

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-28-79

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WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1979

ENROLLED

SENATE BILL NO. 338

(By Mr. Hogers)

PASSED March 9, 1979

In Effect July 1, 1979 ~~Passage~~



No. 338

ENROLLED
Senate Bill No. 338
(By MR. ROGERS)

[Passed March 9, 1979; in effect July 1, 1979.]

AN ACT to amend and reenact section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact sections one hundred seven and one hundred eleven, article four of said chapter, all relating to the West Virginia consumer credit and protection act; loan finance charge for supervised lenders; maximum interest when loan is in excess of one thousand five hundred dollars.

Be it enacted by the Legislature of West Virginia:

That section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that sections one hundred seven and one hundred eleven, article four of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-102. General definitions.

- 1 In addition to definitions appearing in subsequent
- 2 articles, in this chapter:
- 3 (1) "Actuarial method" means the method, defined
- 4 by rules adopted by the commissioner, of allocating pay-
- 5 ments made on a debt between principal or amount
- 6 financed and loan finance charge or sales finance charge
- 7 pursuant to which a payment is applied first to the ac-

8 cumulated loan finance charge or sales finance charge
9 and the balance is applied to the unpaid principal or
10 unpaid amount financed.

11 (2) "Agreement" means the bargain of the parties in
12 fact as found in their language or by implication from
13 other circumstances including course of dealing or usage
14 of trade or course of performance. A "consumer credit
15 agreement" is an agreement where credit is granted.

16 (3) "Agricultural purpose" means a purpose related
17 to the production, harvest, exhibition, marketing, trans-
18 portation, processing or manufacture of agricultural
19 products by a natural person who cultivates, plants,
20 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.

28 (4) "Amount financed" means the total of the following items to the extent that payment is deferred:

30 (a) The cash price of the goods, services or interest
31 in land, less the amount of any down payment whether
32 made in cash or in property traded in;

33 (b) The amount actually paid or to be paid by the
34 seller pursuant to an agreement with the buyer to discharge a security interest in or a lien on property traded in; and

37 (c) If not included in the cash price:

38 (i) Any applicable sales, use, privilege, excise or
39 documentary stamp taxes;

40 (ii) Amounts actually paid or to be paid by the
41 seller for registration, certificate of title or license fees;
42 and

43 (iii) Additional charges permitted by this chapter.

44 (5) "Average daily balance" in a billing cycle for
45 which a sales finance charge or loan finance charge is
46 made is the sum of the amount unpaid each day during

47 that cycle divided by the number of days in that cycle.
48 The amount unpaid on a day is determined by adding
49 to the balance, if any, unpaid as of the beginning of
50 that day all purchases and other debits and deducting
51 all payments and other credits made or received as of
52 that day.

53 (6) The "cash price" of goods, services or an interest
54 in land means the price at which the goods, services or
55 interest in land are offered for sale by the seller to cash
56 buyers in the ordinary course of business, and may in-
57 clude (a) applicable sales, use, privilege, and excise
58 and documentary stamp taxes, (b) the cash price of
59 accessories or related services such as delivery, installa-
60 tion, servicing, repairs, alterations and improvements,
61 and (c) amounts actually paid or to be paid by the
62 seller for registration, certificate of title, or license fees.

63 (7) "Closing costs" with respect to a debt secured by
64 an interest in land include:

65 (a) Fees or premiums for title examination, title
66 insurance or similar purposes including surveys;

67 (b) Fees for preparation of a deed, deed of trust,
68 mortgage, settlement statement or other documents;

69 (c) Escrows for future payments of taxes and insur-
70 ance;

71 (d) Official fees and fees for notarizing deeds and
72 other documents;

73 (e) Appraisal fees; and

74 (f) Credit reports.

75 (8) "Code" means the official code of West Virginia,
76 one thousand nine hundred thirty-one, as amended.

77 (9) "Commissioner" means the commissioner of bank-
78 ing of West Virginia.

