

APPROVED AND SIGNED BY THE GOVERNOR

Date 4-15-81

Time _____

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1981

ENROLLED
Committee Substitute
for **SENATE BILL NO. 559**

(By Mr. *Lord & Mr. Rogers*)

PASSED April 10, 1981

In Effect from Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 559
(By MR. WARD and MR. ROGERS)

[Passed April 10, 1981; in effect from passage.]

AN ACT to amend and reenact section eleven, article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact section thirty, article four, chapter thirty-one-a of said code; to amend and reenact section one hundred two, article one, chapter forty-six-a of said code; to further amend said chapter forty-six-a by amending and reenacting sections one hundred one, one hundred three, one hundred four, one hundred six and one hundred eleven, article three; to further amend and reenact sections one hundred seven and one hundred eleven, article four, of said chapter forty-six-a; and to amend and reenact section five-a, article six, chapter forty-seven; and to further amend said article six by adding thereto a new section, designated section five-d; and to further amend said code by adding thereto a new chapter, designated chapter forty-seven-a, all relating to maximum interest rates and finance charges; increasing the maximum allowable finance charge for certain industrial loan company loans, consumer credit sales, motor vehicle and motor home sales and loans involving a specified quantity of real estate, revolving charge

accounts, revolving loan accounts, lenders other than supervised lenders, and supervised lenders, all of which increased maximum allowable finance charges terminate after the first day of July, one thousand nine hundred eighty-two; eliminating the use of the sum of the digits method, commonly referred to as the "Rule of 78," in the computation of rebates upon prepayment of installment loans payable over more than thirty-six months; and providing for determination of rebates upon prepayment of loans payable over thirty-six months or more by applying the rate of finance charge required to be disclosed in the transaction, according to the actuarial method; definition of "supervised loan"; establishing the West Virginia lending and credit rate board; authorizing said board to prescribe quarterly alternative maximum interest rates or finance charges on loans, credit sales or transactions, forbearances or other similar transactions, and providing for compensation for its members; requiring quarterly reports; specifying factors to be considered in setting rates; allowing different rates within ranges of balances; staffing of and offices for the West Virginia lending and credit rate board; creation of revolving fund and assessment of fee for revolving fund for board operations; requiring report to and review by Legislature; validity of contracts, and usury; applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

Be it enacted by the Legislature of West Virginia:

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

CHAPTER 31. CORPORATIONS.

ARTICLE 7. INDUSTRIAL BANKS AND INDUSTRIAL LOAN COMPANIES.

§31-7-11. Powers of industrial loan companies; limitation of powers.

1 (a) In addition to the general powers conferred upon
2 corporations by the laws of this state, each industrial loan
3 company shall have power to exercise by its board of
4 directors or duly authorized officers or agents, subject to law,
5 all such powers as shall be necessary to:

6 (1) Lend money to any person, firm or corporation,
7 secured by the obligation of such person, firm or corporation,
8 or otherwise; and, in addition, to receive and require uniform
9 periodical installments for the repayment of the loan;

10 (2) Sell or offer for sale its secured or unsecured evidences
11 or certificates of indebtedness, and such secured or
12 unsecured evidences or certificates of indebtedness are
13 hereby defined as money for the purpose of taxation, but
14 every such evidence or certificate of indebtedness shall state,
15 on its face, in a clearly visible manner approved by the
16 commissioner, that such evidence or certificate of
17 indebtedness is not federally insured;

18 (3) Buy and sell bonds or choses in action of any person,
19 firm or corporation;

20 (4) Impose a charge of five cents for each default in the
21 payment of one dollar, or fraction thereof, at the time at which
22 any periodical installment for the repayment of a loan
23 becomes due;

24 (5) Demand and receive for loans or for notes, bills or
25 evidences of debt discounted or purchased, such rate of
26 interest as may be agreed upon by the parties, not exceeding
27 the lawful rate of interest, and it shall be lawful to receive
28 such interest in advance. As an alternative to the loan finance
29 charge allowed by this subsection, from the effective date of
30 this subsection until and including the first day of July, one
31 thousand nine hundred eighty-two, an industrial loan
32 company may contract for and receive a loan finance charge
33 not exceeding twenty-one percent per annum calculated
34 according to the actuarial method on that part of the unpaid
35 balance of the principal which is five thousand dollars or less.
36 This section does not limit or restrict the manner of
37 calculating the loan finance charge, whether by way of

38 add-on, discount or otherwise, so long as the rate of loan
39 finance charge does not exceed that permitted by this section.

40 (6) Charge for a loan made pursuant to this section, one
41 dollar for each fifty dollars, or fraction thereof, loaned, for
42 expenses including any examination or investigation of the
43 character and circumstances of the borrower, comaker or
44 surety, and the drawing and taking the acknowledgement of
45 necessary papers, or other expenses, incurred in making the
46 loan. No additional charge shall be made except to reimburse
47 the corporation for money actually expended for additional
48 service actually rendered the borrower. No charge shall be
49 collected unless a loan shall have been made as the result of
50 such examination or investigation;

51 (7) Purchase, hold and convey real estate as follows:

52 (A) Such as shall be necessary for the convenient
53 transaction of its business, including with its office other
54 apartments or offices to rent as a source of income, which
55 investment shall not exceed twenty-five percent of its paid-in
56 capital stock and surplus;

57 (B) Such as is mortgaged to it in good faith by way of
58 security for loans made by or money due to such industrial
59 loan company;

60 (C) Such as is conveyed to it in satisfaction of debts
61 previously contracted in the course of its dealings;

62 (D) Such as is acquired by sale on execution or judgment
63 or decree of any court in its favor.

64 Industrial loan companies shall not purchase, hold or
65 convey any real estate in any other case or for any other
66 purpose whatever. Real estate shall be conveyed only by
67 authority of the board of directors of any such industrial loan
68 company. No real estate acquired in the cases contemplated
69 in paragraphs (B), (C) and (D) of subdivision (7) shall be held
70 for a longer time than five years, unless such period shall be
71 extended by the commissioner of banking.

72 (b) An industrial loan company shall not:

73 (1) Accept or receive deposits;

74 (2) Make any loan under the provisions of this article for a
75 longer period than two years from the date thereof, except
76 upon express authorization of the board of directors of such
77 company;

78 (3) Hold at any one time the primary obligation or
79 obligations of any one person, firm or corporation, for more

80 than ten percent of the amount of the paid-up capital and
81 surplus of such industrial loan company;

82 (4) Hold at any one time the obligation or obligations of
83 persons, firms or corporations purchased from any person,
84 firm or corporation in excess of twenty percent of the
85 aggregate paid-up capital and surplus of such industrial loan
86 company;

87 (5) Make any loan or discount on the security of its own
88 capital stock (controlling and voting stock, if there be more
89 than one class), unless such security or purchase shall be
90 necessary to prevent loss upon a debt previously contracted
91 in good faith. Stock so purchased or acquired shall be sold at
92 public or private sale or otherwise disposed of within ninety
93 days from the time of its purchase or acquisition;

94 (6) Have outstanding at any time its evidences or
95 certificates of indebtedness, in an aggregate sum in excess of
96 ten times the aggregate amount of its paid-up capital (voting
97 and controlling stock) and surplus;

98 (7) Deposit any of its funds with any other moneyed
99 corporation unless such corporation has been designated as
100 such depository by a vote of the majority of the board of
101 directors;

102 (8) Pledge or hypothecate any of its securities or notes
103 owned by it to any creditor, except that such companies shall
104 have the power to rediscount or to borrow money from any
105 source in addition to selling its evidences or certificates of
106 indebtedness, but the aggregate amount of such
107 rediscounting and borrowing shall at no time exceed the sum
108 total of the capital, surplus and reserve funds of such
109 company, and the security so pledged therefor shall not
110 exceed two times the amount borrowed and rediscounted;

111 (9) Pay any fees, bonuses, commissions, rewards, or other
112 consideration to any person, firm or corporation for the
113 privilege of using any plan of operation, scheme or device for
114 the organization or carrying on of business under this article,
115 or the use of any name, trademark or copyright to be so used;
116 nor shall any industrial loan company under this article enter
117 into any contract for such purpose or purposes, or for the
118 purpose of giving to or vesting in any other corporation any
119 power or authority over the organization or management of
120 corporations under this article.

CHAPTER 31A. BANKS AND BANKING.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-30. Charges and interest allowed in certain cases; negotiability of installment notes.

1 In addition to the interest rate provided in article six of
2 chapter forty-seven of this code and elsewhere by law, a
3 banking institution may charge and collect a reasonable
4 amount to cover the expenses incurred in procuring reports
5 and information respecting loans and the value of and title to
6 property offered as security therefor, and a charge of three
7 dollars may be made for any loan or forbearance of money or
8 other thing where the interest at the rate of six percent per
9 annum would not amount to that sum and the same shall not
10 be a usurious charge or rate of interest. Except in cases where
11 it is otherwise specially provided by law, any banking
12 institution authorized to do, and doing business in this State,
13 may contract for and charge interest for a secured or
14 unsecured loan, repayable in installments at a rate not in
15 excess of: (a) Six percent per annum upon the principal
16 amount of the loan, for the entire period of the loan, and add
17 such charge to the principal amount of the loan; or (b) six
18 percent per annum upon the face amount of the instruments
19 evidencing the obligation to repay the loan, for the entire
20 period of the loan, and deduct such charge in advance but in
21 no case shall the interest on such a discount loan exceed an
22 annual percentage rate of fifteen percent per annum
23 calculated according to the actuarial method: *Provided*, That
24 upon prepayment in full of a precomputed loan, the bank
25 shall rebate the unearned portion of such charge as specified
26 in section five-d, article six, chapter forty-seven of this code.
27 Any note evidencing any such installment loan may provide
28 that the entire unpaid balance thereof at the option of the
29 holder shall become due and payable upon default in the
30 payment of any stipulated installment without impairing the
31 negotiability of such note if otherwise negotiable.

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.

§46A-1-102. General definitions.

1 In addition to definitions appearing in subsequent articles,
2 in this chapter:

3 (1) "Actuarial method" means the method, defined by
4 rules adopted by the commissioner, of allocating payments
5 made on a debt between principal or amount financed and
6 loan finance charge or sales finance charge pursuant to which
7 a payment is applied first to the accumulated loan finance
8 charge or sales finance charge and the balance is applied to
9 the unpaid principal or unpaid amount financed.

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

15 (3) "Agricultural purpose" means a purpose related to the
16 production, harvest, exhibition, marketing, transportation,
17 processing or manufacture of agricultural products by a
18 natural person who cultivates, plants, propagates or nurtures
19 the agricultural products. "Agricultural products" includes
20 agricultural, horticultural, viticultural and dairy products,
21 livestock, wildlife, poultry, bees, forest products, fish and
22 shellfish, and any products thereof, including processed and
23 manufactured products, and any and all products raised or
24 produced on farms and any processed or manufactured
25 products thereof.

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

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

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

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

35 (i) Any applicable sales, use, privilege, excise or
36 documentary stamp taxes;

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

39 (iii) Additional charges permitted by this chapter.

40 (5) "Average daily balance" in a billing cycle for which a
41 sales finance charge or loan finance charge is made is the sum
42 of the amount unpaid each day during that cycle divided by
43 the number of days in that cycle. The amount unpaid on a day
44 is determined by adding to the balance, if any, unpaid as of
45 the beginning of that day all purchases and other debits and

46 deducting all payments and other credits made or received as
47 of that day.

48 (6) The "cash price" of goods, services or an interest in
49 land means the price at which the goods, services or interest
50 in land are offered for sale by the seller to cash buyers in the
51 ordinary course of business, and may include (a) applicable
52 sales, use, privilege, and excise and documentary stamp
53 taxes, (b) the cash price of accessories or related services such
54 as delivery, installation, servicing, repairs, alterations and
55 improvements, and (c) amounts actually paid or to be paid by
56 the seller for registration, certificate of title, or license fees.

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

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

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

63 (c) Escrows for future payments of taxes and insurance;

64 (d) Official fees and fees for notarizing deeds and other
65 documents;

66 (e) Appraisal fees; and

67 (f) Credit reports.

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

70 (9) "Commissioner" means the commissioner of banking
71 of West Virginia.

72 (10) "Conspicuous": A term or clause is conspicuous when
73 it is so written that a reasonable person against whom it is to
74 operate ought to have noticed it. Whether a term or clause is
75 conspicuous or not is for decision by the court.

76 (11) "Consumer" means a natural person who incurs debt
77 pursuant to a consumer credit sale or a consumer loan.

78 (12) (a) Except as provided in paragraph (b), "consumer
79 credit sale" is a sale of goods, services or an interest in land in
80 which:

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

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

85 (iii) The goods, services or interest in land are purchased
86 primarily for a personal, family, household or agricultural
87 purpose;

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

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

92 (b) "Consumer credit sale" does not include a sale in
93 which the seller allows the buyer to purchase goods or
94 services pursuant to a lender credit card or similar
95 arrangement.

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

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

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

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

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

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

108 (a) The debtor is a person other than an organization;

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

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

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

115 (15) "Credit" means the privilege granted by a creditor to a
116 debtor to defer payment of debt or to incur debt and defer its
117 payment.

118 (16) "Earnings" means compensation paid or payable to
119 an individual or for his account for personal services
120 rendered or to be rendered by him, whether denominated as
121 wages, salary, commission, bonus or otherwise, and includes
122 periodic payments pursuant to a pension, retirement or
123 disability program.

124 (17) "Federal Consumer Credit Protection Act" means the
125 "Consumer Credit Protection Act" (Public Law 90-321; 82
126 Stat. 146), as amended, and includes regulations issued
127 pursuant to that act.

128 (18) "Goods" includes goods not in existence at the time
129 the transaction is entered into and gift and merchandise

130 certificates, but excludes money, chattel paper, documents of
131 title and instruments.

132 (19) "Home solicitation sale" means a consumer credit
133 sale in excess of twenty-five dollars in which the buyer
134 receives a solicitation of the sale at a place other than the
135 seller's business establishment at a fixed location and the
136 buyer's agreement or offer to purchase is there given to the
137 seller or a person acting for the seller. The term does not
138 include a sale made pursuant to a preexisting open-end-credit
139 account with the seller in existence for at least three months
140 prior to the transaction, a sale made pursuant to prior
141 negotiations between the parties at the seller's business
142 establishment at a fixed location, a sale of motor vehicles,
143 mobile homes or farm equipment or a sale which may be
144 rescinded under the Federal Truth in Lending Act (being
145 Title I of the Federal Consumer Credit Protection Act). A sale
146 which would be a home solicitation sale if credit were
147 extended by the seller is a home solicitation sale although the
148 goods or services are paid for in whole or in part by a
149 consumer loan in which the creditor is subject to claims and
150 defenses arising from the sale.

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

155 (21) "Lender credit card or similar arrangement" means
156 an arrangement or loan agreement, other than a seller credit
157 card, pursuant to which a lender gives a debtor the privilege
158 of using a credit card, letter of credit, or other credit
159 confirmation or identification in transactions out of which
160 debt arises:

161 (a) By the lender's honoring a draft or similar order for the
162 payment of money drawn or accepted by the consumer;

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

165 (c) By the lender's purchase from the obligee of the
166 consumer's obligations.

167 (22) "Loan" includes:

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

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

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

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

178 (23) (a) "Loan finance charge" means the sum of (i) all
179 charges payable directly or indirectly by the debtor and
180 imposed directly or indirectly by the lender as an incident to
181 the extension of credit, including any of the following types
182 of charges which are applicable: Interest or any amount
183 payable under a point, discount, or other system of charges,
184 however denominated, premium or other charge for any
185 guarantee or insurance protecting the lender against the
186 consumer's default or other credit loss; and (ii) charges
187 incurred for investigating the collateral or credit-worthiness
188 of the consumer or for commissions or brokerage for
189 obtaining the credit, irrespective of the person to whom the
190 charges are paid or payable, unless the lender had no notice of
191 the charges when the loan was made. The term does not
192 include charges as a result of default, additional charges,
193 delinquency charges or deferral charges.

194 (b) If a lender makes a loan to a consumer by purchasing
195 or satisfying obligations of the consumer pursuant to a lender
196 credit card or similar arrangement, and the purchase or
197 satisfaction is made at less than the face amount of the
198 obligation, the discount is not part of the loan finance charge.

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

203 (25) "Official fees" means:

204 (a) Fees and charges prescribed by law which actually are
205 or will be paid to public officials for determining the
206 existence, of or for perfecting, releasing, terminating or
207 satisfying a security interest related to a consumer credit sale
208 or consumer loan; or

209 (b) Premiums payable for insurance or fees escrowed in a
210 special account for the purpose of funding self-insurance or
211 its equivalent in lieu of perfecting a security interest
212 otherwise required by the creditor in connection with the
213 sale, lease or loan, if such premium or fee does not exceed the
214 fees and charges described in paragraph (a) which would
215 otherwise be payable.

216 (26) "Organization" means a corporation, government or
217 governmental subdivision or agency, trust, estate,
218 partnership, cooperative or association.

219 (27) "Payable in installments" means that payment is
220 required or permitted by agreement to be made in (a) two or
221 more periodic payments, excluding a down payment, with
222 respect to a debt arising from a consumer credit sale pursuant
223 to which a sales finance charge is made, (b) four or more
224 periodic payments, excluding a down payment, with respect
225 to a debt arising from a consumer credit sale pursuant to
226 which no sales finance charge is made, or (c) two or more
227 periodic payments with respect to a debt arising from a
228 consumer loan. If any periodic payment other than the down
229 payment under an agreement requiring or permitting two or
230 more periodic payments is more than twice the amount of any
231 other periodic payment, excluding the down payment, the
232 consumer credit sale or consumer loan is "Payable in
233 installments."

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

236 (29) "Person related to" with respect to an individual
237 means (a) the spouse of the individual, (b) a brother,
238 brother-in-law, sister or sister-in-law of the individual, (c) an
239 ancestor or lineal descendant of the individual or his spouse,
240 and (d) any other relative, by blood or marriage, of the
241 individual or his spouse who shares the same home with the
242 individual. "Person related to" with respect to an
243 organization means (a) a person directly or indirectly
244 controlling, controlled by or under common control with the
245 organization, (b) an officer or director of the organization or a
246 person performing similar functions with respect to the
247 organization or to a person related to the organization, (c) the
248 spouse of a person related to the organization, and (d) a
249 relative by blood or marriage of a person related to the
250 organization who shares the same home with him.

251 (30) "Precomputed loan." A loan, refinancing or
252 consolidation is "precomputed" if the debt is expressed as a
253 sum comprising the principal and the amount of the loan
254 finance charge computed in advance.

255 (31) "Precomputed sale." A sale, refinancing or
256 consolidation is "precomputed" if the debt is expressed as a
257 sum comprising the amount financed and the amount of the
258 sales finance charge computed in advance.

259 (32) "Presumed" or "presumption" means that the trier of
260 fact must find the existence of the fact presumed unless and
261 until evidence is introduced which would support a finding of
262 its nonexistence.

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

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

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

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

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

272 (ii) Additional charges permitted by this chapter.

273 (34) "Revolving charge account" means an agreement
274 between a seller and a buyer by which (a) the buyer may
275 purchase goods or services on credit or a seller credit card, (b)
276 the balances of amounts financed and the sales finance and
277 other appropriate charges are debited to an account, (c) a
278 sales finance charge if made is not precomputed but is
279 computed periodically on the balances of the account from
280 time to time, and (d) there is the privilege of paying the
281 balances in installments.

282 (35) "Revolving loan account" means an arrangement
283 between a lender and a consumer including, but not limited
284 to, a lender credit card or similar arrangement, pursuant to
285 which (a) the lender may permit the consumer to obtain loans
286 from time to time, (b) the unpaid balances of principal and the
287 loan finance and other appropriate charges are debited to an
288 account, (c) a loan finance charge if made is not precomputed
289 but is computed periodically on the outstanding unpaid
290 balances of the principal of the consumer's account from time
291 to time, and (d) there is the privilege of paying the balances in
292 installments.

293 (36) "Sale of goods" includes any agreement in the form of
294 a bailment or lease of goods if the bailee or lessee agrees to
295 pay as compensation for use a sum substantially equivalent to
296 or in excess of the aggregate value of the goods involved and
297 it is agreed that the bailee or lessee will become, or for no
298 other or a nominal consideration has the option to become,
299 the owner of the goods upon full compliance with his
300 obligations under the agreement.

