

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-25-80

Time 11:00 A.M.

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1980

— ● —

# ENROLLED

HOUSE BILL No. 1366

(By Mr. Tucker)

— ● —

Passed March 8, 1980

In Effect From Passage



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No. 1366

**ENROLLED**

# **H. B. 1366**

(By MR. TUCKER)

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[Passed March 8, 1980; in effect from passage.]

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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  
2 sale of real estate subject to the provisions of section one  
3 hundred two of this article or a sale pursuant to a revolving  
4 charge account, a seller may contract for and receive a sales  
5 finance charge not exceeding eighteen percent per year on  
6 that part of the unpaid balance of the amount financed which  
7 is fifteen hundred dollars or less and twelve percent per year  
8 on that part of the unpaid balances of the amount financed  
9 which is in excess of fifteen hundred dollars, calculated ac-  
10 cording to the actuarial method.

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

16 (a) The sales finance charge may be calculated on the as-  
17 sumption that all scheduled payments will be made when due,  
18 and

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

23 (3) For the purposes of this section, the term of a sale  
24 agreement commences on the date the credit is granted or, if  
25 goods are delivered or services performed ten days or more  
26 after that date, with the date of commencement of delivery or  
27 performance. Differences in the lengths of months are disre-  
28 garded and a day may be counted as one thirtieth of a month.

29 Subject to classifications and differentiations the seller may  
30 reasonably establish, a part of a month in excess of fifteen  
31 days may be treated as a full month if periods of fifteen days or  
32 less are disregarded and if that procedure is not consistently  
33 used to obtain a greater yield than would otherwise be per-  
34 mitted.

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

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

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

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

51 (6) Notwithstanding any provision of this section to the  
52 contrary, with respect to a consumer credit sale involving a  
53 motor vehicle or a mobile home or a consumer credit sale from  
54 the same seller of both a mobile home and the real estate upon  
55 which such mobile home is or will be located, or a consumer  
56 credit sale of a mobile home where a security interest in real  
57 estate owned by the buyer is given to the seller as collateral, a  
58 seller may from the effective date of this section and until  
59 and including the fifteenth day of April, one thousand nine  
60 hundred eighty-one, contract for and receive a sales finance  
61 charge not exceeding eighteen percent per year on the unpaid  
62 balance calculated according to the actuarial method: *Pro-*  
63 *vided*, That the quantity of real estate involved with the con-  
64 sumer credit sale of a mobile home upon which such finance  
65 charge is contracted for and received shall not exceed one  
66 acre.

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

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

9 In addition to the sales finance charge permitted by this  
10 section with respect to such sale, a seller may also contract  
11 for and receive additional charges, delinquency charges, and  
12 deferral charges and compute rebates upon prepayment, re-  
13 financing or consolidation as defined and authorized by this  
14 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 (1) With respect to a consumer loan, other than a consumer  
2 loan made pursuant to a revolving loan account, (a) a bank,  
3 as defined in section two, article one, chapter thirty-one-a of  
4 this code, may contract for and receive a loan finance charge  
5 not exceeding the charge or interest permitted by the provi-  
6 sions of section thirty, article four, chapter thirty-one-a or by  
7 the provisions of section five, section five-a, or section five-b,  
8 article six, chapter forty-seven of this code, (b) an industrial  
9 loan company, as defined in section three, article seven, chap-  
10 ter thirty-one of this code, may contract for and receive a  
11 loan finance charge not exceeding the aggregate of the interest  
12 and charges permitted by subdivisions (5) and (6), subsection  
13 (a), section eleven, article seven, chapter thirty-one of this  
14 code or by the provisions of section five, article six, chapter

15 forty-seven of this code, (c) a building and loan association,  
16 as defined in section two, article six, chapter thirty-one of this  
17 code, may contract for and receive a loan finance charge not  
18 exceeding the charge or interest permitted by the provisions of  
19 section seventeen, article six, chapter thirty-one of this code,  
20 or by the provisions of section five, article six, chapter forty-  
21 seven of this code, (d) a credit union, as defined in section  
22 one, article ten, chapter thirty-one of this code, may contract  
23 for and receive a loan finance charge not exceeding the charge  
24 or interest permitted by the provisions of section sixteen, article  
25 ten, chapter thirty-one of this code, or by the provisions of  
26 section five, article six, chapter forty-seven of this code, and  
27 (e) any other lender, other than a supervised lender, may  
28 contract for and receive a loan finance charge not exceeding  
29 the charge or interest permitted by the provisions of section  
30 five, section five-a or section five-b, article six, chapter forty-  
31 seven of this code.

32 (2) Notwithstanding any provision of this section to the  
33 contrary, with respect to a consumer loan involving a motor  
34 vehicle or a mobile home or with respect to a consumer loan  
35 to finance the sale from one seller of both a mobile home and  
36 the real estate upon which such mobile home is or will be  
37 located, or with respect to a consumer loan where a security  
38 interest in real estate owned by the borrower is given to the  
39 lender as collateral for such loan, a lender may from the  
40 effective date of this section and until and including the fif-  
41 teenth day of April, one thousand nine hundred eighty-one,  
42 contract for and receive a loan finance charge not exceeding  
43 eighteen percent per year on the unpaid balance calculated ac-  
44 cording to the actuarial method: *Provided*, That the quantity  
45 of real estate involved in such consumer loan transactions in-  
46 volving a mobile home and real estate where such finance  
47 charge is contracted for and received shall not exceed one acre.

48 (3) If the loan is precomputed:

49 (a) The loan finance charge may be calculated on the as-  
50 sumption that all scheduled payments will be made when due,  
51 and

52 (b) The effect of prepayment, refinancing or consolidation  
53 is governed by the provisions on rebate upon prepayment, re-

54 financing or consolidation contained in section one hundred  
55 eleven of this article.

56 (4) Notwithstanding subsection (1), the lender may con-  
57 tract for and receive a minimum loan finance charge of not  
58 more than five dollars when the amount loaned does not ex-  
59 ceed seventy-five dollars, or seven dollars and fifty cents when  
60 the amount loaned exceeds seventy-five dollars.

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

**§46A-3-104a. Alternative finance charges authorized.**

1 Notwithstanding any other provisions of this chapter, a per-  
2 son making any sale or loan subject to the provisions of this  
3 chapter, may charge a sales finance charge, loan finance charge  
4 or rate of interest for such sale or loan not exceeding the  
5 charge or interest permitted by the provisions of section thirty-  
6 a, article four, chapter thirty-one-a or section five-b, article  
7 six, chapter forty-seven of this code for the loan of money, or  
8 permitted by the provisions of section five-c, article six, chapter  
9 forty-seven of this code for the forbearance of money, or the  
10 appropriate rate authorized by this chapter for such sale or  
11 loan, whichever is greater.

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

*James L. Davis*  
-----  
Chairman Senate Committee

*Clarence C. Chestnut*  
-----  
Chairman House Committee

Originated in the House.

Takes effect from passage.

*Todd C. Wilks*  
-----  
Clerk of the Senate

*CA Blankenship*  
-----  
Clerk of the House of Delegates

*W.C. Proffitt*  
-----  
President of the Senate

*Clide M. Lee, Jr.*  
-----  
Speaker House of Delegates

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

*James R. Reynolds*  
-----  
Governor

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OFFICE OF THE GOVERNOR