

No. 81

WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1986



**ENROLLED**

SENATE BILL NO. 81

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



PASSED .....January 31..... 1986

In Effect.....from..... Passage



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**Senate Bill No. 81**  
(BY SENATOR TUCKER)

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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.**

**§46A-1-102. General definitions.**

1 In addition to definitions appearing in subsequent  
2 articles, 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  
7 which a payment is applied first to the accumulated loan  
8 finance charge or sales finance charge and the balance is  
9 applied to the unpaid principal or unpaid amount financed.

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

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

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

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

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

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

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

40 (iii) Additional charges permitted by this chapter.

41 (5) "Average daily balance" in a billing cycle for which  
42 a sales finance charge or loan finance charge is made is the  
43 sum of the amount unpaid each day during that cycle  
44 divided by the number of days in that cycle. The amount

45 unpaid on a day is determined by adding to the balance, if  
46 any, unpaid as of the beginning of that day all purchases  
47 and other debits and deducting all payments and other  
48 credits made or received as of that day.

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

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

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

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

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

66 (d) Official fees and fees for notarizing deeds and other  
67 documents;

68 (e) Appraisal fees; and

69 (f) Credit reports.

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

72 (9) "Commissioner" means the commissioner of  
73 banking of West Virginia.

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

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

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

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

86 (ii) The buyer is a person other than an organization;  
87 (iii) The goods, services or interest in land are purchased  
88 primarily for a personal, family, household or agricultural  
89 purpose;

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

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

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

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

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

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

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

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

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

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

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

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

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

119 (15) "Cosigner" means a natural person who assumes  
120 liability for the obligation on a consumer credit sale or  
121 consumer loan without receiving goods, services or money  
122 in return for the obligation or, in the case of a revolving  
123 charge account or revolving loan account of a consumer,  
124 without receiving the contractual right to obtain extensions  
125 of credit under the account. The term cosigner includes any  
126 person whose signature is requested as a condition to  
127 granting credit to a consumer or as a condition for

128 forbearance on collection of a consumer's obligation that is  
129 in default. The term cosigner does not include a spouse  
130 whose signature is required to perfect a security interest. A  
131 person who meets the definition in this paragraph is a  
132 "cosigner," whether or not the person is designated as such  
133 on the credit obligation.

134 (16) "Credit" means the privilege granted by a creditor  
135 to a debtor to defer payment of debt or to incur debt and  
136 defer its payment.

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

143 (18) "Federal Consumer Credit Protection Act" means  
144 the "Consumer Credit Protection Act" (Public Law 90-321;  
145 82 Stat. 146), as amended, and includes regulations issued  
146 pursuant to that act.

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

151 (20) "Home solicitation sale" means a consumer credit  
152 sale in excess of twenty-five dollars in which the buyer  
153 receives a solicitation of the sale at a place other than the  
154 seller's business establishment at a fixed location and the  
155 buyer's agreement or offer to purchase is there given to the  
156 seller or a person acting for the seller. The term does not  
157 include a sale made pursuant to a preexisting open-end  
158 credit account with the seller in existence for at least three  
159 months prior to the transaction, a sale made pursuant to  
160 prior negotiations between the parties at the seller's  
161 business establishment at a fixed location, a sale of motor  
162 vehicles, mobile homes or farm equipment or a sale which  
163 may be rescinded under the Federal Truth in Lending Act  
164 (being Title I of the Federal Consumer Credit Protection  
165 Act). A sale which would be a home solicitation sale if credit  
166 were extended by the seller is a home solicitation sale  
167 although the goods or services are paid for in whole or in  
168 part by a consumer loan in which the creditor is subject to  
169 claims and defenses arising from the sale.

170 (21) Except as otherwise provided, "lender" includes an  
171 assignee of the lender's right to payment but use of the term  
172 does not in itself impose on an assignee any obligation of the  
173 lender.

174 (22) "Lender credit card or similar arrangement" means  
175 an arrangement or loan agreement, other than a seller credit  
176 card, pursuant to which a lender gives a debtor the privilege  
177 of using a credit card, letter of credit, or other credit  
178 confirmation or identification in transactions out of which  
179 debt arises:

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

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

184 (c) By the lender's purchase from the obligee of the  
185 consumer's obligations.

186 (23) "Loan" includes:

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

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

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

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

197 (24) (a) "Loan finance charge" means the sum of (i) all  
198 charges payable directly or indirectly by the debtor and  
199 imposed directly or indirectly by the lender as an incident to  
200 the extension of credit, including any of the following types  
201 of charges which are applicable: Interest or any amount  
202 payable under a point, discount, or other system of charges,  
203 however denominated, premium or other charge for any  
204 guarantee or insurance protecting the lender against the  
205 consumer's default or other credit loss; and (ii) charges  
206 incurred for investigating the collateral or credit-  
207 worthiness of the consumer or for commissions or  
208 brokerage for obtaining the credit, irrespective of the  
209 person to whom the charges are paid or payable, unless the  
210 lender had no notice of the charges when the loan was made.

211 The term does not include charges as a result of default,  
212 additional charges, delinquency charges or deferral  
213 charges.

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

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

224 (26) "Official fees" means:

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

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

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

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



253 the down payment, the consumer credit sale or consumer  
254 loan is “payable in installments.”

255 (29) “Person” or “party” includes a natural person or an  
256 individual, and an organization.

257 (30) “Person related to” with respect to an individual  
258 means (a) the spouse of the individual, (b) a brother,  
259 brother-in-law, sister or sister-in-law of the individual, (c)  
260 an ancestor or lineal descendant of the individual or his  
261 spouse, and (d) any other relative, by blood or marriage, of  
262 the individual or his spouse who shares the same home with  
263 the individual. “Person related to” with respect to an  
264 organization means (a) a person directly or indirectly  
265 controlling, controlled by or under common control with  
266 the organization, (b) an officer or director of the  
267 organization or a person performing similar functions with  
268 respect to the organization or to a person related to the  
269 organization, (c) the spouse of a person related to the  
270 organization, and (d) a relative by blood or marriage of a  
271 person related to the organization who shares the same  
272 home with him.

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

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

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

285 (34) “Principal” of a loan means the total of:

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

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

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

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

294 (ii) Additional charges permitted by this chapter.

295 (35) "Revolving charge account" means an agreement  
296 between a seller and a buyer by which (a) the buyer may  
297 purchase goods or services on credit or a seller credit card,  
298 (b) the balances of amounts financed and the sales finance  
299 and other appropriate charges are debited to an account, (c)  
300 a sales finance charge if made is not precomputed but is  
301 computed periodically on the balances of the account from  
302 time to time, and (d) there is the privilege of paying the  
303 balances in installments.

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

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

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

327 (39) "Sale of services" means furnishing or agreeing to  
328 furnish services and includes making arrangements to have  
329 services furnished by another.

330 (40) "Sales finance charge" means the sum of (a) all  
331 charges payable directly or indirectly by the buyer and  
332 imposed directly or indirectly by the seller or issuer of a  
333 seller credit card as an incident to the extension of credit,  
334 including any of the following types of charges which are  
335 applicable: Time-price differential, however denominated,  
336 including service, carrying or other charge, premium or  
337 other charge for any guarantee or insurance protecting the

338 seller against the buyer's default or other credit loss, and (b)  
339 charges incurred for investigating the collateral or credit-  
340 worthiness of the buyer or for commissions or brokerage for  
341 obtaining the credit, irrespective of the person to whom the  
342 charges are paid or payable; unless the seller had no notice  
343 of the charges when the credit was granted. The term does  
344 not include charges as a result of default, additional  
345 charges, delinquency charges or deferral charges. If the  
346 seller or issuer of a seller credit card purchases or satisfies  
347 obligations of the consumer and the purchase or  
348 satisfaction is made at less than the face amount of the  
349 obligation, the discount is not part of the sales finance  
350 charge.

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

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

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

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

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

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

381 (45) "Supervised lender" means a person authorized to  
382 make or take assignments of supervised loans.

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

## ARTICLE 2. CONSUMER CREDIT PROTECTION.

### §46A-2-104. Notice to cosigners.

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

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

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

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

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

27 The caption shall be typewritten or printed in at least  
28 twelve point bold upper case type. The body of the notice  
29 shall be typewritten or printed in at least eight point regular  
30 type, in upper or lower case, where appropriate.

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

*[Handwritten Signature]*  
.....  
Chairman Senate Committee

*[Handwritten Signature]*  
.....  
Chairman House Committee

Originated in the Senate.

In effect from passage.

*[Handwritten Signature]*  
.....  
Clerk of the Senate

*[Handwritten Signature]*  
.....  
Clerk of the House of Delegates

*[Handwritten Signature]*  
.....  
President of the Senate

*[Handwritten Signature]*  
.....  
Speaker House of Delegates

The within *approved* ..... this the *11th* .....  
day of *February* ..... 1986.

*[Handwritten Signature]*  
.....  
Governor



~~PRESENTED~~ TO THE  
GOVERNOR

Date 2/5/86

Time 3:57 p.m.

PROPERTY

LOS FEB 19 19 02

STATE OF CALIFORNIA  
SHERIFF'S OFFICE

FILED IN THE OFFICE OF  
SHERIFF OF STATE OF  
LOS ANGELES

THIS DATE 2/13/86