301 (37) "Sale of an interest in land" includes a lease in which
302 the lessee has an option to purchase the interest and all or a
303 substantial part of the rental or other payments previously
304 made by him are applied to the purchase price.

305 (38) "Sale of services" means furnishing or agreeing to
306 furnish services and includes making arrangements to have
307 services furnished by another.

308 (39) "Sales finance charge" means the sum of (a) all
309 charges payable directly or indirectly by the buyer and
310 imposed directly or indirectly by the seller or issuer of a seller
311 credit card as an incident to the extension of credit, including
312 any of the following types of charges which are applicable:
313 Time-price differential, however denominated, including
314 service, carrying or other charge, premium or other charge for
315 any guarantee or insurance protecting the seller against the
316 buyer's default or other credit loss, and (b) charges incurred
317 for investigating the collateral or credit-worthiness of the
318 buyer or for commissions or brokerage for obtaining the
319 credit, irrespective of the person to whom the charges are
320 paid or payable; unless the seller had no notice of the charges
321 when the credit was granted. The term does not include
322 charges as a result of default, additional charges, delinquency
323 charges or deferral charges. If the seller or issuer of a seller
324 credit card purchases or satisfies obligations of the consumer
325 and the purchase or satisfaction is made at less than the face
326 amount of the obligation, the discount is not part of the sales
327 finance charge.

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

332 (41) "Seller credit card" means an arrangement pursuant
333 to which a person gives to a buyer or lessee the privilege of
334 using a credit card, letter of credit, or other credit
335 confirmation or identification primarily for the purpose of
336 purchasing or leasing goods or services from that person, that
337 person and any other person or persons, a person related to
338 that person, or others licensed or franchised or permitted to
339 do business under his business name or trade name or
340 designation or on his behalf.

341 (42) "Services" includes (a) work, labor and other personal
342 services, (b) privileges with respect to transportation, use of
343 vehicles, hotel and restaurant accommodations, education,

344 entertainment, recreation, physical culture, hospital
345 accommodations, funerals, cemetery accommodations, and
346 the like, and (c) insurance.

347 (43) "Supervised financial organization" means a person,
348 other than a supervised lender or an insurance company or
349 other organization primarily engaged in an insurance
350 business:

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

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

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

359 (45) "Supervised loan" means a consumer loan made by
360 other than a supervised financial organization, including a
361 loan made pursuant to a revolving loan account, where the
362 principal does not exceed two thousand dollars, and in which
363 the rate of the loan finance charge exceeds eight percent per
364 year as determined according to the actuarial method.

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

11 (2) This section does not limit or restrict the manner of
12 calculating the sales finance charge, whether by way of
13 add-on, discount, or otherwise, so long as the rate of the sales

14 finance charge does not exceed that permitted by this section.

15 If the sale is precomputed:

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

19 (b) The effect of prepayment, refinancing or consolidation
20 is governed by the provisions on rebate upon prepayment,
21 refinancing or consolidation, contained in section one
22 hundred 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
28 disregarded and a day may be counted as one thirtieth of a
29 month. Subject to classifications and differentiations the
30 seller may reasonably establish, a part of a month in excess of
31 fifteen days may be treated as a full month if periods of fifteen
32 days or less are disregarded and if that procedure is not
33 consistently used to obtain a greater yield than would
34 otherwise be permitted.

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

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

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

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

53 (6) Notwithstanding any provision of this section to the
54 contrary, with respect to a consumer credit sale involving a
55 motor vehicle or a mobile home or a consumer credit sale
56 from the same seller of both a mobile home and the real estate

57 upon which such mobile home is or will be located, or a
 58 consumer credit sale of a mobile home where a security
 59 interest in real estate owned by the buyer is given to the seller
 60 as collateral, a seller may from the effective date of this
 61 section until and including the first day of July one thousand
 62 nine hundred eighty-two contract for and receive a sales
 63 finance charge not exceeding eighteen percent per year on
 64 the unpaid balance calculated according to the actuarial
 65 method: *Provided*, That the quantity of real estate involved
 66 with the consumer credit sale of a mobile home upon which
 67 such finance charge is contracted for and received shall not
 68 exceed one acre.

69 (7) As an alternative to the loan finance charge allowed by
 70 section one hundred one, subsection (1) of this article, from
 71 the effective date of this subsection until and including the
 72 first day of July, one thousand nine hundred eighty-two, with
 73 respect to a consumer credit sale, other than a sale of real
 74 estate subject to the provisions of section one hundred two of
 75 this article or a sale pursuant to a revolving charge account, a
 76 seller may contract for and receive a sales finance charge not
 77 exceeding eighteen percent per year on the unpaid balance of
 78 the amount financed calculated according to the actuarial
 79 method.

**§46A-3-103. Sales finance charge for revolving charge accounts
 other than certain sales of real estate.**

1 (1) With respect to a consumer credit sale made pursuant
 2 to a revolving charge account, other than sales of real estate
 3 pursuant to section one hundred two of this article, the
 4 parties may contract for the payment by the buyer of a sales
 5 finance charge not exceeding that permitted in this section.

6 (2) A sales finance charge may be made in each billing
 7 cycle which is a percentage of an amount not exceeding the
 8 greatest of:

9 (a) The average daily balance of the account, or

10 (b) The balance of the account at the beginning of the first
 11 day of the billing cycle, less all payments on and credits to
 12 such account during such billing cycle and excluding all
 13 charges to such account during such billing cycle, or

14 (c) The median amount within a specified range within
 15 which the average daily balance of the account or the balance
 16 of the account at the beginning of the first day of the billing
 17 cycle, less all payments on and credits to such account during
 18 such billing cycle and excluding all charges to such account

19 during such billing cycle, is included. A charge may be made
20 pursuant to this paragraph only if the seller, subject to
21 classifications and differentiations he may reasonably
22 establish, makes the same charge on all balances within the
23 specified range and if the percentage when applied to the
24 median amount within the range does not produce a charge
25 exceeding the charge resulting from applying that percentage
26 to the lowest amount within the range by more than eight
27 percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the sales finance charge
29 may not exceed one and one-half percent on the first seven
30 hundred fifty dollars of unpaid balance and one percent on
31 the unpaid balance in excess of seven hundred fifty dollars. If
32 the billing cycle is not monthly, the maximum charge is that
33 percentage which bears the same relation to the applicable
34 monthly percentage as the number of days in the billing cycle
35 bears to thirty. A billing cycle is monthly if the billing
36 statement dates are on the same day each month or do not
37 vary by more than four days therefrom.

38 (4) Notwithstanding subsection (3), if there is an unpaid
39 balance on the date as of which the sales finance charge is
40 applied, the seller may contract for and receive a charge not
41 exceeding fifty cents if the billing cycle is monthly or longer,
42 or the pro rata part of fifty cents which bears the same
43 relation to fifty cents as the number of days in the billing
44 cycle bears to thirty if the billing cycle is shorter than
45 monthly.

46 (5) As an alternative to the loan finance charge allowed by
47 section one hundred three, subsection (3) of this article, from
48 the effective date of this subsection until and including the
49 first day of July, one thousand nine hundred eighty-two, with
50 respect to a consumer credit sale made pursuant to a
51 revolving charge account, other than sales of real estate
52 pursuant to section one hundred two of this article, if the
53 billing cycle is monthly, the sales finance charge may not
54 exceed one and one-half percent on the unpaid principal
55 balance. If the billing cycle is not monthly, the maximum
56 charge is that percentage which bears the same relation to the
57 applicable monthly percentage as the number of days in the
58 billing cycle bears to thirty. A billing cycle is monthly if the
59 billing statement dates are on the same day each month or do
60 not vary by more than four days therefrom.

§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
2 consumer loan made pursuant to a revolving loan account, (a)
3 a bank, as defined in section two, article one, chapter
4 thirty-one-a of this code, may contract for and receive a loan
5 finance charge not exceeding the charge or interest permitted
6 by the provisions of section thirty, article four, chapter
7 thirty-one-a or by the provisions of section five, section five-a,
8 or section five-b, article six, chapter forty-seven of this code,
9 (b) an industrial loan company, as defined in section three,
10 article seven, chapter thirty-one of this code, may contract for
11 and receive a loan finance charge not exceeding the aggregate
12 of the interest and charges permitted by subdivisions (5) and
13 (6), subsection (a), section eleven, article seven, chapter
14 thirty-one of this code or by the provisions of section five,
15 article six, chapter forty-seven of this code, (c) a building and
16 loan association, as defined in section two, article six, chapter
17 thirty-one of this code, may contract for and receive a loan
18 finance charge not exceeding the charge or interest permitted
19 by the provisions of section seventeen, article six, chapter
20 thirty-one of this code, or by the provisions of section five,
21 article six, chapter forty-seven of this code, (d) a credit union,
22 as defined in section one, article ten, chapter thirty-one of this
23 code, may contract for and receive a loan finance charge not
24 exceeding the charge or interest permitted by the provisions
25 of section sixteen, article ten, chapter thirty-one of this code,
26 or by the provisions of section five, article six, chapter
27 forty-seven of this code, and (e) any other lender, other than a
28 supervised lender, may contract for and receive a loan finance
29 charge not exceeding the charge or interest permitted by the
30 provisions of section five, section five-a, or section five-b,
31 article six, chapter forty-seven of this code.
32 (2) As an alternative to the loan finance charge allowed by
33 section one hundred four, subsection (1) of this article, from
34 the effective date of this subsection until and including the
35 first day of July, one thousand nine hundred eighty-two, a

36 lender, other than a supervised lender, may contract for and
37 receive a loan finance charge not exceeding eighteen percent
38 per annum calculated according to the actuarial method.

39 (3) This section does not limit or restrict the manner of
40 calculating the loan finance charge, whether by way of
41 add-on, discount or otherwise, so long as the rate of loan
42 finance charge does not exceed that permitted by this section.

43 (4) Notwithstanding any provision of this section to the
44 contrary, with respect to a consumer loan involving a motor
45 vehicle or a mobile home or with respect to a consumer loan
46 to finance the sale from one seller of both a mobile home and
47 the real estate upon which such mobile home is or will be
48 located, or with respect to a consumer loan where a security
49 interest in real estate owned by the borrower is given to the
50 lender as collateral for such loan, a lender may from the
51 effective date of this section and until and including the first
52 day of July, one thousand nine hundred eighty-two contract
53 for and receive a loan finance charge not exceeding eighteen
54 percent per year on the unpaid balance calculated according
55 to the actuarial method: *Provided*, That the quantity of real
56 estate involved in such consumer loan transactions involving
57 a mobile home and real estate where such finance charge is
58 contracted for and received shall not exceed one acre.

59 (5) If the loan is precomputed:

60 (a) The loan finance charge may be calculated on the
61 assumption that all scheduled payments will be made when
62 due, and

63 (b) The effect of prepayment, refinancing or consolidation
64 is governed by the provisions on rebate upon prepayment,
65 refinancing or consolidation contained in section one
66 hundred eleven of this article.

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

72 (7) An assignee of a consumer credit sale contract may
73 collect, receive or enforce the sales finance charge provided
74 in said contract, and any such charge so collected, received or
75 enforced by an assignee shall not be deemed usurious or in
76 violation of this chapter or any other provision of this code if
77 such sales finance charge does not exceed the limits
78 permitted to be charged by a seller under the provisions of
79 this chapter.

§46A-3-106. Loan finance charge for revolving loan accounts.

1 (1) With respect to a consumer loan made pursuant to a
2 revolving loan account, a supervised financial organization
3 permitted to establish revolving loan accounts may contract
4 for and receive a loan finance charge not exceeding that
5 permitted in this section.

6 (2) A loan finance charge may be made in each billing
7 cycle which is a percentage of an amount not exceeding the
8 greatest of:

9 (a) The average daily balance of the debt,

10 (b) The balance of the debt at the beginning of the first day
11 of the billing cycle, less all payments on and credits to such
12 debt during such billing cycle and excluding all additional
13 borrowings during such billing cycle, or

14 (c) The median amount within a specified range within
15 which the average daily balance of the debt or the balance of
16 the debt at the beginning of the first day of the billing cycle,
17 less all payments on and credits to such debt during such
18 billing cycle and excluding all additional borrowings during
19 such billing cycle, is included. A charge may be made
20 pursuant to this subdivision only if the lender, subject to
21 classifications and differentiations he may reasonably
22 establish, makes the same charge on all balances within the
23 specified range and if the percentage when applied to the
24 median amount within the range does not produce a charge
25 exceeding the charge resulting from applying that percentage
26 to the lowest amount within the range by more than eight
27 percent of the charge on the median amount.

28 (3) If the billing cycle is monthly, the loan finance charge
29 may not exceed one and one-half percent on the first seven
30 hundred fifty dollars of unpaid principal balance and one
31 percent on the unpaid principal balance in excess of seven
32 hundred fifty dollars. If the billing cycle is not monthly, the
33 maximum charge is that percentage which bears the same
34 relation to the applicable monthly percentage as the number
35 of days in the billing cycle bears to thirty. A billing cycle is
36 monthly if the billing statement dates are on the same day
37 each month or do not vary by more than four days therefrom.

38 (4) Notwithstanding subsection (3), if there is an unpaid
39 balance on the date as of which the loan finance charge is
40 applied the lender may contract for and receive a charge not
41 exceeding fifty cents if the billing cycle is monthly or longer,
42 or the pro rata part of fifty cents which bears the same

43 relation to fifty cents as the number of days in the billing
44 cycle bears to thirty if the billing cycle is shorter than
45 monthly, but no charge may be made pursuant to this
46 subsection if the lender has made an annual charge for the
47 same period as permitted by the provisions on additional
48 charges.

