursuant to section three of this article.

WV Legislature

§46A-6E-5. Disclosure upon further sale or lease.

No assistive device returned by a consumer or assistive device lessor in this state, or by a consumer or assistive device lessor in another state under a similar law of that state, may be sold or leased again in this state unless full disclosure of the reasons for return is made to any prospective buyer or lessee.

WV Legislature

§46A-6E-6. Arbitration.

(a) Each consumer shall have the option of submitting any dispute arising under this section upon the payment of a prescribed filing fee to an alternate arbitration mechanism established by the Attorney General. Upon application of the consumer and payment of the filing fee, all manufacturers shall submit to such alternate arbitration.

(b) Such alternate arbitration shall be conducted by a professional arbitrator or arbitration firm appointed by the Attorney General. The arbitration process shall ensure that personal objectivity of its arbitrators and the right of each party to present its case, to be in attendance during any presentation made by the other party and to rebut or refute such presentation.

(c) The Attorney General shall propose a legislative rule or rules for promulgation in accordance with the provisions of chapter twenty-nine-a of this code to establish the arbitration mechanism provided for in this section.

WV Legislature

§46A-6E-7. Limitations; waiver of rights; action for damages; punitive damages.

(a) This section does not limit rights or remedies available to a consumer under any other law.

(b) Any waiver by a consumer of rights under this article is void.

(c) In addition to pursuing any other remedy, a consumer may bring an action to recover for any damages caused by a violation of this section. The court shall award a consumer who prevails in such an action twice the amount of any pecuniary loss, together with costs, disbursements and reasonable attorney fees, and any equitable relief that the court determines appropriate.

WV Legislature

PART I. DEFINITIONS.

§46A-6F-101. Applicability of definitions.

For the purposes of this article, the words or terms defined in this part have the meanings ascribed to them. These definitions are applicable unless a different meaning clearly appears from the context.

WV Legislature

§46A-6F-102. Chance promotion.

"Chance promotion" means any plan in which premiums are distributed by random or chance selection.

WV Legislature

§46A-6F-103. Consumer; purchaser.

?Consumer" or ?purchaser" means a person who is solicited to become or does become obligated to pay for consumer goods or services offered by a telemarketer through telemarketing.

WV Legislature

§46A-6F-104. Consumer goods or services.

?Consumer goods or services" means:

(1) Any property or services offered or sold to a natural person primarily for personal, family, household or agricultural purposes;

(2) Any property or service offered or sold for the purpose of providing a profit or investment opportunity; or

(3) Any property intended to be attached to or installed in any real property, without regard to whether it is so attached or installed, as well as timeshare estates and licenses, resort and campground memberships, and any services related to such property.

WV Legislature

§46A-6F-105. Division.

?Division" means the consumer protection division of the office of the Attorney General.

WV Legislature

§46A-6F-106. Individual.

?Individual" means a single human being and does not mean a firm, association of individuals, corporation, partnership, joint venture, sole proprietorship, or any other entity.

WV Legislature

§46A-6F-107. Investment opportunity.

?Investment opportunity" means anything tangible or intangible, that is offered for sale, sold or traded based, wholly or in part, on representations, either express or implied, about past, present or future income, profit or appreciation.

WV Legislature

§46A-6F-108. Material aspect or element.

?Material aspect or element" means any factor likely to affect a person's choice of, or conduct regarding, goods or services and includes currency values and comparative expressions of value including, but not limited to, percentages or multiples.

WV Legislature

§46A-6F-109. Person.

?Person" includes any individual, group of individuals, firm, association, corporation, partnership, joint venture, sole proprietorship, or any other business entity.

WV Legislature

§46A-6F-110. Prize, gift or award.

?Prize, gift or award" means anything offered or given, or purportedly offered or given, to a consumer as part of a prize promotion.

WV Legislature

§46A-6F-111. Prize promotion.

?Prize promotion" means:

(1) A sweepstakes or other game of chance; or

(2) An oral or written express or implied representation that a person has won, has been selected to receive, or may be eligible to receive a prize, gift or award.

WV Legislature

§46A-6F-112. Telemarketing solicitation.

(a) ?Telemarketing solicitation" means and includes any communication between a telemarketer and a prospective purchaser for the purpose of selling or attempting to sell the purchaser any consumer goods or services, if it is intended by the telemarketer that an agreement to purchase the consumer goods or services will be made after any of the following events occur:

(1) The telemarketer makes an unsolicited telephone call to a consumer, attempting to sell consumer goods or services to the consumer, when the consumer has not previously expressed an interest to the telemarketer in purchasing, investing in, or obtaining information regarding, the consumer goods or services offered by the telemarketer; or

(2) The telemarketer communicates with a consumer by any means and invites or directs the consumer to respond by any means to the telemarketer's communications, and the telemarketer intends to enter into an agreement with the consumer for the purchase of consumer goods or services at some time during the course of one or more subsequent telephone communications with the consumer.

(b) For purposes of this article, ?communication" means a written or oral notification or advertisement transmitted from a telemarketer to a consumer by any means.

WV Legislature

§46A-6F-113. Telemarketer.

(a) ?Telemarketer" means any person who initiates or receives telephone calls to or from a consumer in this state for the purpose of making a telemarketing solicitation as defined in section one hundred twelve of this article.

(b) A telemarketer may initiate or receive a communication that constitutes a telemarketing solicitation on his own behalf, through a salesperson or through an automated dialing machine.

(c) A telemarketer does not include any of the persons or entities exempted pursuant to part II of this article.

(d) A telemarketer does not include a salesperson as defined in section one hundred fourteen of this article.

(e) A telemarketer includes, but is not limited to, owners, operators, officers, directors, partners or other individuals engaged in the management activities of a business entity that is subject to licensing and registration pursuant to this article.

WV Legislature

§46A-6F-114. Telemarketer in good standing.

?Telemarketer in good standing" means a telemarketer who, during the previous two years has continually been engaged in the business of telemarketing and who has not been convicted, or pled guilty or nolo contendere to racketeering, embezzlement, fraudulent conversion, misappropriation of property or any violations of state or federal securities laws, a theft offense, or any consumer protection law or telemarketing law.

WV Legislature

PART II. EXEMPT PERSONS OR ENTITIES.

§46A-6F-201. Inapplicability of registration and bonding provisions of this article to charitable organizations.

A charitable organization that is exempt from filing an annual registration statement with the Secretary of State under the provisions of section six, article nineteen, chapter twenty-nine of this code is exempt from the registration and bonding provisions of this article when making a telemarketing solicitation.

WV Legislature

§46A-6F-202. Inapplicability of article to licensed securities, commodities, or investment broker, dealer, or investment adviser.

The provisions of this article do not apply to any licensed securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his license. As used in this section, ?licensed securities, commodities, or investment broker, dealer, or investment adviser" means a person who is licensed or registered as such by the securities and exchange commission, by the national association of securities dealers or some other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. §781), or by an official or agency of this state or of any state of the United States.

WV Legislature

§46A-6F-203. Inapplicability of article to licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser.

The provisions of this article do not apply to any licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser, when soliciting within the scope of his license. As used in this section, ?licensed associated person of a securities, commodities, or investment broker, dealer, or investment adviser" means any associated person registered or licensed by the national association of securities dealers or other self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U.S.C. §781) or by an official or agency of this state or of any state of the United States.

WV Legislature

§46A-6F-204. Inapplicability of article to person who does not make the major sales presentation.

The provisions of this article do not apply to a person who does not make the major sales presentation during the telephone solicitation and who does not intend to, and does not actually, complete or obtain provisional acceptance of a sale during the telephone solicitation, but who makes the major sales presentation and completes the sale at a later face-to-face meeting between the seller and the prospective consumer in accordance with the home solicitation provisions in this chapter and as a home solicitation sale as defined by section one hundred two, article one of this chapter. However, if a seller, in violation of subdivision (4), subsection (a), section five hundred one of this article, causes an individual to go to the prospective consumer for the primary purpose of collecting payment or delivering any item purchased, this exemption does not apply.

WV Legislature

§46A-6F-205. Inapplicability of article to person who solicits sales by catalog.

The provisions of this article do not apply to a person who solicits sales by periodically publishing and delivering a catalog of a seller's merchandise to prospective purchasers, if the catalog:

(1) Contains a written description or illustration of each item offered for sale;

(2) Includes the business address or home address of the seller;

(3) Includes at least twenty pages of written material and illustrations and is distributed in more than one state; and

(4) Has an annual circulation, by mailing, of not less than one hundred fifty thousand catalogs.

WV Legislature

§46A-6F-206. Inapplicability of article to business-to-business sale.

The provisions of this article do not apply to a business-to-business sale.

WV Legislature

§46A-6F-207. Inapplicability of article to person who solicits contracts for the maintenance or repair of goods.

The provisions of this article do not apply to a person who solicits contracts for the maintenance or repair of goods previously purchased from the person making the solicitation or on whose behalf the solicitation is made.

WV Legislature

§46A-6F-208. Inapplicability of article to person soliciting a transaction regulated by the commodity futures trading commission.

The provisions of this article do not apply to a person soliciting a transaction regulated by the federal commodity futures trading commission if the person is registered or temporarily licensed for this activity with the commodity futures trading commission under the Commodity Exchange Act (7 U.S.C. §1 et seq.) and the registration or license has not expired or been suspended or revoked.

WV Legislature

§46A-6F-209. Inapplicability of article to supervised financial organization.

The provisions of this article do not apply to any supervised financial organization or an affiliate or subsidiary thereof or regulated consumer lender subject to regulation by the commissioner of banking or a federal agency charged with regulating such supervised financial organizations or regulated consumer lenders when acting within the scope of the supervised or regulated activity. As used in this section, the terms ?supervised financial organization" and ?regulated consumer lender" shall have the same meanings as ascribed to them in section one hundred two, article one of this chapter.

WV Legislature

§46A-6F-210. Inapplicability of article to licensed insurance broker, agent, customer representative, or solicitor.

The provisions of this article do not apply to any licensed insurance broker, agent, customer representative, or solicitor when soliciting within the scope of his or her license. As used in this section, ?licensed insurance broker, agent, customer representative, or solicitor" means any insurance broker, agent, customer representative, or solicitor licensed by an official or agency of this state pursuant to subsection (a), section one, article twelve, chapter thirty-three of this code, or of any state of the United States.

WV Legislature

§46A-6F-211. Inapplicability of article to person soliciting the sale of services provided by a cable television system.

The provisions of this article do not apply to a person soliciting the sale of services provided by a cable television system operating under authority of a franchise or permit, or to a person soliciting the sale of subscriber television services or advertising.

WV Legislature

§46A-6F-212. Inapplicability of article to certain telephone and communications companies.

The provisions of this article do not apply to any of the following entities to the extent that its acts or practices are subject to the jurisdiction or regulation of the West Virginia Public Service Commission or the federal communications commission:

(1) A telephone company, or any affiliate or agent of a telephone company; or

(2) Any provider of commercial mobile service, as defined by the Communications Act of 1934, as amended by the Telecommunications Act of 1966 (47 U.S.C. §151, et seq.).

WV Legislature

§46A-6F-213. Inapplicability of article to persons maintaining continuing business locations for sales of consumer goods or services.

The provisions of this article do not apply to a person who offers to sell consumer goods or services through telemarketing activities if the person maintains a permanent business location under the same exact name as that used in connection with the telemarketing sales, and both of the following activities occur on a continuing basis:

(1) The identical consumer goods or services offered for sale by the person through telemarketing activities are offered for sale at the person's business location; and

(2) More than fifty percent of all of the consumer goods or services offered for sale by the person are provided to consumers at the person's business location rather than through telemarketing sales.

WV Legislature

§46A-6F-214. Inapplicability of article to issuer of certain securities.

The provisions of this article do not apply to an issuer or a subsidiary of an issuer that has a class of securities which is subject to §12 of the Securities Exchange Act of 1934 (15 U.S.C. §781) and which is either registered or exempt from registration under paragraphs (A), (B), (C), (E), (F), (G), or (H) of subsection (g)(2) of that section.

WV Legislature

§46A-6F-215. Inapplicability of article to book, video, record, or multimedia club.

The provisions of this article do not apply to a book, video, record, or multimedia club or contractual plan or arrangement:

(1) Under which the seller provides the consumer with a form which the consumer may use to instruct the seller not to ship the offered merchandise;

(2) That is regulated by the federal trade commission trade regulation concerning use of negative option plans by sellers in commerce; or

(3) That provides for the sale of books, records, videos, multimedia products or other goods that are not covered under subdivision (1) or (2) of this section, including continuity plans, subscription arrangements, standing order arrangements, single sales of items offered for sale one time, supplements, and series arrangements under which the seller periodically ships merchandise to a consumer who has consented in advance to receive such merchandise on a periodic basis.

WV Legislature

§46A-6F-216. Inapplicability of article to registered developer or a real estate salesperson or broker.

The provisions of this article do not apply to a person who is licensed as a real estate broker, associate broker, or real estate salesperson, in accordance with the provisions of article twelve, chapter forty-seven of this code, when such person is acting within the scope of their license.

WV Legislature

§46A-6F-217. Inapplicability of article to person soliciting the sale of electric or natural gas energy or related goods or services.

The provisions of this article do not apply to a person soliciting on behalf of an entity that sells electric or natural gas energy, or an affiliate of such an entity, if the solicitation is for the sale of electric or natural gas energy or related goods and services, and the transaction is governed and regulated by the Public Service Commission or the federal energy regulatory commission.

WV Legislature

§46A-6F-218. Inapplicability of article to person soliciting the sale of a magazine or newspaper.

The provisions of this article do not apply to a person primarily soliciting the sale of a single magazine subscription or subscription to a newspaper of general circulation or the sale of advertisements therein.

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§46A-6F-219. Inapplicability of article to certain telemarketers based on continuous sales and gross sales for exempt persons.

The provisions of this article do not apply to any telemarketer, in good standing, who has been providing telemarketing sales services continuously for at least two years under the same name and ownership and which derives fifty percent of its gross telemarketing sales revenues from contracts with persons exempted from this part: Provided, That telemarketers under this exemption must register, without bond, with the secretary of tax and revenue to establish eligibility for this exemption.

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§46A-6F-220. Inapplicability of article to the annual sale of less than one hundred dollars for food stuffs and edibles.

