

# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990



# ENROLLED

Com. Sub. for  
HOUSE BILL No. 4712

(By ~~Mr.~~ *Del. R. Burk* )



Passed *March 6,* 1990

In Effect *90 Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4712**  
(By DELEGATE R. BURK)

[Passed March 6, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section fourteen, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to future advances secured by a credit line deed of trust; form; priority over other liens; release; providing an alternative to the caption entitled a credit line deed of trust; to further define future advances to include obligations other than those arising from traditional loan transactions; and to clarify the distinction between obligatory and nonobligatory future advances.

*Be it enacted by the Legislature of West Virginia:*

That section fourteen, article one, chapter thirty-eight of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

**ARTICLE 1. VENDOR'S AND TRUST DEED LIENS.**

**§38-1-14. Future advances secured by credit line deed of trust; definitions; notice requirements and form; priority over other liens; release.**

- 1 (a) Definitions: For purposes of this section, the  
2 following definitions shall apply:

3 (1) "Credit line deed of trust" is a deed of trust  
4 securing any obligation arising out of a loan agreement,  
5 a promissory note, a sales contract, a performance  
6 contract, or any other agreement or writing, under the  
7 terms of which the indebtedness or other obligation  
8 created may increase and/or decrease from time to time.

9 (2) "Future advance" means any form of increase in  
10 the indebtedness or obligation owed to the secured party  
11 under the terms of the credit line deed of trust,  
12 including, but not limited to, an increase arising from,  
13 but not limited to, an application for the same by the  
14 obligor; the advancement of loan proceeds pursuant to  
15 the terms of the credit line deed of trust or other  
16 agreement; the payment of any taxes, insurance premi-  
17 ums, interest, or other obligations pursuant to the terms  
18 of the credit line deed of trust or other agreement; or  
19 the occurrence of any condition, event or circumstance  
20 set forth in the credit line deed of trust.

21 (3) "Obligatory advance" means any advance which,  
22 under the terms of the credit line deed of trust or other  
23 agreement, the secured party has legally obligated itself  
24 to make in the absence of a default, breach, or other  
25 such event. Obligatory advances include, but are not  
26 limited to, advances which the secured party has agreed  
27 to make as a term or condition of the credit line deed  
28 of trust or other related agreement; obligations arising  
29 out of the occurrence of a condition, event or circum-  
30 stance contemplated by the agreement; obligations  
31 arising on a specified date or time; or advances made  
32 upon application therefor by the grantor under the  
33 credit line deed of trust or by another obligor whose  
34 indebtedness is secured by the deed of trust,

35 (b) A credit line deed of trust shall comply with all  
36 the provisions of this article and shall either (i) have  
37 clearly entitled at the beginning thereof either in capital  
38 letters or in language underscored, the words, "A  
39 CREDIT LINE DEED OF TRUST", or (ii) state  
40 conspicuously either immediately above or beneath the  
41 caption at the top of the first page of the credit line deed  
42 of trust the words, "This instrument secures an obliga-

43 tion that may increase and decrease from time to time”.

44 A credit line deed of trust shall be, from the time it  
45 is duly recorded as required by law, security for all  
46 indebtedness or other obligations secured thereby at the  
47 time of recording and for all future advances secured  
48 thereby in an aggregate principal amount outstanding  
49 at any time not to exceed the maximum amount stated  
50 in the credit line deed of trust, without regard to  
51 whether the future advances are contracted for at the  
52 time of recordation of the credit line deed of trust or  
53 whether the secured party under the credit line deed of  
54 trust readvances principal sums repaid. The credit line  
55 deed of trust shall also be security for interest on the  
56 principal sums and for taxes, insurance premiums and  
57 other obligations, including interest thereon, undertaken  
58 by the secured party in the credit line deed of trust or  
59 in the related loan agreement, note, contract, or other  
60 agreement or evidences of indebtedness or obligations  
61 secured thereby. The interest, taxes, insurance premi-  
62 ums and other obligations when added to the total  
63 principal amount of the obligations outstanding at any  
64 time may increase the amount secured by the credit line  
65 deed of trust above the stated maximum amount.

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

68 (1) The credit line deed of trust shall contain specific  
69 provisions permitting or requiring future advances and  
70 stating whether the future advances are intended to be  
71 obligatory or nonobligatory;

72 (2) At no time may the unpaid principal balance of  
73 the obligation or indebtedness secured by the credit line  
74 deed of trust exceed the maximum amount stated  
75 therein, except as specifically provided for in subsection  
76 (b) of this section; and

77 (3) The original credit line deed of trust must be  
78 executed and recorded after the sixth day of June, one  
79 thousand nine hundred eighty-four.

