WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1986

ENROLLED

SENATE BILL NO. 81

(By Senator .............................................)

PASSED .............................................

In Effect .............................................
AN ACT to amend and reenact section one hundred two, article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred four, article two of said chapter, all relating to consumer credit and protection; short titles, definitions, adding a definition of a cosigner; and consumer credit protection, notice to cosigners, deleting sureties, comakers, endorsers and guarantors from the definition of cosigner.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 1. SHORT TITLES, DEFINITIONS AND GENERAL PROVISIONS.


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

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

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

(3) “Agricultural purpose” means a purpose related to
the production, harvest, exhibition, marketing,
transportation, processing or manufacture of agricultural
products by a natural person who cultivates, plants,
propagates or nurtures the agricultural products.
“Agricultural products” includes agricultural,
horticultural and dairy products, livestock,
wildlife, poultry, bees, forest products, fish and shellfish,
and any products thereof, including processed and
manufactured products, and any and all products raised or
produced on farms and any processed or manufactured
products thereof.

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

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

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

(c) If not included in the cash price:

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

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

(iii) Additional charges permitted by this chapter.

(5) “Average daily balance” in a billing cycle for which
a sales finance charge or loan finance charge is made is the
sum of the amount unpaid each day during that cycle
divided by the number of days in that cycle. The amount
unpaid on a day is determined by adding to the balance, if
any, unpaid as of the beginning of that day all purchases
and other debits and deducting all payments and other
credits made or received as of that day.
(6) The "cash price" of goods, services or an interest in
land means the price at which the goods, services or interest
in land are offered for sale by the seller to cash buyers in the
ordinary course of business, and may include (a) applicable
sales, use, privilege, and excise and documentary stamp
taxes, (b) the cash price of accessories or related services
such as delivery, installation, servicing, repairs, alterations
and improvements, and (c) amounts actually paid or to be
paid by the seller for registration, certificate of title, or
license fees.
(7) "Closing costs" with respect to a debt secured by an
interest in land include:
(a) Fees or premiums for title examination, title
insurance or similar purposes including surveys;
(b) Fees for preparation of a deed, deed of trust,
mortgage, settlement statement or other documents;
(c) Escrows for future payments of taxes and insurance;
(d) Official fees and fees for notarizing deeds and other
documents;
(e) Appraisal fees; and
(f) Credit reports.
(8) "Code" means the official code of West Virginia, one
thousand nine hundred thirty-one, as amended.
(9) "Commissioner" means the commissioner of
banking of West Virginia.
(10) "Conspicuous": A term or clause is conspicuous
when it is so written that a reasonable person against whom
it is to operate ought to have noticed it. Whether a term or
clause is conspicuous or not is for decision by the court.
(11) "Consumer" means a natural person who incurs
debt pursuant to a consumer credit sale or a consumer loan.
(12) (a) Except as provided in paragraph (b), "consumer
credit sale" is a sale of goods, services or an interest in land
in which:
(i) Credit is granted either by a seller who regularly
engages as a seller in credit transactions of the same kind or
pursuant to a seller credit card;
(ii) The buyer is a person other than an organization;
(iii) The goods, services or interest in land are purchased primarily for a personal, family, household or agricultural purpose;
(iv) Either the debt is payable in installments or a sales finance charge is made; and
(v) With respect to a sale of goods or services, the amount financed does not exceed twenty-five thousand dollars.

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

(13) (a) "Consumer lease" means a lease of goods:
(i) Which a lessor regularly engaged in the business of leasing makes to a person, other than an organization, who takes under the lease primarily for a personal, family, household or agricultural purpose;
(ii) In which the amount payable under the lease does not exceed twenty-five thousand dollars; and
(iii) Which is for a term exceeding four months.
(b) "Consumer lease" does not include a lease made pursuant to a lender credit card or similar arrangement.

(14) "Consumer loan" is a loan made by a person regularly engaged in the business of making loans in which:
(a) The debtor is a person other than an organization;
(b) The debt is incurred primarily for a personal, family, household or agricultural purpose;
(c) Either the debt is payable in installments or a loan finance charge is made; and
(d) Either the principal does not exceed twenty-five thousand dollars or the debt is secured by an interest in land.

(15) "Cosigner" means a natural person who assumes liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for
forbearance on collection of a consumer’s obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a “cosigner,” whether or not the person is designated as such on the credit obligation.

(16) “Credit” means the privilege granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(17) “Earnings” means compensation paid or payable to an individual or for his account for personal services rendered or to be rendered by him, whether denominated as wages, salary, commission, bonus or otherwise, and includes periodic payments pursuant to a pension, retirement or disability program.

(18) “Federal Consumer Credit Protection Act” means the “Consumer Credit Protection Act” (Public Law 90-321; 82 Stat. 146), as amended, and includes regulations issued pursuant to that act.

(19) “Goods” includes goods not in existence at the time the transaction is entered into and gift and merchandise certificates, but excludes money, chattel paper, documents of title and instruments.

(20) “Home solicitation sale” means a consumer credit sale in excess of twenty-five dollars in which the buyer receives a solicitation of the sale at a place other than the seller’s business establishment at a fixed location and the buyer’s agreement or offer to purchase is there given to the seller or a person acting for the seller. The term does not include a sale made pursuant to a preexisting open-end credit account with the seller in existence for at least three months prior to the transaction, a sale made pursuant to prior negotiations between the parties at the seller’s business establishment at a fixed location, a sale of motor vehicles, mobile homes or farm equipment or a sale which may be rescinded under the Federal Truth in Lending Act (being Title I of the Federal Consumer Credit Protection Act). A sale which would be a home solicitation sale if credit were extended by the seller is a home solicitation sale although the goods or services are paid for in whole or in part by a consumer loan in which the creditor is subject to claims and defenses arising from the sale.
Except as otherwise provided, “lender” includes an assignee of the lender’s right to payment but use of the term does not in itself impose on an assignee any obligation of the lender.

“Lender credit card or similar arrangement” means an arrangement or loan agreement, other than a seller credit card, pursuant to which a lender gives a debtor the privilege of using a credit card, letter of credit, or other credit confirmation or identification in transactions out of which debt arises:

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

(b) By the lender’s payment or agreement to pay the consumer’s obligations; or

(c) By the lender’s purchase from the obligee of the consumer’s obligations.

“Loan” includes:

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

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

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

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

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

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

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

(26) "Official fees" means:

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

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

(27) "Organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(28) "Payable in installments" means that payment is required or permitted by agreement to be made in (a) two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made, (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made, or (c) two or more periodic payments with respect to a debt arising from a consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding
the down payment, the consumer credit sale or consumer loan is "payable in installments."

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

(30) "Person related to" with respect to an individual means (a) the spouse of the individual, (b) a brother, brother-in-law, sister or sister-in-law of the individual, (c) an ancestor or lineal descendant of the individual or his spouse, and (d) any other relative, by blood or marriage, of the individual or his spouse who shares the same home with the individual. "Person related to" with respect to an organization means (a) a person directly or indirectly controlling, controlled by or under common control with the organization, (b) an officer or director of the organization or a person performing similar functions with respect to the organization or to a person related to the organization, (c) the spouse of a person related to the organization, and (d) a relative by blood or marriage of a person related to the organization who shares the same home with him.

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

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

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

(34) "Principal" of a loan means the total of:

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

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

(c) To the extent that payment is deferred:

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

(ii) Additional charges permitted by this chapter.
"Revolving charge account" means an agreement between a seller and a buyer by which (a) the buyer may purchase goods or services on credit or a seller credit card, (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account, (c) a sales finance charge if made is not precomputed but is computed periodically on the balances of the account from time to time, and (d) there is the privilege of paying the balances in installments.

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

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

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

"Sale of services" means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

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

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

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

(43) "Services" includes (a) work, labor and other
personal services, (b) privileges with respect to
transportation, use of vehicles, hotel and restaurant
accommodations, education, entertainment, recreation,
physical culture, hospital accommodations, funerals,
cemetery accommodations, and the like, and (c) insurance.

(44) "Supervised financial organization" means a
person, other than a supervised lender or an insurance
company or other organization primarily engaged in an
insurance business:

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

(b) Subject to supervision and examination with respect
to such loans by an official or agency of this state or of the
United States.
(45) "Supervised lender" means a person authorized to make or take assignments of supervised loans.

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-104. Notice to cosigners.

No person shall be held liable as cosigner, or be charged with personal liability for payment in a consumer credit sale or consumer loan unless that person, in addition to and before signing any instrument evidencing the transaction, signs and receives a separate notice which clearly explains his liability in the event of default by the consumer and also receives a copy of the disclosure required by the "Federal Consumer Credit Protection Act." Such notice shall be sufficient if it appears under the conspicuous caption "NOTICE TO COSIGNER" and contains substantially the following language:

"You are being asked to guarantee this debt. Think carefully before you do. If the borrower doesn't pay the debt, you will have to. Be sure you can afford to pay it if you have to, and that you want to accept this responsibility."

"You may have to pay up to the full amount of the debt if the borrower does not pay. You may also have to pay late fees or collection costs, which increase this amount."

"The creditor can collect this debt from you without first trying to collect from the borrower. The creditor can use the same collection methods against you that can be used against the borrower, such as suing you, garnishing your wages, etc. If this debt is ever in default, that fact may become a part of your credit record."

"This notice is not the contract that makes you liable for the debt."

The caption shall be typewritten or printed in at least twelve point bold upper case type. The body of the notice shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Floyd Fuller
Chairman House Committee

Originated in the Senate.

In effect from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within ......................this the 11th
day of ................... , 1986.

Governor
PRESENTED TO THE
GOVERNOR

Date 3/5/36
Time 3:57 p.m.