79 (10) "Conspicuous": A term or clause is conspicuous
80 when it is so written that a reasonable person against
81 whom it is to operate ought to have noticed it. Whether
82 a term or clause is conspicuous or not is for decision by
83 the court.

84 (11) "Consumer" means a natural person who incurs

85 debt pursuant to a consumer credit sale or a consumer
86 loan.

87 (12) (a) Except as provided in paragraph (b), "con-
88 sumer credit sale" is a sale of goods, services or an
89 interest in land in which:

90 (i) Credit is granted either by a seller who regularly
91 engages as a seller in credit transactions of the same
92 kind or pursuant to a seller credit card;

93 (ii) The buyer is a person other than an organization;

94 (iii) The goods, services or interest in land are pur-
95 chased primarily for a personal, family, household or
96 agricultural purpose;

97 (iv) Either the debt is payable in installments or a
98 sales finance charge is made; and

99 (v) With respect to a sale of goods or services, the
100 amount financed does not exceed twenty-five thousand
101 dollars.

102 (b) "Consumer credit sale" does not include a sale in
103 which the seller allows the buyer to purchase goods or
104 services pursuant to a lender credit card or similar
105 arrangement.

106 (13) (a) "Consumer lease" means a lease of goods:

107 (i) Which a lessor regularly engaged in the business
108 of leasing makes to a person, other than an organization,
109 who takes under the lease primarily for a personal,
110 family, household or agricultural purpose;

111 (ii) In which the amount payable under the lease
112 does not exceed twenty-five thousand dollars; and

113 (iii) Which is for a term exceeding four months.

114 (b) "Consumer lease" does not include a lease made
115 pursuant to a lender credit card or similar arrangement.

116 (14) "Consumer loan" is a loan made by a person
117 regularly engaged in the business of making loans in
118 which:

119 (a) The debtor is a person other than an organiza-
120 tion;

121 (b) The debt is incurred primarily for a personal,
122 family, household or agricultural purpose;

123 (c) Either the debt is payable in installments or a
124 loan finance charge is made; and

125 (d) Either the principal does not exceed twenty-five
126 thousand dollars or the debt is secured by an interest in
127 land.

128 (15) "Credit" means the privilege granted by a
129 creditor to a debtor to defer payment of debt or to incur
130 debt and defer its payment.

131 (16) "Earnings" means compensation paid or payable
132 to an individual or for his account for personal services
133 rendered or to be rendered by him, whether denominated
134 as wages, salary, commission, bonus or otherwise, and
135 includes periodic payments pursuant to a pension, re-
136 tirement or disability program.

137 (17) "Federal Consumer Credit Protection Act" means
138 the "Consumer Credit Protection Act" (Public Law
139 90-321; 82 Stat. 146), as amended, and includes regula-
140 tions issued pursuant to that act.

141 (18) "Goods" includes goods not in existence at the
142 time the transaction is entered into and gift and mer-
143 chandise certificates, but excludes money, chattel paper,
144 documents of title and instruments.

145 (19) "Home solicitation sale" means a consumer credit
146 sale in excess of twenty-five dollars in which the buyer
147 receives a solicitation of the sale at a place other than
148 the seller's business establishment at a fixed location
149 and the buyer's agreement or offer to purchase is there
150 given to the seller or a person acting for the seller. The
151 term does not include a sale made pursuant to a pre-
152 existing open-end-credit account with the seller in
153 existence for at least three months prior to the transac-
154 tion, a sale made pursuant to prior negotiations between
155 the parties at the seller's business establishment at a
156 fixed location, a sale of motor vehicles, mobile homes or
157 farm equipment or a sale which may be rescinded under
158 the Federal Truth in Lending Act (being Title I of the
159 Federal Consumer Credit Protection Act). A sale which
160 would be a home solicitation sale if credit were extended
161 by the seller is a home solicitation sale although the

162 goods or services are paid for in whole or in part by a
163 consumer loan in which the creditor is subject to claims
164 and defenses arising from the sale.

165 (20) Except as otherwise provided, "lender" includes
166 an assignee of the lender's right to payment but use of
167 the term does not in itself impose on an assignee any
168 obligation of the lender.

169 (21) "Lender credit card or similar arrangement"
170 means an arrangement or loan agreement, other than a
171 seller credit card, pursuant to which a lender gives a
172 debtor the privilege of using a credit card, letter of credit,
173 or other credit confirmation or identification in transac-
174 tions out of which debt arises:

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

178 (b) By the lender's payment or agreement to pay
179 the consumer's obligations; or

180 (c) By the lender's purchase from the obligee of
181 the consumer's obligations.

182 (22) "Loan" includes:

183 (a) The creation of debt by the lender's payment of
184 or agreement to pay money to the consumer or to a
185 third party for the account of the consumer other than
186 debts created pursuant to a seller credit card;

187 (b) The creation of debt by a credit to an account
188 with the lender upon which the consumer is entitled to
189 draw immediately;

190 (c) The creation of debt pursuant to a lender credit
191 card or similar arrangement; and

192 (d) The forbearance of debt arising from a loan.

193 (23) (a) "Loan finance charge" means the sum of
194 (i) all charges payable directly or indirectly by the
195 debtor and imposed directly or indirectly by the lender
196 as an incident to the extension of credit, including any
197 of the following types of charges which are applicable:
198 Interest or any amount payable under a point, discount,
199 or other system of charges, however denominated,

200 premium or other charge for any guarantee or insurance
201 protecting the lender against the consumer's default or
202 other credit loss; and (ii) charges incurred for investi-
203 gating the collateral or credit-worthiness of the con-
204 sumer or for commissions or brokerage for obtaining
205 the credit, irrespective of the person to whom the charges
206 are paid or payable, unless the lender had no notice
207 of the charges when the loan was made. The term
208 does not include charges as a result of default, addi-
209 tional charges, delinquency charges or deferral charges.

210 (b) If a lender makes a loan to a consumer by pur-
211 chasing or satisfying obligations of the consumer pur-
212 suant to a lender credit card or similar arrangement,
213 and the purchase or satisfaction is made at less than
214 the face amount of the obligation, the discount is not
215 part of the loan finance charge.

216 (24) "Merchandise certificate" or "gift certificate"
217 means a writing issued by a seller or issuer of a seller
218 credit card, not redeemable in cash and usable in its face
219 amount in lieu of cash in exchange for goods or services.

220 (25) "Official fees" means:

221 (a) Fees and charges prescribed by law which actu-
222 ally are or will be paid to public officials for determining
223 the existence of or for perfecting, releasing, terminating
224 or satisfying a security interest related to a consumer
225 credit sale or consumer loan; or

226 (b) Premiums payable for insurance or fees escrowed
227 in a special account for the purpose of funding self-
228 insurance or its equivalent in lieu of perfecting a security
229 interest otherwise required by the creditor in connection
230 with the sale, lease or loan, if such premium or fee does
231 not exceed the fees and charges described in paragraph

232 (a) which would otherwise be payable.

233 (26) "Organization" means a corporation, government
234 or governmental subdivision or agency, trust, estate,
235 partnership, cooperative or association.

236 (27) "Payable in installments" means that payment
237 is required or permitted by agreement to be made in (a)
238 two or more periodic payments, excluding a down pay-

239 ment, with respect to a debt arising from a consumer
240 credit sale pursuant to which a sales finance charge is
241 made, (b) four or more periodic payments, excluding a
242 down payment, with respect to a debt arising from a
243 consumer credit sale pursuant to which no sales finance
244 charge is made, or (c) two or more periodic payments
245 with respect to a debt arising from a consumer loan. If
246 any periodic payment other than the down payment
247 under an agreement requiring or permitting two or more
248 periodic payments is more than twice the amount of
249 any other periodic payment, excluding the down pay-
250 ment, the consumer credit sale or consumer loan is "pay-
251 able in installments."

252 (28) "Person" or "party" includes a natural person
253 or an individual, and an organization.

254 (29) "Person related to" with respect to an individual
255 means (a) the spouse of the individual, (b) a brother,
256 brother-in-law, sister or sister-in-law of the individual,
257 (c) an ancestor or lineal descendant of the individual
258 or his spouse, and (d) any other relative, by blood or
259 marriage, of the individual or his spouse who shares the
260 same home with the individual. "Person related to" with
261 respect to an organization means (a) a person directly
262 or indirectly controlling, controlled by or under common
263 control with the organization, (b) an officer or director
264 of the organization or a person performing similar func-
265 tions with respect to the organization or to a person
266 related to the organization, (c) the spouse of a person
267 related to the organization, and (d) a relative by blood
268 or marriage of a person related to the organization who
269 shares the same home with him.

270 (30) "Precomputed loan." A loan, refinancing or con-
271 solidation is "precomputed" if the debt is expressed as a
272 sum comprising the principal and the amount of the loan
273 finance charge computed in advance.

274 (31) "Precomputed sale." A sale, refinancing or con-
275 solidation is "precomputed" if the debt is expressed as
276 a sum comprising the amount financed and the amount
277 of the sales finance charge computed in advance.

278 (32) "Presumed" or "presumption" means that the
279 trier of fact must find the existence of the fact presumed
280 unless and until evidence is introduced which would
281 support a finding of its nonexistence.

282 (33) "Principal" of a loan means the total of:

283 (a) The net amount paid to, receivable by or paid
284 or payable for the account of the debtor;

285 (b) The amount of any discount excluded from the
286 loan finance charge; and

287 (c) To the extent that payment is deferred:

288 (i) Amounts actually paid or to be paid by the lender
289 for registration, certificate of title, or license fees if not
290 included in (a); and

291 (ii) Additional charges permitted by this chapter.

292 (34) "Revolving charge account" means an agreement
293 between a seller and a buyer by which (a) the buyer
294 may purchase goods or services on credit or a seller
295 credit card, (b) the balances of amounts financed and
296 the sales finance and other appropriate charges are
297 debited to an account, (c) a sales finance charge if made
298 is not precomputed but is computed periodically on the
299 balances of the account from time to time, and (d) there
300 is the privilege of paying the balances in installments.

301 (35) "Revolving loan account" means an arrangement
302 between a lender and a consumer including, but not
303 limited to, a lender credit card or similar arrangement,
304 pursuant to which (a) the lender may permit the con-
305 sumer to obtain loans from time to time, (b) the unpaid
306 balances of principal and the loan finance and other
307 appropriate charges are debited to an account, (c) a loan
308 finance charge if made is not precomputed but is com-
309 puted periodically on the outstanding unpaid balances
310 of the principal of the consumer's account from time to
311 time, and (d) there is the privilege of paying the balances
312 in installments.

313 (36) "Sale of goods" includes any agreement in the
314 form of a bailment or lease of goods if the bailee or
315 lessee agrees to pay as compensation for use a sum
316 substantially equivalent to or in excess of the aggregate

317 value of the goods involved and it is agreed that the
318 bailee or lessee will become, or for no other or a nominal
319 consideration has the option to become, the owner of
320 the goods upon full compliance with his obligations
321 under the agreement.

322 (37) "Sale of an interest in land" includes a lease in
323 which the lessee has an option to purchase the interest
324 and all or a substantial part of the rental or other pay-
325 ments previously made by him are applied to the pur-
326 chase price.

327 (38) "Sale of services" means furnishing or agreeing
328 to furnish services and includes making arrangements
329 to have services furnished by another.

330 (39) "Sales finance charge" means the sum of (a) all
331 charges payable directly or indirectly by the buyer and
332 imposed directly or indirectly by the seller or issuer of a
333 seller credit card as an incident to the extension of
334 credit, including any of the following types of charges
335 which are applicable: Time-price differential, however
336 denominated, including service, carrying or other charge,
337 premium or other charge for any guarantee or insurance
338 protecting the seller against the buyer's default or other
339 credit loss, and (b) charges incurred for investigating
340 the collateral or credit-worthiness of the buyer or for
341 commissions or brokerage for obtaining the credit, irre-
342 spective of the person to whom the charges are paid or
343 payable; unless the seller had no notice of the charges
344 when the credit was granted. The term does not include
345 charges as a result of default, additional charges, delin-
346 quency charges or deferral charges. If the seller or
347 issuer of a seller credit card purchases or satisfies obliga-
348 tions of the consumer and the purchase or satisfaction is
349 made at less than the face amount of the obligation, the
350 discount is not part of the sales finance charge.

351 (40) Except as otherwise provided, "seller" includes
352 an assignee of the seller's right to payment but use of
353 the term does not in itself impose on an assignee any
354 obligation of the seller.

355 (41) "Seller credit card" means an arrangement pur-

356 suant to which a person gives to a buyer or lessee the
357 privilege of using a credit card, letter of credit, or other
358 credit confirmation or identification primarily for the
359 purpose of purchasing or leasing goods or services from
360 that person, that person and any other person or persons,
361 a person related to that person, or others licensed or
362 franchised or permitted to do business under his business
363 name or trade name or designation or on his behalf.

364 (42) "Services" includes (a) work, labor and other
365 personal services, (b) privileges with respect to trans-
366 portation, use of vehicles, hotel and restaurant accom-
367 modations, education, entertainment, recreation, physical
368 culture, hospital accommodations, funerals, cemetery
369 accommodations, and the like, and (c) insurance.

370 (43) "Supervised financial organization" means a per-
371 son, other than a supervised lender or an insurance
372 company or other organization primarily engaged in an
373 insurance business:

374 (a) Organized, chartered or holding an authorization
375 certificate under the laws of this state or of the United
376 States which authorizes the person to make consumer
377 loans; and

378 (b) Subject to supervision and examination with
379 respect to such loans by an official or agency of this
380 state or of the United States.

381 (44) "Supervised lender" means a person authorized
382 to make or take assignments of supervised loans.

383 (45) "Supervised loan" means a consumer loan made
384 by other than a supervised financial organization, in-
385 cluding a loan made pursuant to a revolving loan account,
386 where the principal does not exceed one thousand five
387 hundred dollars and in which the rate of the loan finance
388 charge exceeds eight percent per year as determined
389 according to the actuarial method.

ARTICLE 4. SUPERVISED LENDERS.

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

1 (1) With respect to a supervised loan, including a
2 revolving loan account, a supervised lender may con-

3 tract for and receive a loan finance charge not exceeding
4 that permitted by this section.

5 (2) The loan finance charge, calculated according to
6 the actuarial method, may not exceed the total of:

7 (a) Thirty-six percent per year on that part of the
8 unpaid balances of the principal which is two hundred
9 dollars or less;

10 (b) Twenty-four percent per year on that part of
11 the unpaid balances of the principal which is more than
12 two hundred dollars but does not exceed twelve hundred
13 dollars; and

14 (c) Eighteen percent per year on that part of the
15 unpaid balances of the principal which is more than
16 twelve hundred dollars.

17 (3) This section does not limit or restrict the manner
18 of calculating the loan finance charge, whether by way
19 of add-on, discount, or otherwise, so long as the rate of
20 the loan finance charge does not exceed that permitted
21 by this section. If the loan is precomputed:

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

25 (b) The effect of prepayment, refinancing or con-
26 solidation is governed by the provisions on rebate upon
27 prepayment, refinancing or consolidation contained in
28 section one hundred eleven, article three of this chapter.