80 (d) Except as otherwise provided herein, a credit line

81 deed of trust, to the extent of the principal amount of  
82 the loan indebtedness or obligation secured thereby,  
83 interest thereon, taxes, insurance premiums and other  
84 obligations, including interest thereon, secured thereby,  
85 has priority over all other deeds of trust, liens and  
86 encumbrances of every nature, however created or  
87 arising, to the same extent and for the same amount as  
88 if all the amounts were advanced on the date and at the  
89 time the credit line deed of trust is recorded.

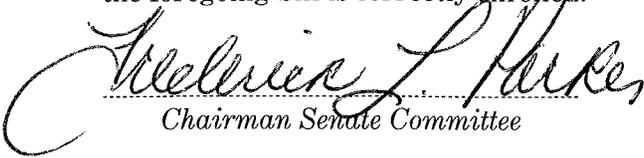
90 (e) Any mechanic's lien, abstract of judgment, notice  
91 of lis pendens, other deed of trust or other lien of  
92 encumbrance, which affects the property encumbered  
93 by the credit line deed of trust and which is duly  
94 recorded and perfected as required by law after the  
95 recording of the credit line deed of trust, shall have  
96 priority over any advances secured by the credit line  
97 deed of trust that are not obligatory and that are made  
98 by the secured party under the credit line deed of trust  
99 after receipt by the secured party, at the address  
100 provided for the purpose of notification in the credit line  
101 deed of trust, of written notice of such mechanic's lien,  
102 judgment lien, notice of lis pendens, other deed of trust  
103 or other lien or encumbrance. However, any obligatory  
104 advances made by the secured party that are secured  
105 by the credit line deed of trust or any other related  
106 agreement, and any taxes, insurance premiums and  
107 obligations which the secured party has agreed to pay,  
108 or which under the credit line deed of trust or otherwise  
109 the secured party has the right to pay in connection with  
110 such credit line deed of trust, shall continue to have the  
111 priority created under subsection (b) of this section over  
112 a mechanic's lien, judgment lien, notice of lis pendens,  
113 deed of trust or other lien or encumbrance.

114 (f) Notwithstanding any other provision of this code,  
115 the secured party under a credit line deed of trust  
116 subject to this section shall be obligated to release the  
117 credit line deed of trust at such time as all indebtedness  
118 or other obligations secured thereby have been paid in  
119 full or otherwise satisfied and the secured party has  
120 been duly released from any further obligation to make  
121 future advances under any note or agreement secured

122 by the credit line deed of trust. This release shall  
123 become effective upon the recording of the release and  
124 the secured party shall be released and discharged from  
125 any further obligation.

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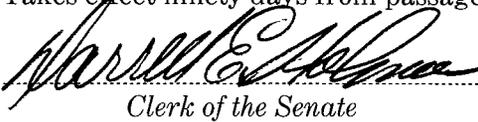
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

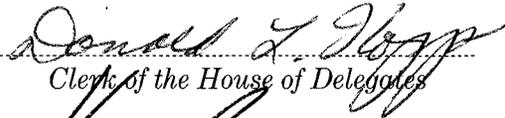
  
Chairman Senate Committee

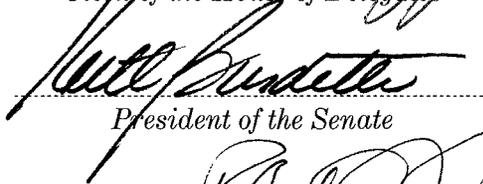
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

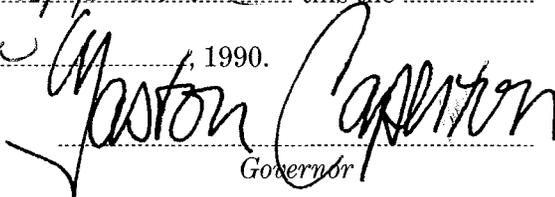
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved this the 15<sup>th</sup>  
day of March, 1990.

  
Governor

PRESENTED TO THE  
GOVERNOR

Date 3/13/90

Time 2:41 PM

RECEIVED

1990 MAR 15 PM 4: 08  
OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE