WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1963

ENROLLED

SENATE BILL NO. 80

(By Mr. Carnahan-Mr. Judah)

PASSED March 2, 1963

In Effect 90 days from Passage

Filed in Office of the Secretary of State
of West Virginia 3-9-63

JOE F. BURDETT
SECRETARY OF STATE
AN ACT to amend and reenact sections one, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to small loan companies.

Be it enacted by the Legislature of West Virginia:

That sections one, twelve, thirteen, fourteen, fifteen, sixteen, seventeen and eighteen, article seven-a, chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

Section 1. When License Necessary to Make Loans at

2 Greater Rate Than Six Per Cent.—No person, copartner-

3 ship, association or corporation shall engage in the busi-
ness of making loans of money, credit, goods, or things in action in the amount or of the value of eight hundred dollars or less and charge, contract for, or receive on any such loan a greater rate of interest, discount, or consideration therefor than six per cent per annum except as authorized by this article and without first obtaining a license from the commissioner of banking of the state of West Virginia, hereinafter called the commissioner.

Sec. 12. Advertising by Licensee; Liens on Realty as Security; Where Business Conducted; Confession of Judgment; What Notes, etc. to Contain.—No licensee or other person, copartnership, association, or corporation shall advertise, print, display, publish, distribute, or broadcast or cause or permit to be advertised, printed, displayed, published, distributed or broadcasted, in any manner whatsoever any statement or representation with regard to the rates, terms, or conditions for the loaning of money, credit, goods, or things in action in the amount or of the value of eight hundred dollars or less, which is false, misleading, or deceptive.

The commissioner may order any licensee to desist
from any conduct which he shall find to be a violation of
the foregoing provisions.

No licensee shall take a lien upon real estate as security
for any loan under the provisions of this article, except
such lien as is created by law upon the recording of a
judgment.

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 so-
licted 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 such that the granting of such authority
would not facilitate evasions of this article or of the rules
and regulations lawfully made hereunder, except nothing
herein shall prohibit the licensee from purchasing install-
ment sales contracts.

No licensee shall transact such business or make any
loan provided for by this article under any other name or
at any other place of business than that named in the
license.
No licensee shall take any confession of judgment or any power of attorney. No licensee shall take any note, promise to pay, or security that does not accurately disclose the actual amount of the loan, the time for which it is made, and the agreed rate of interest or charge, nor any instrument in which blanks are left to be filled in after execution.

It shall be unlawful for any licensee to renegotiate the original loan, or any part thereof, or make a new contract covering 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 licensee 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 deduction for charges herein specifically authorized. Any violation hereof shall be grounds
for suspension or revocation of the license of the licensee by the commissioner of banking.

Sec. 13. Interest; Other Charges Prohibited.—Division A. Every licensee hereunder may loan any sum of money not exceeding eight hundred dollars in amount and may charge, contract for, and receive thereon interest at a rate not exceeding three per centum per month on the first two hundred dollars of any loan, or the remaining balance thereof, two per centum per month on the excess of two hundred dollars to six hundred dollars of any loan, or the remaining balance thereof, and one and one-half per centum per month on the excess of six hundred dollars to eight hundred dollars of any loan or the remaining balance thereof.

No amount whatsoever shall be paid, deducted, or received in advance. Interest shall not be compounded and shall be computed only on unpaid principal balances.

In addition to the interest herein provided for no further or other charge or amount whatsoever for any examination, service, brokerage, commission, expense, fee, or bonus or other thing or otherwise, except credit life in-
surance premiums as hereinafter provided for in section
sixteen of this article, shall be directly or indirectly
charged, contracted for, or received. If any interest, con-
sideration or charges, in excess of those permitted by this
article are charged, contracted for, or received, the con-
tract of loan shall be void and the licensee shall have no
right to collect or receive any principal, interest, or
charges whatsoever.