49 (5) As an alternative to the loan finance charge allowed by
50 section one hundred six, subsection (3) of this article, from
51 the effective date of this subsection until and including the
52 first day of July, one thousand nine hundred eighty-two, with
53 respect to a consumer loan made pursuant to a revolving loan
54 account, if the billing cycle is monthly, a supervised financial
55 organization permitted to establish revolving loan accounts
56 may contract for and receive a loan finance charge not
57 exceeding one and one-half percent on the unpaid principal
58 balance. If the billing cycle is not monthly, the maximum
59 charge is that percentage which bears the same relation to the
60 applicable monthly percentage as the number of days in the
61 billing cycle bears to thirty. A billing cycle is monthly if the
62 billing statement dates are on the same day each month or do
63 not vary by more than four days therefrom.

**§46A-3-111. Application of payments on account; rebate upon
prepayment, refinancing or consolidation;
judgments and interest on judgments.**

1 (1) When a consumer credit sale or consumer loan is
2 precomputed all payments on account shall be applied to
3 installments in the order in which they fall due, except as
4 provided in subsection (3), section one hundred twelve of this
5 article. When the total amount is payable in substantially
6 equal consecutive monthly installments, the portion of the
7 sales finance charge or loan finance charge attributable to any
8 particular monthly installment period shall be that
9 proportion of the sales finance charge or loan finance charge
10 originally contracted for, as the balance scheduled to be
11 outstanding on the last day of the monthly installment period
12 before deducting the payment, if any, scheduled to be made
13 on that day bears to the sum of all the monthly installment
14 balances under the original schedule of payments. (This
15 method of allocation is the sum of the digits method,
16 commonly referred to as the "Rule of 78.")

17 (2) Upon prepayment in full of a precomputed consumer
18 credit sale or consumer loan by cash, a new loan, refinancing,
19 consolidation or otherwise, the creditor shall rebate to the

20 consumer that portion of the sales finance charge or loan
21 finance charge in the manner specified in section five-d,
22 article six, chapter forty-seven of this code.

23 (3) If the maturity of a precomputed consumer credit sale
24 or consumer loan is accelerated for any reason and judgment
25 is obtained, the debtor is entitled to the same rebate as if the
26 payment had been made on the date maturity is accelerated.
27 Such judgment shall bear interest until paid at the rate of six
28 percent per annum.

ARTICLE 4. SUPERVISED LENDERS.

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

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

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

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

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

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

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

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

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

28 (4) For the purposes of this section, the term of a loan
29 commences on the date the loan is made. Differences in the
30 lengths of months are disregarded and a day may be counted
31 as one thirtieth of a month. Subject to classifications and

32 differentiations the licensee may reasonably establish, a part
33 of a month in excess of fifteen days may be treated as a full
34 month if periods of fifteen days or less are disregarded and if
35 that procedure is not consistently used to obtain a greater
36 yield than would otherwise be permitted.

37 (5) Subject to classifications and differentiations the
38 lender may reasonably establish, he may make the same loan
39 finance charge on all principal amounts within a specified
40 range. A loan finance charge so made does not violate
41 subsection (2) if:

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

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

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

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

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

56 (ii) The balance of the debt at the beginning of the first day
57 of the billing cycle, less all payments on and credits to such
58 debt during such billing cycle and excluding all additional
59 borrowings during such billing cycle, or

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

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

74 (c) Notwithstanding subdivisions (a) and (b) of this
 75 subsection (6), if there is an unpaid balance on the date as of
 76 which the loan finance charge is applied, the licensee may
 77 contract for and receive a charge not exceeding fifty cents if
 78 the billing cycle is monthly or longer, or the pro rata part of
 79 fifty cents which bears the same relation to fifty cents as the
 80 number of days in the billing cycle bears to thirty if the billing
 81 cycle is shorter than monthly, but no charge may be made
 82 pursuant to this subdivision (c) if the lender has made an
 83 annual charge for the same period as permitted by the
 84 provisions on additional charges.

85 (7) As an alternative to the loan finance charge allowed by
 86 section one hundred seven, subsection (2) of this article, from
 87 the effective date of this subsection until and including the
 88 first day of July, one thousand nine hundred eighty-two, with
 89 respect to a supervised loan, including a revolving loan
 90 account, a supervised lender may contract for and receive a
 91 loan finance charge, calculated according to the actuarial
 92 method, which may not exceed the total of:

93 (a) Thirty-six percent per year on that part of the unpaid
 94 balances of the principal which is five hundred dollars or less;

95 (b) Twenty-four percent per year on that part of the
 96 unpaid balances of the principal which is more than five
 97 hundred dollars but does not exceed fifteen hundred one
 98 dollars; and

99 (c) Eighteen percent per year on that part of the unpaid
 100 balances of the principal which is more than fifteen hundred
 101 one dollars.

§46A-4-111. Maximum interest when loan is in excess of sixteen hundred dollars.

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

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5a. Interest charges on loans repayable in installments.

1 Except in cases where it is otherwise specially provided by
2 law, parties may contract for and charge interest for a secured
3 or unsecured loan, repayable in installments at a rate not in
4 excess of: (a) Six percent per annum upon the principal
5 amount of the loan, for the entire period of the loan, and add
6 such charge to the principal amount of the loan; or (b) six
7 percent per annum upon the face amount of the instruments
8 evidencing the obligation to repay the loan, for the entire
9 period of the loan and deduct such charge in advance but in
10 no case shall the interest on such a discount loan exceed an
11 annual percentage rate of fifteen percent per annum
12 calculated according to the actuarial method: *Provided, That*
13 upon prepayment in full of a precomputed loan, the creditor
14 shall rebate that portion of such charge in the manner set
15 forth in section five-d of this article. Any note evidencing any
16 such installment loan may provide that the entire unpaid
17 balance thereof at the option of the holder shall become due
18 and payable upon default in the payment of any stipulated
19 installment without impairing the negotiability of such note if
20 otherwise negotiable. Nothing herein contained shall affect or
21 restrict the right of the parties under section five of this article
22 to contract in writing for the payment of interest for the loan
23 or forbearance of money at a rate not to exceed eight dollars
24 upon one hundred dollars a year, and proportionately for a
25 greater or less sum, or for a longer or shorter time, including
26 points expressed as a percentage of the loan divided by the
27 number of years of the loan contract.

§47-6-5d. Rebate upon prepayment, refinancing, consolidation or otherwise; alternative method of rebate; transactions to which rebate applies; liability and penalties for excess charge.

