WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1984

ENROLLED
Committee Substitute for
SENATE BILL NO. 65

(By Mr. Teare and Mr. Tomblin)

PASSED March 5, 1984
In Effect ninety days from Passage
ENROLLED
COMMITTEE SUBSTITUTE
FOR
Senate Bill No. 65
(BY MR. TUCKER AND MR. TOMBLIN, original sponsors)

[Passed March 8, 1984; in effect ninety days from passage.]

AN ACT to amend article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section fourteen, relating generally to credit line deeds of trust which secure a present indebtedness and future advances; mandatory provisions of such deeds of trust; priority of such deeds of trust over all other liens created or arising after recordation of the deed of trust; certain exceptions to the priority of such deeds of trust; and the release of such deeds of trust.

Be it enacted by the Legislature of West Virginia:

That article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section fourteen, to read as follows:

ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.
§38-1-14. Future advances secured by credit line deed of trust; form; priority over other liens; release.

1 (a) Whenever a deed of trust otherwise complying with the provisions of this article is clearly entitled at the beginning thereof either in capital letters and in language underscored, the words "A CREDIT LINE DEED OF TRUST," the deed of trust shall be, from the time it is duly recorded as required by law, security for
all indebtedness secured thereby at the time of recording
and for all future advances secured thereby in an aggregate principal amount outstanding at any time not to exceed the maximum amount stated in the deed of trust, without regard to whether the future advances are contracted for the time of recordation of the deed of trust or whether the secured party under the deed of trust readvances principal sums repaid. The deed of trust shall also be security for interest on the principal sums and for taxes, insurance premiums and other obligations, including interest thereon, undertaken by the secured party in the deed of trust or in the related loan agreement, note or other evidences of indebtedness secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the loans outstanding at any time may increase the amount secured by the deed of trust above the stated maximum amount.

(b) A credit line deed of trust, in addition to other provisions of this code, shall conform with the following:

(1) The deed of trust shall contain specific provisions permitting or requiring future advances;
(2) At no time may the unpaid principal balance of indebtedness secured by the deed of trust exceed the maximum amount stated therein, except as specifically provided for in subsection (a) of this section; and
(3) The original deed of trust must be executed and recorded after the effective date of this section.

(c) Except as otherwise provided herein, the deed of trust to the extent of the principal amount of the loan secured thereby, interest thereon, taxes, insurance premiums and other obligations, including interest thereon, secured thereby, has priority over all other deeds of trust, liens and encumbrances of every nature, however created or arising, to the same extent and for the same amount as if all the amounts were advanced immediately after the date and time the deed of trust is recorded.

(d) After the recording of the credit line deed of trust, any mechanic's lien, abstract of judgment, notice of lis pendens, deed of trust or other lien or encumbrance
affecting the property encumbered by the deed of trust is 
duly recorded and otherwise perfected as required by 
law, any optional or nonobligatory advances secured by 
the deed of trust which are made by the secured party 
under the deed of trust after receipt by the secured 
party of written notice of the other lien at the address 
provided for this purpose in the deed of trust, does not 
have priority over the lien of the mechanic's lien, judg-
ment lien, notice of lis pendens, deed of trust or other 
lien or encumbrances. However, any obligatory advances 
which the secured party contracted to make by written 
agreement entered into with the obligor whose indebt-
edness is secured by the deed of trust, prior to receipt 
of this written notice, and any taxes, insurance prem-
iums and obligations which the secured party has agreed 
to pay, or which under the deed of trust or otherwise 
the secured party has the right to pay in connection 
with such deed of trust, shall continue to have the 
priority created under subsection (a) of this section 
over a mechanic's lien, judgment lien, notice of lis 
pendens, deed of trust or other lien or encumbrance. For 
the purposes of this section, an "obligatory advance" 
means any advance of principal which the secured party 
under the deed of trust is legally obligated to make in 
the absence of the occurrence of a specific event under the 
deed of trust or related loan agreement or note, by a 
specified date or time or upon application therefor by 
the grantor under the deed of trust or by another ob-
ligor whose indebtedness is secured by the deed of trust. 
(e) Notwithstanding any other provision of this code, 
the secured party under a credit line deed of trust subject 
to this section shall be obligated to release the deed of 
trust at such time as all indebtedness secured thereby has 
been paid in full and the secured party has been duly 
released from any further obligation to make future ad-
vances under any note or agreement secured by the deed 
of trust. This release shall become effective upon the 
recording of the release and the secured party shall be 
released and discharged from any further obligation.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Donald C. Arntzen

Originated in the Senate.

In effect ninety days 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 20 day of March, 1984.

Governor