The provisions of this article do not apply to a person soliciting the sale of food stuffs and edibles, except vitamins, if the solicitations neither intends to result in, or actually results in a sale or sales which costs the consumer in excess of $100 annually to a single address: Provided, That such sales are not solicited by professional telemarketers.

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PART III. REGISTRATION, SECURITY AND RECORD KEEPING.

§46A-6F-301. Registration of telemarketers.

(a) No person shall act as a telemarketer without first having registered with the secretary of the Department of Tax and Revenue.

(b) The initial application for registration shall be made at least sixty days prior to offering consumer goods or services, or offering for sale consumer goods or services through any medium, and an application for renewal shall be made on an annual basis thereafter. The Department of Tax and Revenue shall charge reasonable application and renewal fees for administration of the registration requirements pursuant to this article. The application and renewal fees shall be established through the promulgation of a legislative rule pursuant to chapter twenty-nine-a of this code. The fees so collected shall be deposited into the State Treasury to the credit of the special revenue fund known as the ?telemarketer registration fund" pursuant to section three hundred four of this article.

(c) The application for a certificate of registration or renewal shall include, but not be limited to, the following information:

(1) The true name, mailing address, telephone number and physical address of the telemarketer, including each name under which the telemarketer intends to engage in telemarketing;

(2) Each occupation or business that the telemarketer's principal owner has engaged in for two years immediately preceding the date of the application;

(3) Whether any principal or manager has been convicted, or pled guilty to, or is being prosecuted by indictment for, racketeering, any violations of state or federal securities laws, a theft offense, or any consumer protection law or telemarketing law;

(4) Whether there has been entered against any principal or manager an injunction, temporary restraining order or a final judgment in any civil or administrative action, involving fraud, theft, racketeering, embezzlement, fraudulent conversion, misappropriation of property, or any consumer protection law or telemarketing law, including any pending litigation against the applicant;

(5) Whether the telemarketer, at any time during the previous seven years, has filed for bankruptcy, been adjudged bankrupt or been reorganized because of insolvency;

(6) The true name, current home address, date of birth, social security number and all other names of the following:

(A) Each person participating in or responsible for the management of the seller's business;

(B) Each person, office manager, or supervisor principally responsible for the management

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of the seller's business.

(7) The name, address and account number of every institution where banking or any other monetary transactions are done by the seller.

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§46A-6F-302. Security requirement.

(a) An application for registration or renewal shall be accompanied by a continuing surety bond executed by a corporation that is licensed to transact the business of fidelity and surety insurance in the State of West Virginia. The bond must be approved by the Department of Tax and Revenue before a certificate of registration is issued in accordance with the provisions of section three hundred one of this article. A separate bond in the amount of $100,000 may be filed for each telemarketing location, including each principal office and each branch office thereof, or a single bond in the amount of $500,000 may be filed for all locations of the telemarketer.

(b) The bond shall provide that the telemarketer will pay all damages to the state or a private person resulting from any unlawful act or action by the telemarketer or its agent in connection with the conduct of telemarketing activities.

(c) The registration of any telemarketer shall be void upon termination of the bond of the surety company, or loss of the bond, unless, prior to such termination, a new bond has been filed with the Department of Tax and Revenue. The surety, for any cause, may cancel the bond upon giving a sixty-day written notice by certified mail to the telemarketer and to the Department of Tax and Revenue. Unless the bond is replaced by that of another surety before the expiration of the sixty-day notice of cancellation, the registration of the telemarketer shall be treated as lapsed.

(d) The surety bond shall remain in effect for three years from the period the telemarketing business ceases to operate in this state.

(e) Any business required under this article to file a bond with a registration application, may file, in lieu thereof, an irrevocable letter of credit, with annual renewals, a certificate of deposit, cash or government bond in the same amount as would be required for the bond. The Department of Tax and Revenue shall deposit any such funds in an interest bearing account. The Department of Tax and Revenue shall hold such letter of credit, cash, certificate of deposit or government bond for three years from the period the telemarketing business ceases to operate or registration lapses, in order to pay claims made against the telemarketing business during its period of operation. At the end of the three-year term all interest accrued, not required for payment of claims, shall be remitted to the telemarketer.

(f) The registration of the telemarketing business will be treated as lapsed if at any time, the amount of the letter of credit, bond, cash, certificate of deposit or government bond falls below the amount required by this section.

(g) Should the license of any surety company to transact business in this state be terminated, all bonds given pursuant to this article upon which such company is surety shall thereupon be suspended, and the Department of Tax and Revenue shall immediately notify each affected licensee of such suspension and require that a new bond be filed. This notice shall be sent by registered or certified mail, return receipt requested, and shall be addressed to

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the telemarketer at his or its principal place of business as shown by the Department of Tax and Revenue records. The failure of any telemarketer to file a bond with new or additional surety within thirty days after being advised in writing by the Department of Tax and Revenue of the necessity to do so shall be cause for the Department of Tax and Revenue to revoke the telemarketer's registration.

(h) An action may be brought in any court of competent jurisdiction upon the bond by any person to whom the licensee fails to account and pay as set forth in such bond. The aggregate liability of the surety company to all persons injured by a telemarketer's violations may not exceed the amount of the bond.

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§46A-6F-303. Failure to register or meet security requirement; remedies.

(a) Any person is subject to a civil administrative penalty, to be levied by the Department of Tax and Revenue, of not more than $5,000 if the person:

(1) Acts as a telemarketer without first registering pursuant to section three hundred one of this article;

(2) Acts as a telemarketer without first meeting the security requirements set forth in section three hundred two of this article;

(3) Acts as a telemarketer after failing to maintain a certificate of registration accompanied by a surety bond as required by sections three hundred one and three hundred two of this article;

(4) Includes any material information on a registration application that is false or misleading; or

(5) Misrepresents that a telemarketer is registered.

In assessing a civil administrative penalty, Department of Tax and Revenue shall take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements, any benefit obtained by the act or omission, and any other appropriate factors as the Department of Tax and Revenue may establish by rules proposed for promulgation by the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) No assessment shall be levied pursuant to subsection (a) of this section until after the alleged violator has been notified by certified mail or personal service. The notice shall include:

(1) A reference to this section, sections three hundred one and three hundred two of this article, and any legislative rule that was allegedly violated;

(2) A concise statement of the facts alleged to constitute the violation;

(3) A statement of the amount of the administrative penalty to be imposed; and

(4) A statement of the alleged violator's right to an informal hearing.

(c) The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the Department of Tax and Revenue a written request for a hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period. If a hearing is requested, the Department of Tax and Revenue shall inform the alleged violator of the time and place of the hearing. The Department of Tax and Revenue may appoint a hearing examiner to conduct the hearing and then make a written

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recommendation to the Department of Tax and Revenue concerning the assessment of a civil administrative penalty. Within thirty days following the hearing, the Department of Tax and Revenue shall issue and furnish to the alleged violator a written decision which explains the rationale for any assessment of an administrative penalty. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied. No assessment levied pursuant to this section becomes due and payable until the procedures for review of such assessment as set out in this subsection have been completed.

(d) The Department of Tax and Revenue may seek an injunction, or may institute a civil action against any person allegedly in violation of the provisions of this section, sections three hundred one and three hundred two of this article. An application for injunctive relief or civil action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought. Upon request of the Department of Tax and Revenue, the division or the prosecuting attorney of the county in which the violation occurs shall assist the Department of Tax and Revenue in any civil action under this section.

(e) Independently of the Department of Tax and Revenue, with respect to any action brought by the division or a private citizen regarding unfair or deceptive acts or practices, or abusive acts or practices under the provisions of this article or under other applicable consumer protection laws set forth in this code, the division or a private citizen may also apply to the court for appropriate relief under this section against a person violating the provisions of sections three hundred one and three hundred two of this article, pending final determination of the proceedings.

(f) Any funds recovered and all registration fees, as provided for in this article, shall be paid into the State Treasury to the credit of a special revenue fund to be known as the ?telemarketer registration fund" which is hereby created. The moneys so credited to the fund shall be used solely for the purposes of administering and enforcing the registration and security requirements of this article.

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§46A-6F-304. Record keeping requirements.

(a) A telemarketer shall keep for a period of four years from the date the record is produced the following records related to its telemarketing activities:

(1) One of each advertisement, brochure and other promotional materials;

(2) The name and last known address of each prize recipient and the prize awarded for prizes that are represented, directly or by implication, to have a value of $25 or more;

(3) The name and last known address of each customer, the goods or services purchased, the date such goods or services were shipped or provided, and the amount paid by the customer for the goods or services;

(4) The name, last known home address and telephone number, and the job title for all current and former employees directly involved in telephone sales;

(5) All verifiable authorizations required to be provided or received under this article; and

(6) A copy of all scripts, outlines or presentation material the seller will require the telemarketer to use when soliciting, as well as all sales information to be provided by the seller to a purchaser in connection with any solicitation.

(b) A seller or telemarketer may keep the records required by subsection (a) of this section in any form, and in any manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by subsection (a) of this section shall be a violation of this article.

(c) The telemarketer is responsible for complying with the above provisions.

(d) In the event of any dissolution or termination of the seller's or telemarketer's business, the principal of that telemarketer shall maintain all records as required under this section. In the event of any sale, assignment or other change in ownership of the seller's business, the successor shall maintain all records required under this section.

(e) (1) The division may require a telemarketer to file true copies of all scripts, outlines and promotional material and any modifications thereto with the division of consumer protection for a time period to be determined by the division. Such filing may be required upon an investigation and finding by the division that:

(A) A telemarketer is using scripts, outlines or presentation material that contain material misrepresentations or that fail to state material facts; or

(B) A telemarketer is deviating from scripts, outlines or presentation material so as to make material misrepresentations or to fail to state material facts.

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(2) The Attorney General shall comply with the requirements of article five, chapter twenty-nine-a of this code for hearings requested pursuant to Part III.

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PART IV. DISCLOSURES AND CONTRACT REQUIREMENTS.

§46A-6F-401. Mandatory disclosures.

(a) A telemarketer shall promptly disclose, in a clear and conspicuous manner, the following material information when making a telemarketing communication with a consumer:

(1) The true identity of the telemarketer;

(2) That the purpose of the call is to sell consumer goods or services; and

(3) The nature of the goods or services offered for sale.

(b) Before a consumer pays for the goods or services offered for sale, the telemarketer shall disclose, in a clear and conspicuous manner, the following material information:

(1) The total costs to purchase, receive or use the consumer goods or services that are the subject of the telemarketing communication;

(2) The quantity of the consumer goods or services that are the subject of the telemarketing solicitation;

(3) All material restrictions, limitations or conditions to purchase, receive, or use the consumer goods or services that are the subject of the telemarketing solicitation;

(4) All material aspects of the performance, quality, efficacy, nature or basic characteristics of the consumer goods or services that are the subject of the telemarketing solicitation;

(5) All material aspects of the nature or terms of the telemarketer's refund, cancellation, exchange or repurchase policies;

(6) All material aspects of a prize promotion, disclosed prior to requesting the consumer to enter into a sale or lease, including, but not limited to, the following:

(A) A description of the prizes, gifts or awards offered or to be given to consumers participating in the prize promotion;

(B) A statement of the true retail value of each prize, gift or award offered or to be given to participating consumers;

(C) A clear identification of the person or entity on whose behalf the contest or promotion is conducted;

(D) A description of all material conditions which a participant must satisfy;

(E) A clear and unequivocal statement that the consumer is not required to make any purchase, lease or rental of consumer goods or services in order to qualify for any prize, gift

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or award or to otherwise participate in the prize promotion;

(F) A clear and unequivocal statement that the consumer is not required to pay any handling or shipping costs or to make any other payment of any kind in order to win or receive a prize, gift or award or to otherwise participate in the prize promotion;

(G) The actual numbers of the prizes, gifts or awards to be awarded;

(H) The odds of receiving a prize, gift or award; and

(I) A clear explanation of the no-purchase/no-payment method of participating in the prize promotion, with instructions on how to participate.

(7) All material aspects of any investment opportunity being offered, including, but not limited to, a description of the following factors:

(A) Risk;

(B) Liquidity;

(C) Earnings potential;

(D) Profitability;

(E) Benefits; and

(F) If applicable, the value, price and location of any real or personal property that the consumer will acquire by investing.

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§46A-6F-402. Accepting returns or canceling services.

(a) Every telemarketer shall, at a minimum, have the following policy:

(1) Accepting returns or canceling services for a period of not less than seven days after the date of delivery to the consumer and providing a cash refund for a cash purchase or issuing a credit for a credit purchase, which credit is applied to the account to which the purchase was debited in connection with the return of its unused and undamaged merchandise or canceled services. For purposes of this subsection, it will be presumed that goods were received seven days after they were mailed unless it can be clearly demonstrated that the goods were not received or received at a later date;

(2) Disclosing the telemarketer's return and refund policy to the buyer, orally by telephone or in writing with advertising, promotional material, or with delivery of the products or service; and

(3) Restoring such payment or issuing such credit, as required under subdivision (1) of this section, within thirty days after the date on which the telemarketer receives returned merchandise or notice of cancellation of services. A seller who discloses, in writing, that a sale is made or provided ?satisfaction guaranteed", with ?free inspection," ?no risk guarantee", or similar words or phrases, shall be deemed to meet the requirements of the review and return for refund policy set forth in this subparagraph.

(b) Failure to comply with the provisions of this section is unfair or deceptive act or practice.

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§46A-6F-501. Unfair or deceptive acts or practices.

It is an unfair or deceptive act or practice and a violation of this article for any seller or telemarketer to engage in the following conduct:

(1) To advertise or represent that registration as a telemarketer equals an endorsement or approval by the state or any governmental agency of the state;

(2) To request or receive payment of any fee or consideration for goods or services represented to remove derogatory information from, or improve, a person's credit history, credit record, or credit rating until:

(A) The time frame in which the telemarketer has represented all of the goods or services will be provided to that person has expired; and

(B) The telemarketer has provided the person with documentation in the form of a consumer report from a consumer reporting agency demonstrating that the promised results have been achieved, such report having been issued more than six months after the results were achieved;

(3) To obtain or submit for payment a check, draft, or other form of negotiable paper drawn on a person's checking, savings, share, or similar account, without that person's express verifiable authorization. Such authorization shall be deemed verifiable if any of the following means are employed:

(A) Express written authorization by the customer, which may include the customer's signature on the negotiable instrument; or

(B) Express oral authorization which is tape recorded and made available upon request to the customer's bank and which evidences clearly both the customer's authorization of payment for the goods and services that are the subject of the sales offer and the customer's receipt of all of the following information:

(i) The date of the draft(s);

(ii) The amount of the draft(s);

(iii) The payor's name;

(iv) The number of draft payments (if more than one);

(v) A telephone number for customer inquiry that is answered during normal business hours; and

(vi) The date of the customer's oral authorization.