1 (a) Upon prepayment in full of a precomputed loan, credit
2 sale or transaction, forbearance or similar transaction
3 repayable according to its original terms over a period of
4 thirty-six months or less, the creditor shall rebate that portion
5 of the finance charge attributable to the prepaid periodic
6 installment periods. When the total is payable in substantially
7 equal consecutive monthly installments, the portion of such

8 finance charge attributable to any particular monthly
9 installment period shall be that proportion of the charge
10 originally contracted for, as the balance scheduled to be
11 outstanding on the last day of the monthly installment period
12 before deducting the payment, if any, scheduled to be made
13 on that day bears to the sum of all the monthly installment
14 balances under the original schedule of payments. (This
15 method of allocation is the sum of the digits method,
16 commonly referred to as the "Rule of 78.") For prepayment in
17 full of a precomputed loan, credit sale or transaction,
18 forbearance or similar transaction (i) repayable according to
19 its original terms over a period of thirty-six months or less, (ii)
20 in which unequal or irregular or other than substantially
21 equal consecutive monthly installments are payable, the
22 commissioner of banking shall prescribe by rule the method
23 or procedure for the allocation of charges and the calculation
24 of rebates consistent with the Rule of 78.

25 (b) Upon prepayment in full of a precomputed loan, credit
26 sale or transaction, forbearance or similar transaction,
27 repayable by its original terms over a period of greater than
28 thirty-six months, an amount shall be rebated of not less than
29 the unearned portion of the finance charge calculated by
30 applying the rate of finance charge which was required by
31 applicable law to be disclosed in the transaction according to
32 the actuarial method to the unpaid balance for the time
33 remaining as originally scheduled or as extended by deferral
34 or otherwise for the period following prepayment. In
35 instances where no rate of finance charge was required by law
36 or otherwise to be disclosed, the unearned portion of the
37 finance charge shall be calculated by applying the finance
38 charge which was charged in the transaction according to the
39 actuarial method to the unpaid balance for the time
40 remaining as originally scheduled or as extended by deferral
41 or otherwise for the period following prepayment.

42 (c) For purposes of the rebate of unearned finance charges
43 as required by this section, a prepayment in full shall include
44 repayment by a new loan, extension of credit, refinancing,
45 consolidation, forbearance or otherwise.

46 (d) As an alternative to the Rule of 78 method of rebate of
47 determining the unearned finance charge required by this
48 section, a creditor may rebate unearned finance charges
49 under any other method which gives a greater rebate to the
50 debtor than the rebate determined by the Rule of 78.

51 (e) The provisions governing rebates as set forth in this
52 section shall apply to all transactions entered into on or after
53 the first day of September, one thousand nine hundred
54 eighty-one. For transactions entered into prior to the first day
55 of September, one thousand nine hundred eighty-one, the
56 provisions in effect prior to the effective date of this section of
57 the respective chapters of this code shall be utilized to
58 determine the rebate of unearned finance charges.

59 (f) For consumer credit sales or consumer loans subject to
60 the provisions of chapter forty-six-a of this code the
61 provisions of article five, chapter forty-six-a, govern the
62 imposition of liability and penalties for charging interest or a
63 finance charge in excess of the maximum rate allowed under
64 the provisions of this section. In all other instances, the
65 provisions of this article govern the imposition of liability and
66 penalties for charging interest or a finance charge in excess of
67 the maximum allowed under this section.

CHAPTER 47A. WEST VIRGINIA LENDING AND CREDIT RATE BOARD.

ARTICLE 1. LENDING AND CREDIT RATE BOARD.

**§47A-1-1. Legislative findings; establishing the West Virginia
lending and credit rate board; authorizing said
board to prescribe alternative quarterly maximum
interest rates and finance charges on loans, credit
sales or transactions, forbearances or similar
transactions, including consumer loans and
consumer credit sales; providing for compensation
therefor; requiring quarterly reports; specifying
factors to be considered in setting rates; allowing
different rates within ranges of balances.**

1 (a) The Legislature hereby finds and declares that:

2 (1) Changes in the permissible charges on loans, credit
3 sales or transactions, forbearances or other similar
4 transactions requires specialized knowledge of the needs of
5 the citizens of West Virginia for credit for personal and
6 commercial purposes and knowledge of the availability of
7 such credit at reasonable rates to the citizens of this state
8 while affording a competitive return to persons extending
9 such credit;

10 (2) Maximum charges on loans, credit sales or
11 transactions, forbearances or other similar transactions
12 executed in this state should be prescribed from time to time

13 to reflect changed economic conditions, current interest rates
14 and finance charges throughout the United States and the
15 availability of credit within the state in order to promote the
16 making of such loans in this state; and

17 (3) The prescribing of such maximum interest rates and
18 finance charges can be accomplished most effectively and
19 flexibly by a board comprised of the heads of designated
20 government agencies, university schools of business and
21 administration, and members of the public.

22 (b) In view of the foregoing findings, it is the purpose of
23 this section to establish the West Virginia lending and credit
24 rate board and authorize said board to prescribe quarterly the
25 maximum interest rates and finance charges on loans, credit
26 sales or transactions, forbearances or similar transactions
27 made pursuant to this section subject to the provisions,
28 conditions and limitations hereinafter set forth and to
29 authorize lenders, sellers, and other creditors to charge up to
30 the maximum interest rates or finance charges so fixed. The
31 rates prescribed by the board are alternative rates and any
32 creditor may utilize either the rate or rates set by the board or
33 any other rate or rates which the creditor is permitted to
34 charge under any other provision of this code.

35 (c) The West Virginia lending and credit rate board shall
36 be comprised of:

37 (1) The director of the governor's office of economic and
38 community development;

39 (2) The West Virginia state treasurer;

40 (3) The West Virginia banking commissioner;

41 (4) The deans of the schools of business and
42 administration at Marshall University and West Virginia
43 University;

44 (5) The director of the division of consumer protection of
45 the attorney general's office;

46 (6) Three members of the public appointed by the
47 governor with the advice and consent of the Senate. The
48 members of the public shall be appointed for terms of six
49 years each, and until their successors are appointed and
50 qualified; except that of the members first appointed, one
51 shall be appointed for a term of two years, one for a term of
52 four years, and one for a term of six years. A member who has
53 served one full term of six years shall be ineligible for
54 appointment for the next succeeding term. Vacancies shall be
55 filled for the remainder of any unexpired term in the same
56 manner as the original appointment.

57 The West Virginia banking commissioner shall serve as
58 chairperson of the board and the rate or rates set by the board
59 shall be determined by a majority vote of those members of
60 the board in attendance at the respective board meeting.

61 (d) The West Virginia lending and credit rate board is
62 hereby authorized and directed to meet at least quarterly or
63 more frequently as required by the circumstances and to
64 prescribe by order a maximum rate of interest and finance
65 charge for the next succeeding quarter for any loans, credit
66 sales or transactions, forbearances or similar transactions
67 made pursuant to this section. In fixing said maximum rates
68 of interest and finance charge, the board shall take into
69 consideration prevailing economic conditions, including the
70 monthly index of long-term United States government bond
71 yields for the preceding calendar month, yields on
72 conventional commercial short-term loans and notes
73 throughout West Virginia and throughout the United States
74 and on corporate interest-bearing securities of high quality,
75 the availability of credit at reasonable rates to the citizens of
76 this state which afford a competitive return to persons
77 extending such credit, and such other factors as the board
78 may determine.