Division B. In lieu of computing and collecting interest
as provided in division A of this section, a licensee may
contract for and receive charges, on any loan not exceed-
ing eight hundred dollars, exclusive of such charges,
under a contract which requires the combined total of the
original principal amount of the loan and the charges for
payment according to schedule to be paid in substantially
equal successive monthly installments as follows:

(1) The loan charges may be computed, when the loan
is made, on the original principal amount of the loan (ex-
cluding the charges) for the full term of the contract with-
out regard to the requirement for installment payments,
at rates not exceeding the equivalent of nineteen dollars
per one hundred dollars per year for that part of any original principal amount not exceeding two hundred dollars;
sixteen dollars per one hundred dollars per year for that part of the original principal amount exceeding two hundred dollars, but not exceeding six hundred dollars, and twelve dollars per one hundred dollars per year for that part of the original principal amount exceeding six hundred dollars but not exceeding eight hundred dollars.

Such charges shall be added to the cash advanced and the resulting sum shall be the amount of the loan obligation.

(2) For the purpose of computations under this section, whether at the maximum rate or less, a month shall be that period of time from any date in a month to the corresponding date in the next month and if there is no such corresponding date, then to the last day of such month and a day shall be considered one-thirtieth of a month when such computation is made for a fraction of a month.

The portion of the charges attributable to any particular monthly installment period, as originally scheduled or following a deferment, shall bear the same ratio to the total charges, excluding any adjustment made pursuant
to subsection (3) hereof, as the balance scheduled to be outstanding during that monthly period bears to the sum of all monthly balances scheduled originally by the contract of loan.

(3) A licensee and borrower may agree that the first installment date may exceed one month by as much as fifteen days and the charge for each day exceeding one month shall be one-thirtieth of the charge which would be earned for the first installment period of one month. The charge for extra days in the first installment period may be added to the first installment.

(4) If one-half or more of any installment remains unpaid more than ten consecutive days (including Sundays and holidays) after it is due, the licensee may charge and collect a default charge not exceeding two cents for each one dollar of the scheduled installment. Such default charge shall not be charged more than once on a delinquent installment and may be collected when due or at any time thereafter. In no event shall both a default charge and a deferment charge be levied or collected on any one installment.
(5) If the payment of all wholly unpaid installments on which no default charge has been collected is deferred one or more full months, the licensee may charge and collect a deferment charge not exceeding two cents for each one dollar of the sum of the installment so deferred, multiplied by the number of months the maturity of the contract is extended: Provided, That such number of months shall not exceed the number of installments which are due and wholly unpaid or are to become due within fifteen days from the date of deferment. The deferment charge may be collected at the time of deferment or at any time thereafter. Any payment received at the time of deferment may be applied first to the deferment charge and the remainder, if any, applied to the unpaid balance of the contract: Provided, however, That if such payment is sufficient to pay, in addition to the appropriate deferment charge, any installment which is in default and the applicable default charge, it shall be first so applied and any such installment shall not be deferred or subject to deferment charge.

(6) If the contract of loan is prepaid in full by cash, a
new loan or otherwise, after the first scheduled installment payment date, the unearned portion of the charge for payment according to schedule, less any unpaid default or deferment charges, shall be rebated. No rebate shall be required for any partial prepayment. If judgment is obtained before the final installment payment date, the contract balance and the amount for which judgment can be entered shall be reduced by the amount of the rebate which would be required for prepayment in full as of the date judgment is obtained.

(7) If two or more full installments are in default for one full month or more at any installment date and if the contract so provides, the licensee may reduce the contract balance by the rebate which would be required for prepayment in full on such installment date. Thereafter, in lieu of charging, collecting or receiving charges as provided in subsections (1) to (6) inclusive, of this division B, charges may be charged, collected and received as provided by division A, section 13, until the contract is fully paid.

(8) If part or all of the consideration for a contract of
Enr. S. B. No. 86

loan is the unpaid principal balance of a prior loan with
the same licensee, then the principal amount payable un-
der such new contract of loan shall not include any un-
paid charges on the prior loan except such charges which
have accrued within sixty days before the making of such
new contract of loan and may include the balance remain-
ing after giving the rebate required by subsection (6)
hereof.