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(C) Written confirmation of the transaction, sent to the customer prior to submission for payment of the customer's check, draft, or other form of negotiable paper, that includes:

(i) All of the information contained in subparagraphs (i) through (vi), paragraph (B), subdivision (3) of this section; and

(ii) The procedures by which the customer can obtain a refund from the telemarketer in the event the confirmation is inaccurate;

(4) To procure the services of any professional delivery, courier or other pick-up service to obtain immediate receipt and possession of a consumer's payment unless:

(A) Such service is requested by the consumer;

(B) The consumer is informed that he or she can inspect the goods or services prior to payment and may refuse to accept the goods or services; and

(C) The consumer is actually afforded an opportunity to inspect the goods or services prior to payment;

(5) To engage in any other unfair or deceptive conduct which will create a likelihood of confusion or misunderstanding to any reasonable consumer;

(6) To misrepresent the requirements of this section;

(7) To provide substantial assistance or support to any telemarketer when that person knows or consciously avoids knowing that the telemarketer is engaged in any act or practice that violates this section;

(8) To engage in any "unfair methods of competition and unfair or deceptive acts or practices" as specified in §46A-6-102(f) of this code and made unlawful by the provisions of §46A-6-102 of this code; or

(9) To engage in transmission of misleading or inaccurate caller identification information, including, but not limited to, circumventing caller identification technology that allows the consumer to identify from what phone number or organization the call has originated from, or to otherwise misrepresent the origin and nature of the solicitation: Provided, That the provisions of this subsection do not apply to a communications service provider that delivers a communication originated by another person or entity.

WV Legislature

§46A-6F-502. Causes of action arising out of unfair or deceptive acts or practices; limitation of actions.

(1) If a telemarketer violates the provisions of section five hundred one of this article, the consumer has a cause of action to recover actual damages and, in addition, a right to recover from the violator a penalty in an amount, to be determined by the court, of not less than $100 nor more than $3,000. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(2) If a telemarketer violates the provisions of section five hundred one of this article, any sale or lease of consumer goods or services is void and the consumer is not obligated to pay either the principal or any finance charge. If the consumer has paid any part of the principal or of the finance charge, he or she has a right to recover the payment from the violator or from any assignee of the violator's rights who undertakes direct collection of payments or enforcement of rights arising from the debt.

(3) A consumer is not obligated to pay a charge in excess of that allowed by the sales agreement, and if the consumer has paid an excess charge, he or she has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against the consumer arising from the debt.

(4) If a telemarketer has contracted for or received a charge in excess of that allowed by the sales agreement, the consumer may, in addition to recovering such excess charge, also recover from the telemarketer or the person liable in an action a penalty in an amount determined by the court not less than $100 nor more than $3,000. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(5) A telemarketer has no liability for a penalty under subsection (1) or subsection (4) of this section if, within fifteen days after discovering an error, and prior to the institution of an action under this section or the receipt of written notice of the error, the telemarketer notifies the consumer of the error and corrects the error.

(6) If the telemarketer establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2) and (4) of this section, and the validity of the transaction is not affected.

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§46A-6F-503. Operating a criminal recovery service; penalties.

(a) A person is guilty of operating a criminal recovery service when the person:

(1) Makes a representation that he will recover all or any portion of the consideration that a consumer has paid to a telemarketer in response to a telemarketing solicitation;

(2) Does not intend to make such recovery or has no reasonable expectation to anticipate that recovery will be made; and

(3) Receives any remuneration from the consumer before a recovery of consideration is made.

(b) Any person who violates the provisions of this section is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional center not less than one year nor more than ten years, or fined not more than $5,000 and confined in a state correctional center not less than one year nor more than ten years.

WV Legislature

PART VI. ABUSIVE ACTS OR PRACTICES; PENALTIES.

§46A-6F-601. Abusive acts or practices.

(a) It is an abusive telemarketing act or practice and a violation of this article for any telemarketer to engage in the following conduct:

(1) Threaten, intimidate or use profane or obscene language;

(2) Engage any person repeatedly or continuously with behavior a reasonable person would deem to be annoying, abusive or harassing;

(3) Initiate an outbound telephone call to a person when that person previously has stated that he or she does not wish to receive an outbound telephone call made by or on behalf of the telemarketer whose goods or services are being offered;

(4) Engage in telemarketing to a person's residence at any time other than between eight a.m. and nine p.m. local time, Monday through Sunday, at the called person's location; or

(5) Engage in any other conduct which would be considered abusive to any reasonable consumer.

(b) A telemarketer will not be liable for violating subdivision (3), subsection (a) of this section if:

(1) It has established and implemented written procedures to avoid outbound telephone calls to persons who have previously stated that they do not wish to receive such calls;

(2) It has trained its personnel in the procedures established pursuant to subdivision (1) of this subsection;

(3) The telemarketer has maintained and recorded lists of persons who have previously stated that they do not wish to receive such calls; and

(4) Any subsequent call is the result of error.

WV Legislature

PART VII. REMEDIES.

§46A-6F-701. Civil remedies.

(a) If a telemarketer violates the provisions of section six hundred one of this article, the consumer has a cause of action to recover actual damages and, in addition, a right to recover from the violator a penalty in an amount, to be determined by the court, of not less than$100 nor more than $3,000. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(b) If a telemarketer violates the provisions of section six hundred one of this article, any sale or lease of consumer goods or services is void and the consumer is not obligated to pay either the principal or any finance charge. If the consumer has paid any part of the principal or of the finance charge, he or she has a right to recover the payment from the violator or from any assignee of the violator's rights who undertakes direct collection of payments or enforcement of rights arising from the debt.

(c) Any consumer that suffers harm as a result of any abusive act or practice shall receive injunctive or declaratory relief.

(d) The state, on behalf of its residents who have suffered a loss or harm as a result of a violation of this article, may seek injunctive or declaratory relief, actual damages, consumer restitution, civil penalties, forfeiture of bond, attachment of property, costs, attorney's fees and any other remedies available to the division under the provisions of this chapter or otherwise provided by law.

(e) In any action brought under this article where damages are awarded to a consumer, the court may adjust the damages to account for inflation from July 1, 1998, to the time of the award of damages, in an amount determined by the application of data from the consumer price index. Consumer price index means the last consumer price index for all consumers published by the United States department of labor.

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§46A-6F-702. Remedies not exclusive.

Nothing contained in this article shall be construed to adversely alter or affect a right or benefit accruing to a consumer or the state in accordance with other provisions of this chapter, or to limit any civil or criminal remedy otherwise provided for by law. In the case of provisions contained in this article that exempt a person from the requirements of this article or that otherwise limit the applicability of this article to a person, those provisions are exclusive to this article and shall not be construed to otherwise exempt a person or to limit the applicability of any other provisions of this code.

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§46A-6F-703. Service of process on certain nonresidents.

Any nonresident person, except a nonresident corporation authorized to do business in this state pursuant to the provisions of chapter thirty-one of this code, who directs telemarketing solicitations to persons residing in this state, shall be conclusively presumed to have appointed the Department of Tax and Revenue as his attorney-in-fact with authority to accept service of notice and process in any action or proceeding brought against him arising out of such consumer credit sale, consumer lease or consumer loan. A person shall be considered a nonresident hereunder if he is a nonresident at the time such service of notice and process is sought. No act of such person appointing the Department of Tax and Revenue shall be necessary. Immediately after being served with or accepting any such process or notice, of which process or notice two copies for each defendant shall be furnished the Department of Tax and Revenue with the original notice or process, together with the fee required by section two, article one, chapter fifty-nine of this code, the Department of Tax and Revenue shall file in his office a copy of such process or notice, with a note thereon endorsed of the time of service or acceptance, as the case may be, and transmit one copy of such process or notice by registered or certified mail, return receipt requested, to such person at his address, which address shall be stated in such process or notice: Provided, That such return receipt shall be signed by such person or an agent or employee of such person if a corporation, or the registered or certified mail so sent by said Department of Tax and Revenue is refused by the addressee and the registered or certified mail is returned to said Department of Tax and Revenue, or to his office, showing thereon the stamp of the U.S. postal service that delivery thereof has been refused, and such return receipt or registered or certified mail is appended to the original process or notice and filed therewith in the clerk's office of the court from which such process or notice was issued. But no process or notice shall be served on the Department of Tax and Revenue or accepted fewer than ten days before the return date thereof. The court may order such continuances as may be reasonable to afford each defendant opportunity to defend the action or proceeding.

The provisions for service of process or notice herein are cumulative and nothing herein contained shall be construed as a bar to the plaintiff in any action from having process or notice in such action served in any other mode and manner provided by law.

WVLegislature

§46A-6G-1. Definitions.

As used in this article:

(1) "Bulk electronic mail message" means an electronic mail message sent in bulk to users of an interactive computer service who have not requested or solicited the message. Unauthorized for purposes of a bulk electronic mail message, means a bulk electronic mail message sent in quantity in contravention of the authorization granted by or in violation of the policies or contractual rights of the electronic mail service provider.

(2) "Electronic mail address" means a destination, commonly expressed as a string of characters, to which electronic mail may be sent or delivered.

(3) "Initiate the transmission" means the action by the original sender of an electronic mail message, not the action by any intervening interactive computer service that may handle or retransmit the message.

(4) "Interactive computer service" means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet.

(5) "Internet domain name" means a globally unique, hierarchical reference to an Internet host or service, assigned through centralized Internet naming authorities, comprising a series of character strings separated by periods, with the right-most string specifying the top of the hierarchy.

(6) "Person" means any individual, corporation, partnership, association, limited liability company or any other form or business association.

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§46A-6G-2. Limitations on unauthorized electronic mail.

No person may initiate the transmission of an unauthorized electronic mail message with the intent to deceive and defraud, or a bulk electronic mail message from a computer located in the State of West Virginia or to an electronic mail address that the sender knows, or has reason to know, is held by a West Virginia resident that:

(1) Uses a third party's Internet domain name without the permission of the third party, or otherwise misrepresents any information in identifying the point of origin or the transmission path of a commercial electronic mail message;

(2) Contains false or misleading information in the subject line;

(3) Does not clearly provide the date and time the message is sent, the identity of the person sending the message, and the return electronic mail address of that person; or

(4) Contains "sexually explicit materials" which are defined as a visual depiction, in actual or simulated form, or an explicit description in a predominately sexual context, nudity, human genitalia, or any act of natural or unnatural sexual intercourse.

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§46A-6G-3. Interactive computer service authority; liability.

(1) An interactive computer service may block the receipt or transmission through its service of any bulk electronic mail that it reasonably believes is, or will be, sent in violation of this article.

(2) An interactive computer service may disconnect or terminate the service of any person that is in violation of this article.

(3) No interactive computer service may be held liable for any action voluntarily taken in good faith to block the receipt or transmission through its service of any bulk electronic mail which it reasonably believes is, or will be, sent in violation of this article; nor will any interactive computer service be held liable for any action voluntarily taken in good faith to disconnect or terminate the service of any person that is in violation of this article.

(4) No interactive computer service or public utility will be liable for merely transmitting a bulk electronic mail message on its network.

WV Legislature

§46A-6G-4. Sale or possession of enabling software prohibited.

No person may sell, give or otherwise distribute or possess with the intent to sell, give or distribute software that:

(1) Is primarily designed or produced for the purpose of facilitating or enabling the falsification of electronic mail transmission information or other routing information;

(2) Has only a limited commercially significant purpose or use other than to facilitate or enable the falsification of electronic mail transmission information or other routing information; or

(3) That is marketed by that person or another acting in concert with that person with that person's knowledge for use in facilitating or enabling the falsification of electronic mail transmission information or other routing information.

WV Legislature

§46A-6G-5. Violations; right of action for injunction, damages.

(a) No person or organization may initiate an unauthorized bulk electronic mail message in violation of this article.

(b) A recipient of an unauthorized bulk electronic mail message in violation of this article may bring an action to recover actual damages for any injury sustained by the receipt of an unauthorized bulk electronic mail message. In lieu of actual damages, a minimum damage assessment of $1,000 may be recovered for violations of this article. Punitive damages may be awarded for the willful failure to cease initiating unauthorized bulk electronic mail messages. Court costs and reasonable attorney fees may be awarded for violations of this article.

(c) A recipient of an unauthorized bulk electronic mail message initiated in violation of this article may bring an action to enjoin the initiator from sending any further unauthorized bulk electronic mail messages. Any court costs or other costs incident to such action including reasonable attorney fees may be awarded.

(d) Initiating an unauthorized bulk electronic mail message to any computer or computer network located in this state shall constitute an act in the state for the purposes of section thirty-three, article three, chapter fifty-six of this code.

(e) Any interactive computer service provider or public utility whose property or person is injured by any violation of this article may bring an action to recover for any damages sustained, including, but not limited to, loss of profits. In addition, court costs and attorney fees may be recovered. The service provider may elect, in lieu of actual damages, to recover $10 for each and every unauthorized bulk electronic mail message transmitted in violation of this article, or $25,000 per day, whichever is greater.

(f) The provisions of this section shall not be construed to limit any person's right to pursue any additional civil remedy otherwise allowed by law.

WV Legislature

§46A-6H-1. Definitions.

For the purposes of this article:

(1) "Closing date" means the date the transfer agreement is executed by the consumer and the transferee, and shall be at least fourteen days after the requisite disclosures have been provided to the consumer and interested parties.

(2) "Consumer" means any person entitled to receive periodic future payments from an annuity issuer, settlement obligor or any other party as the result of an annuity, settlement, lottery winnings, sweepstakes payoff or other future payment arrangement.

(3) "Discounted present value" means the fair present value of future payments, as determined by discounting such payments to the present using the most recently published applicable federal rate for determining the present value of an annuity, as issued by the United States Internal Revenue Service.

(4) "Favorable tax determination" means, with respect to a proposed transfer of structured settlement payment rights, any of the following authorities that are applicable to the parties to such transfer and on the parties to the structured settlement agreement and any qualified assignment agreement and establish that the federal income tax treatment of the structured settlement for the parties to the structured settlement agreement and any qualified assignment agreement, other than the consumer, will not be adversely affected by such transfer:

(i) A United States Treasury regulation;

(ii) A published ruling by the United States Internal Revenue Service;

(iii) A private letter ruling by the United States Internal Revenue Service with respect to such transfer; or

(iv) Other applicable legal authority that is binding on the United States Internal Revenue Service.

(5) "Interested party" means an insurance company, an annuity issuer, a structured settlement obligor, a lottery, a beneficiary irrevocably designated in an agreement to receive future payments following the consumer's death or other entity obligated to pay to a consumer any future payments or any other party that has continuing rights or obligations under the structured settlement agreement.

(6) "Qualified assignment agreement" means an agreement providing for a qualified assignment within the meaning of section 130 of the United States Internal Revenue Code, United States Code Title 26, as amended from time to time.

(7) "Structured settlement" means an arrangement whereby a settlement obligor, an annuity

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issuer or other person agrees to make future payments to a consumer in resolution of a personal injury or other claim.

(8) "Structured settlement payment rights" means the right to receive periodic payments, including lump sum payments, under a structured settlement from a settlement obligor, annuity issuer, or other person.

(9) "Transfer" means any sale, assignment or other conveyance of future payment rights by a consumer to a transferee for consideration.

(10) "Transfer agreement" means an agreement providing for the transfer of future payment rights from a consumer to a transferee.

(11) "Transferee" means any person or entity that becomes entitled to receive a consumer's future payments as a result of a transfer agreement and includes companies in the business of purchasing future payments.

WV Legislature

§46A-6H-2. Disclosure requirements prior to transfer.

(a) In order for any transfer by a consumer to a transferee to be effective, the transferee shall provide the following disclosures in writing, in bold, twelve point type, to the consumer at least fourteen days prior to the earlier of the closing date or the hearing on the transfer when court approval is required by the provisions of this article:

(1) The amount of each future payment to be transferred by the consumer and the date such payments were due to the consumer;

(2) The aggregate amount of the future payments to be transferred by the consumer;

(3) The discounted present value of the future payments to be transferred by the consumer and the discount rate used in the calculation, as determined by discounting the payments to the present using the most recently published applicable federal rate for determining the present value of an annuity as issued by the United States Internal Revenue Service;

(4) The discount rate used in subdivision (3) of this section stated in terms of an annual percentage rate;

(5) The lump sum payable to the consumer in exchange for transferring the future payments;

(6) A good faith estimate of all commissions, fees, rebates, service charges, application fees, processing fees, closing costs, filing fees, administrative charges and other commissions, fees, costs, expenses and charges to be paid by the consumer or deducted from the lump sum in connection with the transfer;

(7) The net amount payable to the consumer after the deduction of all commissions, fees, costs, expenses and charges described in subdivision (6) of this section; and

(8) A statement that there may be adverse tax consequences affecting the consumer as a result of the transfer and that the consumer is advised to seek the advice of an attorney or accountant.

(b) The transferee shall also provide written notice to all interested parties at least fourteen days prior to the earlier of the closing date of the transfer or the hearing when court approval is required including:

(1) The closing date of the transfer, or the date, time and place of the hearing;

(2) A copy of the disclosure statement required by subsection (a) of this section; and

(3) The name, address and taxpayer identification number of the transferee.

(c) If the transfer requires court approval pursuant to section three of this article, then the transferee shall also provide the disclosure statement required by subsection (a) of this

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section to the court and the guardian ad litem, if one is named by the court.

WV Legislature

§46A-6H-3. Requirement of court approval for certain structured settlement transfers.

(a) In addition to the requirements of this article, all transfer agreements must be approved by the circuit court of the county wherein the consumer resides or where the structured settlement agreement was executed when the structured settlement payment rights arise from a personal injury or other claim.

(b) The transferee shall commence the action by filing a petition with the court seeking approval of the transfer and providing to the court the disclosure statement required by subsection (a), section two of this article.

(c) The circuit court shall set a time and date for a hearing on the matter within twenty-one days of the date of the filing of the petition. The transferee shall notify the consumer and all interested parties of the date and time of the hearing and provide them with a copy of the petition.

(d) The court may appoint a guardian ad litem for the consumer in all cases, and shall appoint a guardian at litem for the consumer in any case where the structured settlement payment rights belong to an infant, an incompetent person or a ward of the court. The guardian ad litem shall review the requisite disclosures and make an independent inquiry to determine whether the proposed transfer is fair, reasonable and in the best interests of the consumer and any dependents of the consumer as well and determine if transfer has been attempted or accomplished before. The information shall be reported to the court during the hearing on the matter.

(e) An interested party has the right to appear and contest the proposed transfer at the time of the hearing. If, after proper notice, the interested party does not make an appearance, then the interested party shall be bound by the court's ruling.

(f) After a hearing or upon its own motion, the court may approve the transfer if the court finds that:

(1) The consumer has clearly demonstrated that: (A) He or she, or his or her family is facing a financial hardship that the transfer would alleviate and that the transfer would not subject the consumer or the consumer's family to undue financial hardship in the future; or (B) the transfer is in the best interest of the consumer: Provided, That the judge shall inquire of the guardian ad litem and the transferee as to possible adverse tax consequence to the consumer and inform the consumer of the result of said inquiry;

(2) The transferee is in compliance with the provisions of section two of this article; and

(3) The transfer agreement does not contravene the terms of the structured settlement agreement, including any restrictions on the right of the consumer to transfer his or her structured settlement payment rights, unless the annuity issuer and structured settlement

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obligor have consented to the transfer. However, the approval of the annuity issuer and the structured settlement obligor shall not be required if, at the time the consumer and the transferee entered into the transfer agreement, a favorable tax determination was in effect.

(g) The court shall award the guardian ad litem reasonable fees for representing the consumer. Attorneys' fees and costs shall be paid by the transferee.

(h) A consumer may request court approval for a transfer that does not mandate court approval under this section. Such voluntary petition by the consumer shall then become subject to the provisions of this section. The transferee shall be responsible for filing the action pursuant to subsection (b) of this section and shall be responsible for attorney's fees or guardian ad litem fees.

WV Legislature

§46A-6H-4. Prohibiting transfer agreements of workers' compensation claims and other transfer agreements that contravene law.

Any agreement to transfer future payments arising under a workers' compensation claim is prohibited as is any other agreement to transfer future payments that would contravene existing law.

WV Legislature

§46A-6H-5. Right of recision.

(a) Any consumer who enters into a transfer agreement shall have an absolute, nonwaiveable right of recision for five business days following the closing date of the transfer. During the five-day recision period, the consumer may rescind the transfer agreement by phone, mail or facsimile, effective upon receipt, without penalty or further obligation to the transferee, except that any amounts advanced by the transferee to the consumer in contemplation of the transfer shall be immediately refunded to the transferee.

(b) When a transfer requires court approval, the consumer may rescind without penalty until the court order is entered appointing a guardian ad litem. When the consumer dismisses the action after the appointment of a guardian ad litem or rescinds the transfer agreement within five business days of court approval of the transfer, the consumer shall be responsible for the filing fee and any guardian ad litem fees.

(c) Notice of the right of recision shall be provided to the consumer in writing by the transferee prior to the time of closing.

WV Legislature

§46A-6H-6. Remedies; effective date; nonwaiver.

(a) This article shall apply to transfer agreements of future payment rights executed after the effective date of this article. Nothing in this article shall be construed to impair, limit, affect or otherwise apply to any transfer agreement executed prior to the effective date of this article.

(b) A violation of a provision of this article by the transferee is an unfair or deceptive act or practice in the conduct of commerce pursuant to the provisions of article six, section one hundred four of this chapter. The remedy provided for in this section is in addition to other remedies provided for by law.

(c) The provisions of this article may not be waived.

WV Legislature

§46A-6H-7. Protection from liability to consumer.

When an interested party makes payments to the transferee pursuant to a court order of approval or a transfer agreement executed in accordance with the provisions of this article, the interested party and the transferee are not liable to the consumer or other interested party for the transfer of the consumer's future payments.

WV Legislature

§46A-6H-8. Registration with the Secretary of State.

(a) A transferee or other person in the business of soliciting or purchasing future payments shall file a registration statement with the Secretary of State before advertising or arranging transfers of consumer's future payment rights in this state. The registration statement shall contain:

(1) The name and address of the transferee;

(2) The name and address of the transferee's agent for service of process within the state, or if the company does not have one within the state, a statement that the Secretary of State will serve as the agent for service of process; and

(3) A full and complete disclosure of any prior or pending litigation involving alleged violations of this article's provisions or consumer complaints filed with the Attorney General's office of this state that allege violations of this article's provisions, or a notarized statement that there has been no such litigation or unresolved complaint relating to the operations of the transferee.

(b) The transferee shall update the statement within thirty days after a change of information occurs.

(c) Each transferee registering pursuant to the provisions of this section shall maintain a copy of the registration statement. The transferee shall allow a consumer, interested party or court to inspect the registration statement on request.

(d) The Secretary of State may charge each transferee that files a registration statement with the Secretary of State a reasonable fee not to exceed $100 to cover the cost of filing.

WV Legislature

§46A-6I-1. Definitions.

(a) For purposes of this article, the terms herein have the meaning ascribed in section two, article one, chapter thirty-nine-a of this code.

(b) "Consumer transaction" means a transaction involving an individual with respect to or primarily affecting personal, family, household or agricultural purposes.

WV Legislature

§46A-6I-2. Electronic response to electronic notices.

In a consumer transaction, when a consumer is required to provide notice to exercise or preserve the consumer's rights under any law, the consumer may exercise or preserve that right using the same method by which the consumer was provided with notice of that right.

WV Legislature

§46A-6I-3. Receipt of electronic record.

Notwithstanding the provisions of article one, chapter thirty-nine-a of this code, in a consumer transaction, an electronic record is not sent to or received by a party if the sender has actual knowledge that such party did not actually receive the electronic record. In that case, the sender's sole obligation shall be to take reasonable steps to attempt redelivery using information in the sender's files. This redelivery requirement is satisfied if the sender sends the electronic record to a different electronic mail address or to a postal address the sender has on file.

WV Legislature

§46A-6I-4. Electronic transferable records.

(a) In addition to the provisions of article one, chapter thirty-nine-a of this code, this section applies to transferable records in a consumer transaction.

(b) If payment is made to a person indicated to be in control of a transferable record, as described in section sixteen, article one of this chapter, by a system employed for evidencing the transfer of interest in the transferable records, then the obligor is discharged to the extent of the payment as permitted by article three, chapter forty-six of this code.

WV Legislature

§46A-6I-5. Relationship with federal and state law.

The requirements of this article are intended to supplement, not to modify, limit, or supersede, the requirements of the federal Electronic Signatures in Global and National Commerce Act, Public Law No. 106-229, 15 U.S.C. 7001 or article one of this chapter.

WV Legislature

§46A-6I-6. Waiver.

In consumer transactions, the rules and requirements set out in this article may not be changed by agreement of the parties.

WV Legislature

§46A-6I-7. Severability.

If any provision of this article be found by a court of competent jurisdiction to be unenforceable under the Constitution of this state or the laws and Constitutions of the United States, the remaining provisions of this article shall be severable and shall continue in full force and effect.

WV Legislature

§46A-6J-1. Emergencies and natural disasters - Taking unfair advantage of consumers.

The Legislature finds that during emergencies and major disasters, including, but not limited to, tornadoes, earthquakes, fires, floods, storms or civil disturbances or where a large-scale threat exists, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods or services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or state of preparedness results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this article to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency or state of preparedness for goods and services that are vital and necessary for the health, safety and welfare of consumers. Further, it is the intent of the Legislature that this article be liberally construed so that its beneficial purposes may be served.

WV Legislature

§46A-6J-2. Definitions.

(a) “Building materials” means lumber, construction tools, windows, and any other item used in the building or rebuilding of property.

(b) “Consumer food item” means any article that is used or intended for use for food or drink by a person or animal.

(c) “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, loss of life, or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill, or other water or soil contamination, epidemic, air contamination, blight, drought, infestation, or other public calamity requiring emergency action.

(d) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, generators, heaters, and temporary shelters.

(e) “Essential consumer item” means any article that is necessary to the health, safety, and welfare of consumers, including, but not limited to, clothing, diapers, soap, cleaning supplies, and toiletries.

(f) “Gasoline” means any fuel used to power any motor vehicle or power tool.

(g) “Housing” means any rental housing leased on a month-to-month term or the sale of manufactured homes, as that term is defined in §21-9-2 of this code.

(h) “Large-scale threat” means circumstances which present a reasonable probability that necessary services or public order would be disrupted, and effect a significant number of people from either natural or man-made causes.

(i) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(j) “Repair or reconstruction services” means any services performed by any person for repairs to residential, commercial, or public property of any type that is damaged as a result of a disaster.

(k) “State of emergency” means the situation existing during or after the occurrence of a disaster or large-scale threat in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

(l) “State of preparedness” means the situation existing before a disaster or large-scale threat in which a state of preparedness has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

(m) “Transportation, freight, and storage services” means any service that is performed by

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any company that contracts to move, store, or transport personal or business property, or rents equipment or storage space for those purposes.

WV Legislature

§46A-6J-3. Prohibited unfair pricing practices.

(a) Upon the declaration of a state of emergency or state of preparedness, and continuing for the existence of the state of emergency or state of preparedness, or for 30 days following the declaration, whichever period is longer, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell to any person in the area subject to the declaration any consumer food items, essential consumer items, goods used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline or other motor fuels, for a price greater than 10 percent above the price charged by that person for those goods or services on the 10th day immediately preceding the declaration of emergency state of preparedness, unless the increase in price is directly attributable to additional costs imposed on the seller by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided,* That in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency or state of preparedness, the price is no greater than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business on the 10th day immediately preceding the declaration: *Provided, however,* That where a supplier of gasoline or other motor fuels cannot determine its daily costs, the supplier may sell gasoline or other motor fuels to distributers on any day at a rate not to exceed the average of the Oil Price Information Service's average wholesale rack price for that product at the Montvale/Roanoke, Virginia, Fairfax, Virginia, and Pittsburgh, Pennsylvania, wholesale racks for the previous day.

(b) Upon the declaration of a state of emergency or state of preparedness, and for a period of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup in the area subject to the declaration for a price greater than 10 percent above the price charged by that person for those services on the 10th day immediately preceding the declaration, unless the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided,* That in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service, the price is no greater than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business on the 10th day immediately preceding to the declaration of the state of emergency or state of preparedness.

(c) Any business offering an item for sale at a reduced price 10 days immediately prior to the declaration of the state of emergency or state of preparedness may use the price at which it usually sells the item to calculate the price pursuant to subsection (a) or (b) of this section.

(d) Whenever the Governor declares a state of preparedness, the provisions of this article only apply to those items or services specifically set forth in the proclamation.

(e) On the 15th day after the declaration of a state of emergency, and each 15th day thereafter for so long as the state of emergency persists, the Governor shall review the scope of goods to which this article applies and may issue a proclamation maintaining, limiting, terminating, or extending the price restrictions imposed by this article with respect to any categories of goods.

WV Legislature

§46A-6J-4. Notification by the Secretary of State; registry.

The Secretary of State shall promulgate rules to establish a system by which any person, corporation, trade association or partnership may register to receive notification that a state of emergency or state of preparedness has been declared and that the provisions of this article are in effect. The rules promulgated pursuant to the authority conferred by this section may include a requirement of the payment of fees for registration.

WV Legislature

§46A-6J-5. Penalties, remedies and enforcement.

(a) A violation of this article is an unfair or deceptive act or practice within the meaning of section one hundred two, article six of this chapter and is subject to the enforcement provisions and remedies provided by this chapter.

(b) Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in the county or regional jail not more than one year, or both.

(c) The remedies and penalties provided by this article are cumulative, and do not prohibit any other remedy or punishment available under the laws of this state.

WV Legislature

§46A-6J-6. Preemption.

This article preempts any local ordinance prohibiting the same or similar conduct.

WV Legislature

§46A-6K-1. Applicability.

This article applies to the settlement of loans secured by deeds of trust on owner-occupied residential dwellings with accommodations for not more than four families. This article does not apply to construction loans or any other loans which, by agreement of the parties, provide for the disbursement of the proceeds in stages.

WV Legislature

§46A-6K-2. Definitions.

(a) "Collected funds" or "good funds" means moneys used to fund the disbursement of settlement proceeds deposited and irrevocably credited to a settlement agent's account.

(b) "Disbursement of loan funds" means the delivery of the loan funds by the lender to the settlement agent in the form of:

(1) Cash;

(2) Wired funds;

(3) Certified check;

(4) Checks issued by the United States treasury, the State of West Virginia or an instrumentality of the United States or state of West Virginia;

(5) Cashier's check or teller's check or other similar draft or obligation of a federally insured bank, savings bank, savings and loan association or credit union or of any holding company or wholly owned subsidiary of the foregoing;

(6) Checks issued by a licensed lender qualified to do business in West Virginia which has posted the surety bond required by subsection (b), section four, article seventeen, chapter thirty-one of this code;

(7) Checks issued by an insurance company licensed and regulated by the West Virginia Insurance Commission, which checks are drawn on a federally insured financial institution;

(8) Checks drawn on the escrow account of an attorney licensed to practice law in West Virginia or on the escrow account of a real estate broker licensed in West Virginia; or

(9) Personal check or checks in an aggregate amount not exceeding $5,000 per loan closing.

(c) "Disbursement of settlement proceeds" means the payment of all proceeds of the transaction by the settlement agent to the persons entitled thereto.

(d) "Lender" means any person regularly engaged in making loans secured by deeds of trust to secure debt on West Virginia real estate. A person is considered to be regularly engaged in making loans if he or she makes more than five such loans in any one calendar year.

(e) "Loan closing" means that time agreed upon by the borrower, lender, seller, if applicable, and settlement agent when the execution by the borrower and delivery of the loan documents to the settlement agent occur.

(f) "Loan documents" means the note evidencing the debt due the lender, the deed of trust, or mortgage securing the debt due to the lender, and any other documents required by the

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lender to be executed by the borrower as a part of the transaction.

(g) "Loan funds" means the gross or net proceeds of the loan to be disbursed by or on behalf of the lender at loan closing.

(h) "Parties", as used in this subsection, means the seller, purchaser, borrower, lender and the settlement agent, as applicable.

(i) "Settlement" means the time when the settlement agent has received the duly executed deed, loan funds, loan documents and other documents and funds required to carry out the terms of the contract between the parties.

(j) "Settlement agent" means the person authorized by law to be responsible for conducting the settlement and disbursement of the settlement proceeds.

WV Legislature

§46A-6K-3. Duty of lender; accrual of interest.

The lender shall, at or before loan closing, cause disbursement of loan funds to the settlement agent; however, in the case of a refinancing, or any other loan where a right of rescission applies, the lender shall, within one business day after the expiration of the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.), cause disbursement of loan funds to the settlement agent, unless the loan is rescinded by the customer. All funds disbursed by the lender to the settlement agent must be collected funds. The lender may charge and receive interest on the loan during the rescission period required under the federal Truth-in-Lending Act (15 U. S. C. §1601 et seq.): Provided, That the lender may not receive any interest if the loan is rescinded by the customer: Provided, however, That the lender may not charge or receive interest on the loan during the rescission period, if the loan is for the purpose of paying a prior loan made by the same lender in full.

WV Legislature

§46A-6K-4. Validity of loan documents.

Failure to comply with the provisions of this article does not affect the validity or enforceability of any loan documents executed.

WV Legislature

§46A-6K-5. Penalty.

Any persons suffering losses due to the failure of the lender or the settlement agent to disburse settlement proceeds as required by this chapter shall be entitled to recover, in addition to other actual damages, double the amount of any interest collected in violation of section three of this article plus reasonable attorneys' fees incurred in the collection thereof.

WV Legislature

§46A-6L-101. Definitions.

For the purposes of this article, the following terms have the following meanings:

(1) “Person” means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency or other entity.

(2) “Consumer” means an individual.

(3) “Consumer-reporting agency” means any entity which, for monetary fees, dues or on a cooperative nonprofit basis, regularly engages, in whole or in part, in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing credit reports to third parties.

(4) “Credit report” means any written, oral or other communication of any information by a consumer-reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics or mode of living which is used or expected to be used or collected, in whole or in part, for the purpose of serving as a factor in establishing the consumer's eligibility for:

(A) Credit or insurance to be used primarily for a personal, family, household or agricultural purpose, except that nothing in this article authorizes or prohibits the use of credit evaluations, credit scoring or insurance scoring in the underwriting of personal lines of property or casualty insurance;

(B) Employment purposes; or

(C) Any other purpose authorized under Section 15 U.S.C. §1681b as in effect on the effective date of this article.

(5) “Security freeze” means a notice, at the request of the consumer and subject to certain exceptions, that prohibits the consumer-reporting agency from releasing all or any part of the consumer's credit report or any information derived from it without the express authorization of the consumer.

(6) “Reviewing the account” or “account review” includes activities related to account maintenance, monitoring, credit line increases and account upgrades and enhancements.

WV Legislature

§46A-6L-102. Security freeze; timing; effect; covered entities; cost.

(a) A consumer-reporting agency shall permit a consumer to place a security freeze on his or her credit report by the consumer selecting either of the following:

(1) A request in writing by certified or overnight mail to a consumer-reporting agency; or

(2) Making a request directly to the consumer-reporting agency through a secure electronic method, if available: *Provided*, That by January 31, 2009, a secure electronic method shall be made available to the consumer by the consumer-reporting agency.

(b) A consumer-reporting agency shall place a security freeze on a credit report no later than five business days after receiving a written request from the consumer. If a security freeze is in place, a report or information may not be distributed to a third party without prior express authorization from the consumer. This subdivision does not prevent a consumer-reporting agency from advising a third party that a security freeze is in effect with respect to the consumer's credit report. A consumer-reporting agency may, regardless of the existence of a security freeze, distribute information contained in a consumer file to the extent otherwise permitted by law if the information was lawfully obtained by or for a consumer-reporting agency from an open public record, without respect to the existence of a security freeze. Nothing herein prevents a consumer-reporting agency from choosing to apply the security freeze to the entire contents of the credit reporting file that is subject to the security freeze.

(c) The consumer-reporting agency shall send a written confirmation of the security freeze to the consumer within five business days of placing the freeze and at the same time shall provide the consumer with a unique personal identification number or password to be used by the consumer when providing authorization for the distribution of his or her credit information.

(d) If the consumer wishes to allow his or her credit report to be accessed for a period of time while a freeze is in place, he or she shall contact the consumer-reporting agency by regular mail or a procedure developed under subsection (f) of this section and request that the freeze be temporarily lifted, providing all of the following:

(1) Proper identification;

(2) The unique personal identification number or password provided by the consumer-reporting agency pursuant to subsection (c) of this section; and

(3) The time period for which the credit report shall be available to users of the credit report.

(e) A consumer-reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report pursuant to subsection (d) of this section shall comply with the request no later than three business days after receiving the request.

WV Legislature

(f) A consumer-reporting agency shall develop procedures involving the use of telephone, fax, the Internet or other electronic media to receive and process a request from a consumer pursuant to subsection (d) of this section to temporarily lift a freeze on a credit report in an expedited manner.

(g) (1) Beginning on September 1, 2008, a consumer-reporting agency shall temporarily lift a security freeze from a consumer's credit report within fifteen minutes after the consumer's request is received pursuant to subsection (f) of this section by the consumer-reporting agency.

(2) A consumer-reporting agency does not have to remove a security freeze within the time provided in this subsection if:

(A) The consumer fails to meet the requirements of subsection (d) of this section; or

(B) The consumer-reporting agency's ability to remove the security freeze within fifteen minutes is prevented by:

(i) An act of God, including fire, earthquakes, hurricanes, storms or similar natural disasters or phenomena;

(ii) Unauthorized or illegal acts by a third party, including terrorism, sabotage, riot, vandalism, labor strikes or disputes disrupting operations or similar occurrence;

(iii) Operational interruption, including electrical failure, unanticipated delay in equipment or replacement part delivery, computer hardware or software failures inhibiting response time or similar disruption;

(iv) Governmental action, including emergency orders or regulations, judicial or law-enforcement action or similar directives;

(v) Regularly scheduled maintenance, during other than normal business hours, of, or updates to, the consumer-reporting agency's systems; or

(vi) Commercially reasonable maintenance of, or repair to, the consumer-reporting agency's systems that is unexpected or unscheduled.

(h) A consumer-reporting agency shall remove or temporarily lift a freeze placed on a credit report only upon the request of the consumer, pursuant to subsection (d) or (j) of this section.

(i) If a third party requests access to a credit report on which a security freeze is in effect, and this request is in connection with an application for credit or any other use, and the consumer has not allowed his or her credit report to be accessed for a period of time, the third party may treat the application as incomplete.

WV Legislature

(j) A security freeze shall remain in place until the consumer requests that the security freeze be removed. A consumer-reporting agency shall remove a security freeze within three business days of receiving a request for removal from the consumer who provides the following:

(1) Proper identification; and

(2) The unique personal identification number or password provided by the consumer-reporting agency pursuant to subsection (c) of this section.

(k) A consumer-reporting agency shall require proper identification of the person making a request to place or remove a security freeze.

(l) The provisions of this section do not apply to the distribution of a consumer credit report to any of the following:

(1) A person or the person's subsidiary, affiliate, agent or assignee with whom the consumer has or, prior to assignment, had an account, contract or debtor-creditor relationship for the purposes of reviewing the account or collecting the financial obligation owing for the account, contract or debt;

(2) A subsidiary, affiliate, agent, assignee or prospective assignee of a person to whom access has been granted under this section for purposes of facilitating the extension of credit or other permissible use;

(3) A person acting pursuant to a court order, warrant or subpoena;

(4) A state or local agency that administers a program for establishing and enforcing child support obligations;

(5) The West Virginia Department of Human Services or its agents or assigns acting to investigate fraud;

(6) The West Virginia Department of Revenue or its agents or assigns acting to investigate or collect delinquent taxes or unpaid court orders or to fulfill any of its other statutory responsibilities;

(7) A person for the purposes of prescreening as defined by the federal Fair Credit Reporting Act;

(8) A person or entity administering a credit file monitoring subscription service to which the consumer has subscribed; and

(9) A person or entity for the purpose of providing a consumer with a copy of his or her credit report upon the consumer's request.

WV Legislature

(10) Any person or entity for use in setting or adjusting a rate, adjusting a claim or underwriting for insurance purposes to the extent not otherwise prohibited by law.

(m) The provisions of this section do not apply to any of the following:

(1) A consumer-reporting agency that acts only as a reseller of credit information by assembling and merging information contained in the database of another consumer-reporting agency or multiple consumer credit-reporting agencies and does not maintain a permanent database of credit information from which new consumer credit reports are produced. A consumer-reporting agency acting as a reseller shall honor any security freeze placed on a consumer credit report by another consumer-reporting agency.

(2) A check services or fraud prevention services company which issues reports on incidents of fraud or authorizations for the purpose of approving or processing negotiable instruments, electronic funds transfers or similar methods of payments.

(3) A deposit account information service company which issues reports regarding account closures due to fraud, a substantial number of overdrafts, ATM abuse or similar negative information regarding a consumer to inquiring banks or other financial institutions for use only in reviewing a consumer request for a deposit account at the inquiring bank or financial institution.

(4) A consumer-reporting agency's database or file which consists of information concerning, and used for, criminal record information, fraud prevention or detection, personal loss history information and employment, tenant or background screening.

(n) Except as prohibited by subsection (o) of this section, a consumer-reporting agency may charge a reasonable fee, not to exceed $5, to a consumer who elects to place, remove or temporarily lift a security freeze on the consumer's credit report. No fees except those authorized by this subsection and subsection (p) of this section may be charged in connection with a security freeze.