79 (e) Within twenty days next preceding the end of the given
80 quarter, the board shall prescribe by order in accordance with
81 the provisions of subsection (d) of this section the maximum
82 rates of interest and finance charge for the next succeeding
83 quarter for any loan, credit sale, forbearance, or similar
84 transaction made pursuant to this section and shall cause
85 such maximum rate of interest and finance charge to be
86 issued and disseminated to the public, such maximum rate of
87 interest and finance charge to be effective on the first day of
88 the next succeeding quarter.

89 (f) Notwithstanding any other provisions of this section,
90 not later than the first day of September, one thousand nine
91 hundred eighty-one, the board shall prescribe by order the
92 maximum rate of interest and finance charge for loans, credit
93 sales or transactions, forbearances, or similar transactions
94 pursuant to this section for the quarter in which this section
95 shall become effective and shall, at the earliest possible date,
96 prescribe the maximum rate of interest and finance charge
97 for any such loan, credit sale or transaction, forbearance or
98 similar transaction for the next succeeding quarter. The
99 board shall issue and disseminate such maximum rates of

100 interest and finance charge to the public. The board shall
101 thereafter determine and issue and disseminate the
102 maximum rate of interest and finance charge for any such
103 loan, credit sale or transaction, forbearance or similar
104 transaction in conformity with the other provisions of this
105 section.

106 (g) Each member of the board, except those whose regular
107 salary is paid by the state of West Virginia, shall receive
108 seventy-five dollars per diem while actually engaged in the
109 performance of the duties of the board. Each member shall be
110 reimbursed for all reasonable and necessary expenses
111 actually incurred during the performance of their duties,
112 except that in the event the expenses are paid by a third party
113 the members shall not be reimbursed by the state. The
114 reimbursement shall be paid out of the revolving fund
115 established by section two of this article upon a requisition
116 upon the state auditor, properly certified by the banking
117 commissioner.

118 (h) In setting the maximum interest rates and finance
119 charges, the board may set varying rates based on the type of
120 credit transaction, the term of transaction, the type of debtor,
121 the type of creditor, and other factors relevant to
122 determination of such rates. In addition, the board may set
123 varying rates for ranges of principal balances within a single
124 category of credit transactions.

**§47A-1-2. Staffing of and offices for the West Virginia lending
and credit rate board; creation of revolving fund
and assessment of fee for revolving fund for board
operations.**

1 Under the direction of the chairperson of the board, the
2 board shall be entitled to utilize the staff of the West Virginia
3 banking department and the offices of the board shall be
4 those of the West Virginia banking department. In order to
5 defray the cost of the board's operations including the cost of
6 its utilization of the staff of the West Virginia banking
7 department, the board shall establish the West Virginia
8 lending and credit rate board revolving fund.

9 On or before the first day of July of each year, all supervised
10 financial organizations and supervised lenders shall pay a
11 yearly fee of fifty dollars into the revolving fund established
12 by the board. The fees paid into this revolving fund shall be
13 utilized to pay the costs and expenses of the board and all
14 incidental costs and expenses necessary for its operations.

§47A-1-3. Report to and review by Legislature; validity of contracts; usury.

1 On or before the fifteenth day of January of each calendar
2 year commencing with the fifteenth day of January, one
3 thousand nine hundred eighty-two, the board shall prepare a
4 report to the Legislature detailing its (i) activities during the
5 prior year including all rules and regulations adopted or
6 modified during the year, (ii) recommendations regarding
7 legislative action on rates of interest, finance charges, and
8 usury in light of the credit needs of West Virginia's residents
9 and businesses, and (iii) plans for staffing and organization of
10 the board. Unless the Legislature or committee of the
11 Legislature delegated to review the report and actions of the
12 board specifically rejects certain portions of the report or
13 certain prior or proposed acts of the board, the board may
14 continue to implement prior actions or implement proposed
15 aspects of its actions which are within the scope of its duties
16 under this article.

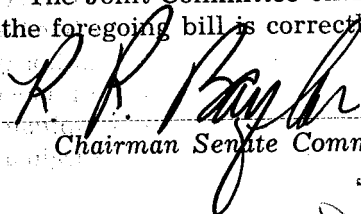
17 Contracts made in good faith in conformity with an order of
18 the board setting the maximum rates of interest and finance
19 charge are valid, notwithstanding that after such contract is
20 made or finance charge is received, such order is amended or
21 rejected by the Legislature. No person who contracts for or
22 receives a finance charge in good faith in conformity with an
23 order of the board is liable in any action or suit for any
24 penalty, forfeiture or recovery based on a charge of usury,
25 notwithstanding that after such contract is made or finance
26 charge is received, such order is amended or rejected by the
27 Legislature.

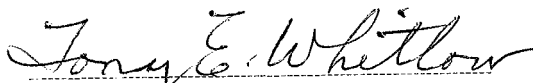
§47A-1-4. Applicability of the West Virginia Administrative Procedures Act; legislative and judicial review.

1 Because of the volatile nature of the credit market and the
2 necessity of prompt action by the board, all orders, rules and
3 regulations, and other procedures adopted by the board
4 relating to setting maximum interest rates and finance
5 charges are specifically exempted from the provisions of the
6 West Virginia Administrative Procedures Act, chapter
7 twenty-nine-a of this code. All other orders, rules and
8 regulations, and other procedures adopted by the board not
9 relating to the setting of maximum rates of interest and
10 finance charges shall be made in accordance with the
11 provisions of the Administrative Procedures Act, chapter
12 twenty-nine-a of this code.

13 All actions of the board relating to the setting of maximum
14 interest rates and finance charges are subject to review as set
15 forth under section three of this article. In instances when the
16 board exceeds or fails to appropriately exercise its authority
17 under this article to set maximum interest rates and finance
18 charges, the actions of the board may be reviewed initially
19 only in the circuit court of Kanawha County, West Virginia.

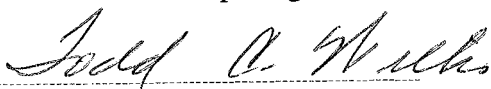
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

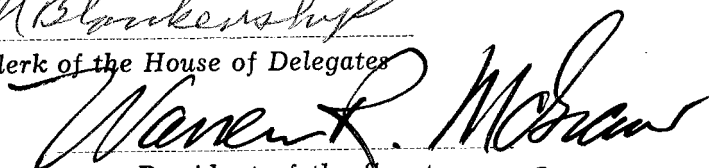

Chairman House Committee

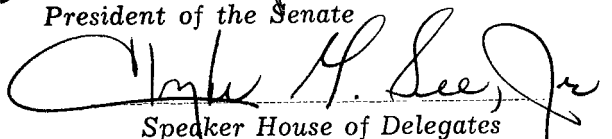
Originated in the Senate.

To take effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 15
day of April, 1981.


Governor

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SECY. OF STATE