Sec. 14. Duties of Licensee to Borrower.—Every li-
censee shall: Deliver to the borrower at the time any
loan is made a statement upon which there shall be print-
ed in the English language a copy of division A, section
thirteen, of this article, if the loan is made under said
division A, or a statement upon which there shall be
printed in the English language a copy of division B, sec-
tion thirteen, of this article, if the loan is made under said
division B, and such statement shall show in clear and
distinct terms the amount and date of the loan and of its
maturity, the nature of the security, if any, for the loan,
the name and address of the borrower and of the licensee,
the agreed rate of interest or charges with the amount
thereof and a notice, if applicable, that default and defer-
ment charges may be made and the amount thereof;

Give to the borrower a receipt for all payments made
in cash on account of any such loan at the time such pay-
ments are made;

Permit payment to be made in advance in any amount
equal to one or more full installments on any contract of
loan at any time during the regular business hours of the
licensee, but the licensee may apply such payment first
to accrued charges and interest in full at the agreed rate
up to the date of such payment;

Upon repayment of the loan in full, mark indelibly
every obligation and security signed by the borrower with
the word “paid” or “cancelled”, and release any mortgage,
restore any pledge, and cancel and return any note given
to the licensee by the borrower.

Sec. 15. Interest When Loan is in Excess of Eight Hun-
dred Dollars.—No licensee shall directly or indirectly
charge, contract for, or receive any interest, discount, or
consideration greater than six per cent per annum upon
the loan, use, or forbearance of money, goods, or things
in action, or upon the loan, use, or sale of credit, of the
amount or value of more than eight hundred dollars. The
foregoing prohibition shall also apply to any licensee who
permits any person, as borrower or as endorser, guaran-
tor, or surety for any borrower, or otherwise, to owe di-
rectly or contingently, or both, to the licensee at any time
the sum of more than eight hundred dollars for principal.

Sec. 16. Credit Life Insurance.—Notwithstanding any
other provision of law, a licensee may request but shall
not require as security for a loan made pursuant to this
article insurance on the life of the borrower, or one of
them if there are two or more. The initial amount of such
insurance shall not exceed the total amount repayable un-
der the contract of loan and where the loan is repayable
in substantially equal installments the amount of insur-
ance shall at no time exceed the scheduled or actual
amount unpaid of the total amount payable by the bor-
rrower to a licensee in accordance with the loan contract,
whichever is greater. The term of such insurance shall
not extend more than fifteen days beyond the scheduled
maturity date of the indebtedness. The premium or identi-
fiable charge for such insurance may be deducted from the
proceeds of any loan or may be included as part of the
principal. Such premium or identifiable charge shall not
be in excess of that filed by the insurance company with
the insurance commissioner. Any gain or benefit to the
licensee, directly or indirectly, from such insurance or the
sale or provision thereof shall not be deemed a violation
of any section of this article. No licensee shall require the
purchasing of such insurance as a condition precedent to
the making of a loan, and if the borrower elects to pur-
chase insurance the licensee shall not require the pur-
chasing of such insurance through a particular agent or
broker or from a particular insurance company.

Sec. 17. Assignment of Wages Prohibited; When Lien
on Household Furniture not Valid.—No licensee shall take
any assignment of, or order for payment of, any salary,
wages, commissions, or other compensation for services,
earned or to be earned, to secure any loan made by any
licensee under this article.

No chattel mortgage, trust deed or other lien on house-
hold furniture then in the possession and use of the bor-
rrower, shall be valid unless it be in writing, signed in
person by the borrower, and if the borrower is married
unless it is 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 chattel mortgage, deed of trust or other
lien.

Sec. 18. Interest on Loans of Less Than Eight Hundred
Dollars.—No person, copartnership, association, or cor-
poration, except as authorized by this article, shall di-
rectly or indirectly charge, contract for, or receive any
interest, discount, or consideration greater than six per
cent per annum upon the loan, use, or forbearance of
money, goods, or things in action, or upon the loan, use,
or sale of credit of the amount or value of eight hundred
dollars or less.

The foregoing prohibition shall apply to any person,
copartnership, association, or corporation who or which,
by any device, subterfuge, or pretense whatsoever shall
charge, contract for, or receive greater interest, considera-
14 tion, or charges than is authorized by this act for any
15 such loan, use, or forbearance of money, goods, or things
16 in action or for any such loan, use, or sale of credit.
17 No loan of the amount or value of eight hundred dollars
18 or less for which a greater rate of interest, consideration,
19 or charges than is permitted by this article has been
20 charged, contracted for, or received, wherever made, shall
21 be enforced in this state and every person in anywise
22 participating therein in this state shall be subject to the
23 provisions of this article.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

Takes effect 20 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within approved this the 8th

day of March, 1963.

Governor
Presented to the Governor Mar 7, 1963