(o) A consumer-reporting agency may not charge a fee for security freeze services to a consumer who is a victim of identity theft and who provides a copy of a police report, an investigative report or a written complaint made to the Federal Trade Commission, to the office of the Attorney General of West Virginia or to a law-enforcement agency concerning the identity theft.

(p) A consumer may be charged a reasonable fee, not to exceed $5, if the consumer fails to retain the original unique personal identification number or password provided by the consumer-reporting agency and must be reissued the same or a new unique personal identification number or password.

WV Legislature

§46A-6L-103. Notice of rights.

(a) At any time that a consumer is required to receive a summary of rights required under Section 609 of the federal Fair Credit Reporting Act, 15 U.S.C. §1681g, as in effect on the effective date of this article, the following notice shall be included:

"West Virginia consumers have the right to obtain a security freeze.

You may obtain a security freeze on your credit report to protect your privacy and ensure that credit is not granted in your name without your knowledge. You have a right to place a security freeze on your credit report pursuant to West Virginia law.

The security freeze will prohibit a consumer-reporting agency from releasing any information in your credit report without your express authorization or approval.

The security freeze is designed to prevent credit, loans and services from being approved in your name without your consent. When you place a security freeze on your credit report, within five business days you will be provided a unique personal identification number or password to use if you choose to remove the freeze on your credit report or to temporarily authorize the distribution of your credit report for a period of time after the freeze is in place. To provide that authorization, you must contact the consumer-reporting agency and provide all of the following:

(1) The unique personal identification number or password provided by the consumer-reporting agency;

(2) Proper identification to verify your identity; and

(3) The period of time for which the report shall be available to users of the credit report.

A consumer-reporting agency that receives a request from a consumer to temporarily lift a freeze on a credit report shall comply with the request no later than three business days after receiving the request.

A security freeze does not apply to circumstances in which you have an existing account relationship and a copy of your report is requested by your existing creditor or its agents or affiliates for certain types of account review, collection, fraud control or similar activities.

If you are actively seeking credit, you should understand that the procedures involved in lifting a security freeze may slow your own applications for credit. You should plan ahead and lift a freeze, either completely if you are shopping around or specifically for a certain creditor, a few days before actually applying for new credit.

You have the right to bring a civil action against someone who violates your rights under the credit reporting laws. The action can be brought against a consumer-reporting agency."

WV Legislature

(b) If a consumer requests information about a security freeze, he or she shall be provided with the notice provided in this section about how to place, temporarily lift and remove a security freeze.

WV Legislature

§46A-6L-104. Violations; penalties.

(a) If a consumer-reporting agency negligently violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within five business days following discovery or actual knowledge of the distribution of the information, including specificity as to the information distributed and the third-party recipient of the information.

(2) File a complaint with the Federal Trade Commission or the office of the Attorney General of West Virginia.

(3) File a civil action against the consumer-reporting agency seeking:

(A) Injunctive relief to prevent or restrain further violation of the security freeze;

(B) Actual damages sustained or not more than $1,000, whichever is greater; and

(C) Reasonable expenses, court costs, investigative costs and attorney's fees.

(4) Each violation of the security freeze is a separate incident for purposes of imposing penalties under this section.

(b) If a consumer-reporting agency willfully violates the security freeze by releasing credit information that has been placed under a security freeze, the affected consumer is entitled to:

(1) Notification within five business days following discovery or actual knowledge of the distribution of the information, including specificity as to the information distributed and the third-party recipient of the information.

(2) File a complaint with the Federal Trade Commission or the office of the Attorney General of West Virginia.

(3) File a civil action against the consumer-reporting agency seeking:

(A) Injunctive relief to prevent or restrain further violation of the security freeze;

(B) Actual damages sustained or not more than $5,000, whichever is greater; and

(C) Reasonable expenses, court costs, investigative costs and attorney's fees.

(4) Each violation of the security freeze is a separate incident for purposes of imposing penalties under this section.

WV Legislature

§46A-6L-105. Unfair or deceptive acts or practices.

Any violation of this article constitutes an unlawful act or practice under the provisions of article six of this chapter regarding fraudulent acts or practices committed by a person in connection with a consumer transaction and shall be subject to the enforcement provisions of article seven of this chapter.

WV Legislature

§46A-6M-1. Definitions.

As used in this article:

(1) "Emergency repair" means a repair that is necessary to prevent the risk of imminent injury to a person or further damage to the homeowner's residence;

(2) "Residential real estate" means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling;

(3) "Roof system" means the components of a roof to include, but not be limited to, covering, framing, insulation, sheathing, ventilation, guttering and weatherproofing; and

(4) "Roofing contractor" means a person or entity in the business of contracting or offering to contract with an owner of residential real estate to repair or replace a roof system.

WV Legislature

§46A-6M-2. Consumer's right to cancel residential roofing contract.

(a) An owner, who on or after July 1, 2015, enters into a contract with a roofing contractor to provide goods or services related to a roof system of residential real estate and who expects the goods or services to be paid from the proceeds of a property and casualty insurance policy, may cancel the contract prior to midnight of the fifth business day after the owner has received notice from the insurer that all or part of the claim is not a covered loss under the property and casualty insurance policy.

(b) The contract with the roofing contract is cancelled when the owner either personally delivers written notice of cancellation to the roofing contractor; deposits the written notice of cancellation in the United States mail, postage prepaid and addressed to the roofing contractor at the address stated in the contract; transmits the notice of cancellation to the roofing contractor by facsimile; or sends an e-mails containing a notice of cancellation.

(c) The owner may use any form of notice of cancellation that is sufficient to indicate, by any form of written expression, the intention of the owner not to be bound by the contract.

WV Legislature

§46A-6M-3. Roofing contractor's duty to disclose rights of the consumer via standard form.

Prior to entering into a contract on or after July 1, 2015, for the provision of goods or services relating to the repair or replacement of any part of a roof system of residential real estate as provided in section two of this article, a roofing contractor shall furnish the owner of the residential real estate with:

(1) The mailing address of the roofing contractor through which written communication may be received;

(2) The telephone number of the roofing contractor and, if applicable, the facsimile number and e-mail address of the contractor;

(3) A statement in at least ten point boldface type that states: "Because you expect all or part of the cost of the roofing repair or replacement to be paid out of the proceeds of a property and casualty insurance policy, you may cancel this contract at any time before midnight on the fifth business day after you have received written notification from your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy. This right to cancel is in addition to any other rights of cancellation you may have under state or federal law or rule or regulation. However, be advised that if you cancel this contract, you are still responsible to pay the reasonable and customary expenses of any emergency repair services you authorized. See the attached Notice of Cancellation form for an explanation of this right."; and

(4) A fully completed form in duplicate, under the conspicuous caption "NOTICE OF CANCELLATION," and attached to, but easily detachable from the contract, in at least ten point boldface type that shall read as follows:

"NOTICE OF CANCELLATION

(enter date of transaction)

If you are notified by your insurer that all or any part of the claim or contract is not a covered loss under the insurance policy, you may cancel this contract without penalty or monetary obligation, except where you have authorized emergency repair services for which you are still responsible for payment, before midnight of the fifth business day after you have received notice from your insurer. To cancel this transaction you may use any of the following methods: Mail or otherwise deliver a signed and dated copy of this cancellation notice, or any other written notice of cancellation which you- sign-and date, to (enter physical address of roofing contractor), or e-mail a notice of cancellation to (enter e-mail address of roofing contractor), or transmit a notice of cancellation to (enter facsimile number of roofing contractor), not later than midnight of the fifth day after you receive notice from your insurer. By signing below, you certify that your insurer has denied all or part of your claim.

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I HEREBY ATTEST THAT I HAVE BEEN NOTIFIED BY THE INSURER THAT ALL OR PART OF MY CLAIM HAS BEEN DENIED AND I HEREBY CANCEL THIS TRANSACTION.

(Date)

(Buyer's Signature)"

WV Legislature

§46A-6M-4. Advanced payments prohibited; refunds; emergency repairs; unenforceable contract.

(a) Except as provided in subsection (c) of this section, on or after July 1, 2015, a roofing contractor may not require any advance payments under a contract for the repair or replacement of any part of a roof system of a residential real estate, when payment is expected to be made from the proceeds of a property or casualty insurance policy until the cancellation period, as provided in section two of this article has expired.

(b) Within ten days after a contract has been canceled, as provided in section two of this article, a roofing contractor shall tender to the owner, any payments, partial payments, or deposits made, and any note or other evidence of indebtedness, except as provided in subsection (c) of this section.

(c) A roofing contractor that performs any emergency repair services authorized by the owner of residential real estate, may collect a reasonable and customary amount for the emergency repair services performed for the authorizing owner.

(d) Any provision in a contract executed on or after July 1, 2015, for the repair of a roof system of residential real estate, as provided in sections one and five of this article, that requires the payment of any fee, except for repair services performed under subsection (c) of this section, is not enforceable against any person who has canceled a contract under section two of this article.

WV Legislature

§46A-6M-5. Roofing contractors; prohibited acts.

(a) Notwithstanding the provisions relating to public adjusters, as defined in section one-e, article twelve-b, chapter thirty-three of this code, on or after July 1, 2015, a roofing contractor may not represent, negotiate, or advertise to represent or negotiate on behalf of an owner of residential real estate on any insurance claim in connection with the repair or replacement of a roof system. Nothing in this subsection may be construed to prohibit a roofing contractor from:

(1) Providing an estimate for repair, replacement, construction or reconstruction of the roof system to the owner of residential real estate; or

(2) Conferring with an insurance company's representative about damage to the property after a claim has been submitted by the owner of residential real estate.

(b) On or after July 1, 2015, a roofing contractor or person representing a roofing contractor may not:

(1) Offer to pay or rebate all or any portion of an insurance deductible or claims proceeds as an inducement to the sale of goods or services related to a residential roofing contract;

(2) Pay the owner of residential real estate for whom services have been performed pursuant to this article for any reason or any form of compensation, including, but not limited to a:

(A) Bonus;

(B) Coupon;

(C) Credit;

(D) Gift;

(E) Prize;

(F) Referral fee; or

(G) Any other tangible item having a monetary value.

WV Legislature

§46A-6M-6. Private remedies for violation of article; criminal penalties.

(a) If a roofing contractor violates the provisions of this article, the owner or the applicable insurer may bring an action against the roofing contractor in a court of competent jurisdiction for damages sustained by the owner or insurer as a consequence of the roofing contractor's violation.

(b) A roofing contractor who willfully violates the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail not more than one year, or both fined and confined.

WV Legislature

§46A-6N-1. Definitions.

For purposes of this article:

(1) "Consumer" means any person who resides, is present, or is domiciled in this state who claims an entitlement to a judgment, award, settlement, or verdict with respect to a legal claim but does not include an attorney representing that person;

(2) "Litigation financier" means a person, entity, or partnership engaged in the business of litigation financing; and

(3) "Litigation financing" or "litigation financing transaction":

(A) Means a transaction in which financing is provided to a consumer in return for a consumer's assigning to the litigation financier a right to receive payment contingent in any respect on the outcome of the legal claim; and

(B) Does not include:

(i) Legal services provided on a contingency fee basis, or advanced legal costs, where such services or costs are provided to or on behalf of a consumer by an attorney representing the consumer in the dispute and in accordance with the West Virginia Rules of Professional Conduct;

(ii) A consumer loan, as defined by §46A-1-102 of this code;

(iii) A claim under the Workers' Compensation Law, compiled in §23-1-1 *et seq*. of this code;

(iv) Lending or financing arrangements between an attorney or law firm and a lender, provided such arrangements do not give the lender any particularized interest in the outcome of any legal claim or portfolio of legal claims; or

(v) Nonprofit organizations provided any financing provided to or by the nonprofit organization does not afford the non-party agreeing to pay legal expenses profit from the legal claim beyond repayment of the amount it has contractually agreed to provide, along with reasonable interest not to exceed the Wall Street Journal prime rate at the time the agreement was executed, plus three percent per year.

WV Legislature

§46A-6N-2. Litigation financier; registration; bond; public record; rules.

(a)(1) No litigation financier shall engage in a litigation financing transaction in this state unless it is registered as a litigation financier in this state.

(2) A litigation financier that is a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code;

(B) It has a status of active and is in good standing as reflected in the records of the Secretary of State; and

(C) Its charter, articles of organization, certificate of limited partnership, or other organizational document, or, if a foreign entity, its West Virginia application for a certificate of authority, contains a statement that it shall be designated as a litigation financier pursuant to this article.

(3) A litigation financier that is not a business entity or partnership is registered in this state if:

(A) It is in compliance with the bond requirements of §46A-6N-2(b) of this code; and

(B) It files an application for registration as a litigation financier on a form prescribed by the Secretary of State that contains the following:

(i) Applicant’s full legal name;

(ii) Business name of applicant, if any;

(iii) Physical street address and mailing address of the applicant;

(iv) A telephone number through which the applicant can be reached;

(v) The name, physical street address, mailing address, and telephone number for a West Virginia registered agent appointed to accept service of process on behalf of the applicant;

(vi) A statement that the applicant shall be designated as a litigation financier pursuant to this article; and

(vii) Any other information the Secretary of State deems necessary.

(b)(1) Each litigation financier shall file with the Secretary of State and have approved by the Office of the West Virginia Attorney General a surety bond or irrevocable letter of credit issued and confirmed by a financial institution authorized by law to transact business in the state of West Virginia in an amount not less than $50,000.

(2) Such bond shall be payable to this state for the use of the Attorney General and any

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person who may have a cause of action against the obligor of the bond for any violation of this article. The bond shall continue in effect so long as a litigation financier is designated as a litigation financier in the records of the Secretary of State.

(c) A litigation financier shall amend its registration with the Secretary of State within 30 days whenever the information contained in such record changes or becomes inaccurate or incomplete in any respect.

(d) The Secretary of State, as appropriate, may promulgate rules in implementing this article, including, but not limited to, the adoption of fees to cover any administrative costs relating to administering this article.

WV Legislature

§46A-6N-3. Litigation financier requirements.

