WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1980

ENROLLED

HOUSE BILL No. 1366

(By Mr. Tucker)

Approved and signed by the Governor

Date: 3-25-80

Time: 11:00 A.M.

Passed March 8, 1980

In Effect from Passage
AN ACT to amend and reenact sections one hundred one, one hundred two and one hundred four, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to further amend said article by adding thereto a new section, designated section one hundred seventeen, all relating to sales finance charges for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes; sales finance charges for certain consumer credit sales of real estate; loan finance charges for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charges on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located; alternative finance charges authorized.

Be it enacted by the Legislature of West Virginia:

That sections one hundred one, one hundred two and one hundred four, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted; and that said article three be further amend-
ed by adding thereto a new section, designated section one hundred four-a, all to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-101. Sales finance charge for consumer credit sales other than certain sales of real estate or sales made pursuant to revolving charge accounts; subject to exceptions as to motor vehicles and mobile homes and a specified quantity of real estate involved with consumer credit sales of mobile homes.

1 (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 fifteen hundred dollars or less and twelve percent per year on that part of the unpaid balances of the amount financed which is in excess of fifteen hundred dollars, calculated according to the actuarial method.

2 (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:

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

4 (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.

5 (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 thirtyieth 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 paragraph (a) by more than eight percent of the rate calculated according to paragraph (a).

(5) Notwithstanding subsection (1), the seller may contract for and receive a minimum sales finance charge of not more than five dollars when the amount financed does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount financed exceeds seventy-five dollars.

(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 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 and until and including the fifteenth day of April, one thousand nine hundred eighty-one, 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.
§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.

§46A-3-104. Loan finance charge for consumer loans made by supervised financial organizations and certain other lenders other than loans made pursuant to revolving loan accounts and finance charge on assigned contracts; subject to exceptions as to loans involving motor vehicles and mobile homes and a specified quantity of real estate upon which mobile homes are or will be located.

(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, section five-a, or section five-b, article six, chapter forty-seven of this code; (b) an industrial loan company, as defined in section three, article seven, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by subdivisions (5) and (6), subsection (a), section eleven, article seven, chapter thirty-one of this code or by the provisions of section five, article six, chapter
forty-seven of this code, (c) a building and loan association, as defined in section two, article six, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section seventeen, article six, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, (d) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, article six, chapter forty-seven of this code, and (e) any other lender, other than a supervised lender, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, section five-a or section five-b, article six, chapter forty-seven of this code.

(2) Notwithstanding any provision of this section to the contrary, with respect to a consumer loan involving a motor vehicle or a mobile home or with respect to a consumer loan to finance the sale from one seller of both a mobile home and the real estate upon which such mobile home is or will be located, or with respect to a consumer loan where a security interest in real estate owned by the borrower is given to the lender as collateral for such loan, a lender may from the effective date of this section and until and including the fifteenth day of April, one thousand nine hundred eighty-one, contract for and receive a loan 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 in such consumer loan transactions involving a mobile home and real estate where such finance charge is contracted for and received shall not exceed one acre.

(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, re-
financing or consolidation contained in section one hundred eleven of this article.

(4) Notwithstanding subsection (1), the lender may contract for and receive a minimum loan finance charge of not more than five dollars when the amount loaned does not exceed seventy-five dollars, or seven dollars and fifty cents when the amount loaned exceeds seventy-five dollars.

(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.

§46A-3-104a. 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.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

James Davis  
Chairman Senate Committee

Chairman House Committee

Originated in the House.
Takes effect from passage.

J. C. Wells  
Clerk of the Senate

Clerk of the House of Delegates

The within is approved this the 25th day of March, 1980.

Governor