29 (4) For the purposes of this section, the term of a
30 loan commences on the date the loan is made. Differ-
31 ences in the lengths of months are disregarded and a
32 day may be counted as one thirtieth of a month. Subject
33 to classifications and differentiations the licensee may
34 reasonably establish, a part of a month in excess of
35 fifteen days may be treated as a full month if periods
36 of fifteen days or less are disregarded and if that pro-
37 cedure is not consistently used to obtain a greater yield
38 than would otherwise be permitted.

39 (5) Subject to classifications and differentiations the
40 lender may reasonably establish, he may make the same
41 loan finance charge on all principal amounts within a

42 specified range. A loan finance charge so made does not
43 violate subsection (2) if:

44 (a) When applied to the median amount within each
45 range, it does not exceed the maximum permitted by
46 subsection (2), and

47 (b) When applied to the lowest amount within each
48 range, it does not produce a rate of loan finance charge
49 exceeding the rate calculated according to subdivision
50 (a) of this subsection (5) by more than eight percent of
51 the rate calculated according to said subdivision (a).

52 (6) With respect to a revolving loan account:

53 (a) A charge may be made by a supervised lender in
54 each monthly billing cycle which is one twelfth of the
55 maximum annual rates permitted by this section com-
56 puted on an amount not exceeding the greatest of:

57 (i) The average daily balance of the debt,

58 (ii) The balance of the debt at the beginning of the
59 first day of the billing cycle, less all payments on and
60 credits to such debt during such billing cycle and ex-
61 cluding all additional borrowings during such billing
62 cycle, or

63 (iii) Subject to subsection (5), the median amount
64 within a specified range within which the average daily
65 balance of the debt or the balance of the debt at the
66 beginning of the first day of the billing cycle, less all
67 payments on and credits to such debt during such billing
68 cycle and excluding all additional borrowings during
69 such billing cycle, is included. For the purpose of this
70 subdivision (a) a billing cycle is monthly if the billing
71 statement dates are on the same day each month or do
72 not vary by more than four days therefrom.

73 (b) If the billing cycle is not monthly, the maximum
74 loan finance charge which may be made by a supervised
75 lender is that percentage which bears the same relation
76 to an applicable monthly percentage as the number of
77 days in the billing cycle bears to thirty.

78 (c) Notwithstanding subdivisions (a) and (b) of this
79 subsection (6), if there is an unpaid balance on the date
80 as of which the loan finance charge is applied, the licensee

81 may contract for and receive a charge not exceeding
82 fifty cents if the billing cycle is monthly or longer, or the
83 pro rata part of fifty cents which bears the same relation
84 to fifty cents as the number of days in the billing cycle
85 bears to thirty if the billing cycle is shorter than monthly,
86 but no charge may be made pursuant to this subdivision
87 (c) if the lender has made an annual charge for the
88 same period as permitted by the provisions on addi-
89 tional charges.

**§46A-4-111. Maximum interest when loan is in excess of one
thousand five hundred dollars.**

1 No licensee shall directly or indirectly charge, contract
2 for, or receive any interest, discount or consideration
3 greater than six percent per annum upon the loan, use
4 or forbearance of money, goods or things in action, or
5 upon the loan, use or sale of credit, when the amount or
6 value thereof is more than one thousand five hundred
7 dollars. The foregoing prohibition shall also apply to
8 any licensee who permits any person, as borrower or as
9 endorser, guarantor, or surety for any borrower, or
10 otherwise, to owe directly or contingently, or both, to
11 the licensee at any time the sum of more than one
12 thousand five hundred dollars for principal.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James F. Davis
Chairman Senate Committee

Clarence C. Chastain, Jr.
Chairman House Committee

Originated in the Senate.

To take effect July 1, 1979.

J. C. McElroy
Clerk of the Senate

W. B. Blankenship
Clerk of the House of Delegates

W. B. Blankenship
President of the Senate

Hyde M. Lee, Jr.
Speaker House of Delegates

The within ~~is approved~~ *is approved* this the 28
day of March, 1979.

John A. Rayburn
Governor

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