A litigation financier shall fulfill each of the following requirements when engaged in litigation financing:

(1) The terms of the litigation financing transaction shall be set forth in a written contract that is completely filled in with no incomplete sections when the contract is offered or presented to the consumer;

(2) The litigation financing contract shall contain a right of rescission, allowing the consumer to cancel the litigation financing contract without penalty or further obligation if, within five business days following the consumer's receipt of the funds, or execution of the litigation financing contract, whichever is later, the consumer gives notice of the rescission and returns any money already provided to the consumer by the litigation financier;

(3) The litigation financing contract shall contain a written acknowledgment by the consumer of whether the consumer is represented by an attorney in the dispute;

(4) If the consumer acknowledges that the consumer is represented by an attorney in the dispute, the litigation financing contract shall include a written acknowledgment executed by the consumer's attorney in the dispute in which the attorney acknowledges all of the following:

(A) The attorney has had the opportunity to review the litigation financing contract on behalf of the consumer;

(B) The attorney is representing the consumer with regard to the dispute that is the subject of the litigation financing contract;

(C) The attorney has neither received nor paid a referral fee or any other consideration from or to the litigation financier, nor will the attorney receive or pay such a fee in the future; and

(D) In the event that proceeds are paid into a settlement fund or trust, the litigation financier shall notify the administrator of the fund or trust of any outstanding liens arising from the litigation financing contract.

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§46A-6N-4. Litigation financier prohibitions.

(a) A litigation financier shall not:

(1) Pay or offer to pay commissions, referral fees, or other forms of consideration to any attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees for referring a consumer to a litigation financier;

(2) Accept any commissions, referral fees, rebates, or other forms of consideration from an attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees;

(3) Advertise false or misleading information regarding its products or services;

(4) Refer a consumer or potential consumer to a specific attorney, law firm, medical provider, chiropractor, physical therapist, or any of their employees: *Provided*, That if a consumer does not have legal representation, the provider may refer the consumer to a local or state bar referral service operated by a bar association;

(5) Fail to promptly supply copies of any and all complete litigation financing contracts to the consumer and the attorney representing the consumer in the dispute;

(6) Attempt to obtain in the litigation for which the litigation financing transaction exists a waiver of any remedy, including, but not limited to, compensatory, statutory, or punitive damages to which the consumer might otherwise be entitled;

(7) Attempt to effect in the litigation for which the litigation financing transaction exists mandatory arbitration or otherwise effect waiver of a consumer's right to a trial by jury;

(8) Offer or provide legal advice to the consumer regarding the litigation financing or the underlying dispute;

(9) Assign, which includes securitizing, a litigation financing contract between a consumer who is a natural person and a litigation financier, in whole or in part, to a third party: *Provided*, That:

(A) §46A-6N-4(9) of this code does not prevent a litigation financier that retains responsibility for collecting payment, administering, or otherwise enforcing the litigation financing contract from making an assignment that is:

(i) To a wholly owned subsidiary of the litigation financier;

(ii) To an affiliate of the litigation financier that is under common control with the litigation financier; or

(iii) A grant of a security interest that is made pursuant to §46-9-101 *et seq*. of this code or is

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otherwise permitted by law; and

(B) If an assignment is authorized and made pursuant to §46A-6N-4(9) of this code, for purposes of this section, "litigation financier" includes a successor-in-interest to a litigation financing contract;

(10) Report a consumer to a credit reporting agency if insufficient funds remain from the net proceeds to repay the litigation financier; or

(11) Receive any right to direct or make any decisions with respect to the conduct of the consumer's legal claim or any settlement or resolution. The right to make such decisions shall remain solely with the consumer and his or her attorney.

(b) An attorney or law firm retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

(c) A personal injury attorney or law firm, practicing in West Virginia, retained by a consumer shall not have a financial interest in a company offering litigation financing to consumers and shall not receive a referral fee or other consideration from the company, its employees, or its affiliates.

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§46A-6N-5. Litigation financing contracts; disclosures.

(a) A litigation financing contract shall contain the disclosures specified in this section, which shall constitute material terms of the litigation financing contract.

(b) Unless otherwise specified, the disclosures shall be typed in at least 14-point, bold font and be placed clearly and conspicuously within the litigation financing contract, as follows:

(1) Each contract shall include consumer disclosures on the first two pages, to the extent possible. The consumer disclosures shall include:

(A) Notification that some or all of the funded amount may be taxable;

(B) A description of the consumer's right of rescission;

(C) The total funded amount provided to the consumer under the contract;

(D) An itemization of charges;

(E) The total amount due from the consumer, in six-month intervals for 42 months, including all charges and fees;

(F) A statement that there are no charges or fees to be paid by the consumer other than what is disclosed on the disclosure form;

(G) In the event the consumer seeks more than one litigation financing contract, a disclosure providing the cumulative amount due from the consumer for all transactions, including charges under all contracts, if repayment is made any time after the contracts are executed;

(H) A statement that if there is no recovery of any money from the consumer's legal claim, the consumer shall owe nothing to the litigation financier;

(I) A statement that if the net proceeds of the claim are insufficient to repay the consumer's indebtedness to the litigation financier, the litigation financier shall accept a reduced sum as full payment of its funded amount and charges; and

(J) The following:

Consumer's Right to Cancellation: You may cancel this contract without penalty or further obligation within five (5) business days from the date you signed this contract or received financing from [insert name of the litigation financier] by: returning the funds to [insert name, office address, and office hours of the litigation financier] or by U. S. mail [insert name and mailing address of litigation financier]. For purposes of the return deadline by U. S. mail, the postmark date on the returned funds or, if mailed by registered or certified mail, the date of the return receipt requested shall be considered the date of return.

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(2) Within the body of the litigation financing contract, the following:

The litigation financier agrees that it has no right to and will not make any decisions about the conduct of your lawsuit or dispute and that the right to make those decisions remains solely with you and your attorney;

(3) Within the body of the litigation financing contract, in all capital letters contained within a box, the following:

THE FUNDED AMOUNT AND AGREED-TO CHARGES SHALL BE PAID ONLY FROM THE PROCEEDS OF YOUR LEGAL CLAIM AND SHALL BE PAID ONLY TO THE EXTENT THAT THERE ARE AVAILABLE PROCEEDS FROM YOUR LEGAL CLAIM. YOU WILL NOT OWE (INSERT NAME OF THE LITIGATION FINANCIER) ANYTHING IF THERE ARE NO PROCEEDS FROM YOUR LEGAL CLAIM, UNLESS YOU HAVE VIOLATED ANY MATERIAL TERM OF THIS CONTRACT OR YOU HAVE COMMITTED FRAUD AGAINST THE LITIGATION FINANCIER;

(4) Located immediately above the place on the litigation financing contract where the consumer’s signature is required, the following:

DO NOT SIGN THIS CONTRACT BEFORE YOU READ IT COMPLETELY. IF THIS CONTRACT CONTAINS ANY INCOMPLETE SECTIONS, YOU ARE ENTITLED TO A COMPLETELY FILLED-IN COPY OF THE CONTRACT PRIOR TO SIGNING IT. BEFORE YOU SIGN THIS CONTRACT, YOU SHOULD OBTAIN THE ADVICE OF AN ATTORNEY. DEPENDING ON THE CIRCUMSTANCES YOU MAY WANT TO CONSULT A TAX ADVISOR, A FINANCIAL PROFESSIONAL, OR AN ACCOUNTANT.

WV Legislature

§46A-6N-6. Third-party agreements.

(a) Except as otherwise stipulated or ordered by the court, a party or his or her counsel shall, without awaiting a discovery request, provide to the other parties any agreement under which any litigation financier, other than an attorney permitted to charge a contingent fee representing a party, has a right to receive compensation that is contingent in any respect on the outcome of the legal claim.

(b) For purposes of this section only, the terms "litigation financing" and "litigation financier" also include financing provided to an attorney or law firm where the right to receive repayment is contingent in any respect on the outcome of the consumer's legal claim.

WV Legislature

§46A-6N-7. Violation; enforcement.

(a) Any violation of this article shall make the litigation financing contract unenforceable by the litigation financier, the consumer, law firm, or any successor-in-interest to the litigation financing contract. The court may, in the event that judgment is awarded to the plaintiff, assess costs of the action, including reasonable attorneys' fees, against the defendant.

(b) Nothing in this article shall be construed to limit the exercise of powers or the performance of the duties of the Attorney General, including those provided by the West Virginia Consumer Credit and Protection Act, which the Attorney General is otherwise authorized or required to exercise or perform by law.

WV Legislature

§46A-6N-8. Contingency rights; assignments; priority of lien, subrogation interest, or right of reimbursement.

(a) The contingent right to receive an amount of the potential proceeds of a legal claim may be assigned by a consumer, and that assignment is valid for the purposes of obtaining litigation financing from a litigation financier.

(b) The lien of a litigation financier on a consumer's legal claim has priority over liens that attach and take effect subsequent to the attachment of the litigation financier's lien to the consumer's legal claim, except for the following:

(1) Attorney liens, insurance carrier liens, medical provider liens, or liens based upon subrogation interests or rights of reimbursement related to the consumer's legal claim; and

(2) Child support, Medicare, tax, or any other statutory or governmental lien.

WV Legislature

§46A-6N-9. Fees; terms; incorporation of obligations in agreement.

(a) A litigation financier may not charge a consumer who is a natural person an annual fee of more than 18 percent of the original amount of money provided to the consumer for the litigation financing transaction.

(b) Litigation financiers shall not charge a consumer the annual fee authorized by §46A-6N-9(a) of this code more than one time each year with regard to any single legal claim regardless of the number of litigation financing transactions that the litigation financier enters into with the consumer with respect to such legal claim.

(c) Fees assessed by a litigation financier may compound semiannually but may not compound based on any lesser time period.

(d) In calculating the annual percentage fee or rate of return, a litigation financier must include all charges payable directly or indirectly by the consumer and must compute the rate based only on amounts actually received and retained by the consumer.

(e) A litigation financier may not assess fees for any period exceeding 42 months from the date of the contract with the consumer.

(f) Litigation financiers shall not enter into an agreement with a consumer that has the effect of incorporating the consumer’s obligations to the litigation financier that are contained in the original litigation financing transaction into a subsequent litigation financing transaction.

(g) Litigation financiers shall not knowingly provide financing to a consumer who has previously assigned and/or sold a portion of the consumer’s right to proceeds from his or her legal claim without first making payment to and/or purchasing a prior unsatisfied litigation financier’s entire funded amount and contracted charges unless a lesser amount is otherwise expressly agreed to in writing by the litigation financiers; except multiple litigation financiers may agree to contemporaneously provide financing to a consumer, provided that the consumer and the consumer’s attorney consent to the agreement in writing.

WV Legislature

§46A-7-101. Division of consumer protection created; purpose.

There is hereby created, under the authority of the Attorney General of the State of West Virginia, a division of consumer protection for the purposes set forth in this article.

WV Legislature

§46A-7-102. Power of Attorney General; reliance on rules of Attorney General or commissioner of banking; duty to report.

(1) In addition to other powers granted by this chapter, the Attorney General within the limitations provided by law may:

(a) Receive and act on complaints, take action designed to obtain voluntary compliance with this chapter or commence proceedings on his own initiative;

(b) Counsel persons and groups on their rights and duties under this chapter;

(c) Establish programs for the education of consumers with respect to credit and leasing practices and problems;

(d) Make studies appropriate to effectuate the purposes and policies of this chapter and make the results available to the public;

(e) Adopt, amend and repeal such reasonable rules and regulations, in accordance with the provisions of chapter twenty-nine-a of this code, as are necessary and proper to effectuate the purposes of this chapter and to prevent circumvention or evasion thereof; and

(f) Delegate his powers and duties under this chapter to qualified personnel in his office, who shall act under the direction and supervision of the Attorney General and for whose acts he shall be responsible.

(2) Except for refund of an excess charge, no liability is imposed under this chapter for an act done or omitted in conformity with a rule of the Attorney General or commissioner, notwithstanding that after the act or omission the rule may be amended or repealed or be determined by judicial or other authority to be invalid for any reason. Any form or procedure which has been submitted to the commissioner and the Attorney General in writing and approved in writing by them shall not be deemed a violation of the penalty provisions of this chapter notwithstanding that such approval may be subsequently amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

(3) Except for refund of an excess charge, in any action brought pursuant to the provisions of this chapter, it shall be a defense that the act or omission complained of was in conformity with a published opinion of the Attorney General issued in compliance with section one, article three, chapter five of this code or in conformity with an examination report issued by the commissioner to the person against whom the action is brought pursuant to section six, article two, chapter thirty-one-a of this code, or a declaratory ruling issued to the person against whom the action is brought pursuant to subdivision (9), subsection (c), section four of said article.

(4) On or before December 1, of each year, the Attorney General and commissioner shall jointly or separately submit a report or reports to the Governor and to the Legislature on the operation of their offices, on the use of consumer credit and on consumer protection

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problems in the state, and on the problems of persons of small means obtaining credit from persons regularly engaged in extending sales or loan credit. For the purpose of making such report or reports, the Attorney General and commissioner are authorized to conduct research and make appropriate studies. The report or reports shall include a description of the examination and investigation procedures and policies of their offices, a statement of policies followed in deciding whether to investigate or examine the offices of credit suppliers subject to this chapter, a statement of the number and percentages of offices which are periodically investigated or examined, a statement of the types of consumer credit and consumer protection problems of both creditors and consumers which have come to their attention through their examinations and investigations and the disposition of them under existing law, and a general statement of the activities of their offices and of others to promote the purposes of this chapter.

WV Legislature

§46A-7-103. Division of administrative powers; investigation and administration.

(1) With respect to regulated consumer lenders and other supervised financial organizations, the powers of examination and investigation and administrative enforcement shall be exercised by the official or agency to whose supervision the organization is subject. All other powers of the Attorney General under this chapter may be exercised by him with respect to any financial organization whether or not a supervised financial organization. Notwithstanding the first sentence of this subsection and notwithstanding subsection (3) of this section, the Attorney General may pursue any investigation, prosecute any suit and take any other proper action relating to the enforcement of any consumer protection provision in this chapter.

(2) If the Attorney General receives a complaint or other information concerning noncompliance with this chapter by any supervised financial organization, he shall inform the official or agency having supervisory authority over the organization concerned. The Attorney General may request information about financial organizations from the officials or agencies supervising them.

(3) The Attorney General and any official or agency of this state having supervisory authority over a financial organization are authorized and directed to consult and assist one another in maintaining compliance with this chapter. They may jointly pursue investigations, prosecute actions and take other official actions, as they deem appropriate, if either of them otherwise is empowered to take the action.

WV Legislature

§46A-7-104. Investigatory powers.

(1) If the Attorney General has probable cause to believe that a person has engaged in an act which is subject to action by the Attorney General, he may, and shall upon request of the commissioner, make an investigation to determine if the act has been committed and, to the extent necessary for this purpose, may administer oaths or affirmations, and, upon his own motion or upon request of any party, may subpoena witnesses, compel their attendance, adduce evidence, and require the production of any matter which is relevant to the investigation, including the existence, description, nature, custody, condition and location of any books, records, documents or other tangible things and the identity and location of persons having knowledge of relevant facts, or any other matter reasonably calculated to lead to the discovery of admissible evidence.

(2) If the person's records are located outside this state, the person at his option shall either make them available to the Attorney General at a convenient location within this state or pay the reasonable and necessary expenses for the Attorney General or his representative to examine them at the place where they are maintained. The Attorney General may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his behalf.

(3) Upon failure of a person without lawful excuse to obey a subpoena or to give testimony and upon reasonable notice to all persons affected thereby, the Attorney General may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance.

(4) The Attorney General shall not make public the name or identity of a person whose acts or conduct he investigates pursuant to this section or the facts disclosed in the investigation, but this subsection does not apply to disclosures in actions or enforcement proceedings pursuant to this chapter.

WV Legislature

§46A-7-105. Application of Administrative Procedures Act.

Except as otherwise provided, the provisions of chapter twenty-nine-a of this code apply to and govern all administrative action taken by the Attorney General pursuant to this chapter.

WV Legislature

§46A-7-106. Administrative enforcement orders; judicial review.

(1) After notice and hearing the Attorney General may order a creditor or other person to cease and desist from engaging in violations of this chapter.

(2) A respondent aggrieved by an order of the Attorney General may obtain judicial review of the order in accordance with the provisions of chapter twenty-nine-a of this code, except as herein otherwise provided. The proceeding for review must be initiated by the filing of a petition in the court within thirty days after a copy of the order of the Attorney General is received. Copies of the petition shall be served upon all parties of record.

(3) Within thirty days after service of the petition for review upon the Attorney General, or within any further time the court may allow, the Attorney General shall transmit to the court the original or a certified copy of the entire record upon which the order is based, including any transcript of testimony, which need not be printed. By stipulation of all parties to the review proceeding, the record may be shortened. After hearing, the court may (a) reverse or modify the order if the findings of fact of the Attorney General are clearly erroneous in view of the reliable, probative and substantial evidence on the whole record, (b) grant any temporary relief or restraining order it deems just, or (c) enter an order affirming, enforcing, modifying and enforcing as modified, or setting aside in whole or in part, the order of the Attorney General, or remanding the case to the Attorney General for further proceedings.

(4) An objection not urged at the administrative hearing shall not be considered by the court unless the failure to urge the objection is excused for good cause shown. A party may move the court to remand the case to the Attorney General in the interest of justice for the purpose of adducing additional specified and material evidence and seeking findings thereon upon good cause shown for the failure to adduce this evidence before the Attorney General.

(5) The judgment of the circuit court shall be final unless reversed, vacated or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of section one, article six, chapter twenty-nine-a of this code. The Attorney General's copy of the testimony shall be available at reasonable times to all parties for examination without cost.

(6) If no proceeding for judicial review is initiated, the Attorney General may obtain an order of a circuit court for enforcement of his order upon a showing that the order was issued in compliance with this section, that no proceeding for review was initiated within thirty days after a copy of the order was received and that the respondent is subject to the jurisdiction of the court. If no proceeding for judicial review is initiated, the proceeding for enforcement of any order of the Attorney General shall be initiated by the filing of a petition in the court. Copies of the petition shall be served upon all parties of record.

(7) With respect to unconscionable agreements or fraudulent or unconscionable conduct by the respondent, the Attorney General may not issue an order pursuant to this section but may bring a civil action for an injunction.

WV Legislature

§46A-7-107. Assurance of discontinuance.

If it is claimed that a person has engaged in conduct which could be subject to an order by the Attorney General or by a court, the Attorney General may accept an assurance in writing that the person will not engage in the conduct in the future. Such assurance of voluntary compliance shall not be considered an admission of violation for any purpose, except that if a person giving such assurance fails to comply with its terms, the assurance is prima facie evidence that prior to such assurance he engaged in the conduct described in such assurance.

WV Legislature

§46A-7-108. Injunctions against violations of chapter.

The Attorney General may bring a civil action to restrain a person from violating this chapter and for other appropriate relief.

WV Legislature

§46A-7-109. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(1) The Attorney General may bring a civil action to restrain a creditor or a person acting in his behalf from engaging in a course of:

(a) Making or enforcing unconscionable terms or provisions of consumer credit sales, consumer leases or consumer loans;

(b) Fraudulent or unconscionable conduct in inducing consumers to enter into consumer credit sales, consumer leases or consumer loans; or

(c) Fraudulent or unconscionable conduct in the collection of debts arising from consumer credit sales, consumer leases or consumer loans.

(2) In an action brought pursuant to this section the court may grant relief only if it finds:

(a) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;

(b) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers; and

(c) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are credit or lease transactions.

(3) In applying this section, consideration shall be given to each of the following factors, among others:

(a) Belief by the creditor at the time consumer credit sales, consumer leases or consumer loans are made that there was no reasonable probability of payment in full of the obligation by the debtor;

(b) In the case of consumer credit sales, knowledge by the seller at the time of the sale of the inability of the buyer to receive substantial benefits from the property or services sold;

(c) In the case of consumer credit sales, gross disparity between the price of the property or services sold and the value of the property or services measured by the price at which similar property or services are readily obtainable in credit transactions by like buyers;

(d) The fact that the creditor contracted for or received separate charges for insurance with respect to consumer credit sales, consumer leases or consumer loans with the effect of making the sales or loans, considered as a whole, unconscionable; and

(e) The fact that the respondent has knowingly taken advantage of the inability of the debtor reasonably to protect his interests by reason of physical or mental infirmities, ignorance,

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illiteracy or inability to understand the language of the agreement, or similar factors.

(4) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.

WV Legislature

§46A-7-110. Temporary relief.

With respect to an action brought to enjoin violations of this chapter or unconscionable agreements or fraudulent or unconscionable conduct, the Attorney General may apply to the court for appropriate temporary relief against a respondent, pending final determination of the proceedings. If the court finds after a hearing held upon notice to the respondent that there is reasonable cause to believe that the respondent is engaging in or is likely to engage in conduct sought to be restrained, it may grant any temporary relief or restraining order it deems appropriate.

WV Legislature

§46A-7-111. Civil actions by Attorney General.

(1) After demand, the Attorney General may bring a civil action against a creditor for making or collecting charges in excess of those permitted by this chapter. If it is found that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a creditor has made an excess charge in a deliberate violation of or in reckless disregard for this chapter, or if a creditor has refused to refund an excess charge within a reasonable time after demand by the consumer or the Attorney General, the court may also order the respondent to pay to the consumer a civil penalty in an amount determined by the court not in excess of the greater of either the amount of the sales finance charge or loan finance charge or ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection may be set off against the consumer's obligation. If a consumer brings an action against a creditor to recover an excess charge or civil penalty, an action by the Attorney General to recover for the same excess charge shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. With respect to excess charges arising from consumer credit sales made pursuant to revolving charge accounts or from consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the time the excess charge was made. With respect to excess charges arising from other consumer credit sales or consumer loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made. If the creditor establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(2) The Attorney General may bring a civil action against a creditor or other person to recover a civil penalty for willfully violating this chapter, and if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter, it may assess a civil penalty of no more than $5,000 for each violation of this chapter. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than four years before the action is brought.

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§46A-7-112. Jury trial.

In an action brought by the Attorney General under this chapter, he has no right to trial by jury.

WV Legislature

§46A-7-113. Consumer's remedies not affected.

The grant of powers to the Attorney General in this chapter does not affect remedies available to consumers under this chapter or under other principles of law or equity.

WV Legislature

§46A-7-114. Venue.

The Attorney General may bring actions or proceedings under this chapter in the circuit court of any county in which an act on which the action or proceeding is based occurred, or in any county in which the respondent or defendant resides or transacts business.

WV Legislature

§46A-7-115. Notification.

(1) Every person engaged in this state in making consumer credit sales or consumer loans, including any person subject to the provisions of section five-a, article twenty-three, chapter eleven of this code, as a result of their consumer lending or any person who regularly purchases retail installment contracts or other consumer paper from a business with which it is affiliated, and every person having an office or place of business in this state who takes assignments of and undertakes direct collection of payments from or enforcement of rights against debtors arising from such sales or loans, shall file notification with the State Tax Department within thirty days after commencing business in this state, and, thereafter, on or before the thirty-first day of January of each year. A notification shall be deemed to be in compliance with this section if the information hereinafter required is given in an application for a business registration certificate provided for in section four, article twelve, chapter eleven of this code. The State Tax Commissioner shall make any information required by this section available to the Attorney General or commissioner upon request. The notification shall state:

(a) Name of the person;

(b) Name in which business is transacted if different from subdivision (a) of this subsection;

(c) Address of principal office, which may be outside this state;

(d) Address of all of its offices, if any, in this state at which consumer loans are made, or in the case of a lender credit card, a description of its affiliation to any store chain, or national or regional credit card acceptance system, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

(e) If consumer credit sales or consumer loans, including loans secured by real property, are made otherwise than at its retail store or office in this state, a brief description of the manner in which they are made;

(f) Address of designated agent upon whom service of process may be made in this state; and

(g) Whether regulated consumer loans are made.

(2) If information in a notification becomes inaccurate after filing, accurate information must be filed within thirty days.

(3) The provisions of this section are not applicable to a seller whose credit sales consist entirely of sales made pursuant to a seller's credit card so long as the issuer of the card has fully complied with the provisions of this section, nor are the provisions of this section applicable to a person whose consumer lending in West Virginia is incidental and confined to access through a nonproprietary automatic teller machine or similar electronic communication terminal.

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§46A-7-116.

Repealed.

Acts, 1990 Reg. Sess., Ch. 51.

WV Legislature

§46A-8-101. Time of becoming operative; provisions for transition; enforceability of prior transactions; applicability and effective dates of amendments.

NOTE: West Virginia Code §46A-8-101 was amended by two bills passed during the 2021 Regular Session of the Legislature. When two acts of the Legislature amend the same section of the Code without express recognition in the bill of the action of the other bill, the Legislative Manager makes no determination as to the appropriate, legal effect of the two acts. Therefore, BOTH versions of this section are set out below.

The later of the two acts, Senate Bill 401 (passed on April 6, 2021), amended West Virginia Code §46A-8-101 to read as follows:

(a) Except as otherwise provided in this section, this chapter shall become operative at 12:01 a.m. on September 1, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make regulated consumer loans under this chapter as amended, the provisions of §46A-4-1 *et seq*. of this code relating to regulated consumer lenders, and the provisions of §46A-7-1 *et seq*. of this code relating to their administration, shall, to the extent necessary, become operative for such purposes at 12:01 a.m. on September 1, 1996.

(c) Transactions entered into before this chapter becomes operative and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this chapter as though the repeal, amendment, or modification had not occurred, but this chapter applies to:

(1) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases, and consumer loans whenever made;

(2) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged, or contracted for before this chapter becomes operative; and

(3) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

(d) *Applicability.* —

(1) The amendments made during the regular session of the Legislature, 2017, to §46A-2-105 of this code shall apply to consumer credit sales or consumer loans entered into on after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-128 and §46A-2-140 of this code, shall apply to all causes of accruing on or after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-122 and §46A-5-108 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

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(2) The amendments made during the regular session of the Legislature, 2021, to §46A-5-104, §46A-5-108, §46A-5-109, §46A-6-105, and §46A-6-106 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

The earlier act, Senate Bill 5 (passed on March 18, 2021) amended West Virginia Code §46A-8-101 to read as follows:

(a) Except as otherwise provided in this section, this chapter became operative at 12:01 a.m. on September 1, 1974.

(b) Notwithstanding the provisions of subsection (a) of this section, in order to allow sufficient time to prepare for the implementation and operation of this chapter and to act on applications for licenses to make regulated consumer loans under this chapter, as amended, the provisions of §46A-4-1 *et seq*. of this code relating to regulated consumer lenders, and the provisions of §46A-7-4 of this code relating to their administration, shall, to the extent necessary, became operative for such purposes at 12:01 a.m. on September 1, 1996.

(c) Transactions entered into before this chapter becomes operative and the rights, duties, and interests flowing from them thereafter may be terminated, completed, consummated, or enforced as required or permitted by any statute, rule of law, or other law amended, repealed, or modified by this chapter as though the repeal, amendment, or modification had not occurred, but this chapter applies to:

(1) Refinancings and consolidations made after this chapter becomes operative of consumer credit sales, consumer leases, and consumer loans whenever made;

(2) Consumer credit sales or consumer loans made after this chapter becomes operative pursuant to revolving charge accounts or revolving loan accounts entered into, arranged, or contracted for before this chapter becomes operative; and

(3) All consumer credit transactions made before this chapter becomes operative insofar as this chapter limits the remedies of creditors.

(d) *Applicability.* —

(1) The amendments made during the regular session of the Legislature, 2017, to §46A-2-105 of this code shall apply to consumer credit sales or consumer loans entered into on after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-128 and §46A-2-140 of this code, shall apply to all causes of accruing on or after the effective date of those amendments. The amendments made during the regular session of the Legislature, 2017, to §46A-2-122 and §46A-5-108 of this code shall apply to all causes of action filed on or after the effective date of those amendments.

(2) The amendments made during the regular session of the Legislature, 2021, to §46A-5-104, §46A-5-108, §46A-5-109, and §46A-6-106 of this code shall apply to all causes of

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action filed on or after the effective date of those amendments.

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§46A-8-102. Severability.

If, for any reason, any article, section, sentence, clause, phrase or provision of this chapter or the application thereof to any person or circumstance is held unconstitutional or invalid, such unconstitutionality or invalidity shall not affect other articles, sections, sentences, clauses, phrases or provisions or their application to any other person or circumstance, and to this end each and every article, section, sentence, clause, phrase or provision of this chapter is hereby declared to be severable.

WV Legislature