WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for
HOUSE BILL No. 4712

(By: Del. R. Burke)

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Passed March 19, 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 following definitions shall apply:
(1) "Credit line deed of trust" is a deed of trust securing any obligation arising out of a loan agreement, a promissory note, a sales contract, a performance contract, or any other agreement or writing, under the terms of which the indebtedness or other obligation created may increase and/or decrease from time to time.

(2) "Future advance" means any form of increase in the indebtedness or obligation owed to the secured party under the terms of the credit line deed of trust, including, but not limited to, an increase arising from, but not limited to, an application for the same by the obligor; the advancement of loan proceeds pursuant to the terms of the credit line deed of trust or other agreement; the payment of any taxes, insurance premiums, interest, or other obligations pursuant to the terms of the credit line deed of trust or other agreement; or the occurrence of any condition, event or circumstance set forth in the credit line deed of trust.

(3) "Obligatory advance" means any advance which, under the terms of the credit line deed of trust or other agreement, the secured party has legally obligated itself to make in the absence of a default, breach, or other such event. Obligatory advances include, but are not limited to, advances which the secured party has agreed to make as a term or condition of the credit line deed of trust or other related agreement; obligations arising out of the occurrence of a condition, event or circumstance contemplated by the agreement; obligations arising on a specified date or time; or advances made upon application therefor by the grantor under the credit line deed of trust or by another obligor whose indebtedness is secured by the deed of trust.

(b) A credit line deed of trust shall comply with all the provisions of this article and shall either (i) have clearly entitled at the beginning thereof either in capital letters or in language underscored, the words, “A CREDIT LINE DEED OF TRUST”, or (ii) state conspicuously either immediately above or beneath the caption at the top of the first page of the credit line deed of trust the words, “This instrument secures an obliga-
tion that may increase and decrease from time to time”.

A credit line deed of trust shall be, from the time it is duly recorded as required by law, security for all indebtedness or other obligations 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 credit line deed of trust, without regard to whether the future advances are contracted for at the time of recordation of the credit line deed of trust or whether the secured party under the credit line deed of trust readvances principal sums repaid. The credit line 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 credit line deed of trust or in the related loan agreement, note, contract, or other agreement or evidences of indebtedness or obligations secured thereby. The interest, taxes, insurance premiums and other obligations when added to the total principal amount of the obligations outstanding at any time may increase the amount secured by the credit line deed of trust above the stated maximum amount.

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

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

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

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

(d) Except as otherwise provided herein, a credit line
deed of trust, to the extent of the principal amount of
the loan indebtedness or obligation 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
taxes, insurance premiums and other
encumbrances of every nature, however created or
arising, to the same extent and for the same amount as
if all the amounts were advanced on the date and at the
time the credit line deed of trust is recorded.

(e) Any mechanic's lien, abstract of judgment, notice
of lis pendens, other deed of trust or other lien of
encumbrance, which affects the property encumbered
by the credit line deed of trust and which is duly
recorded and perfected as required by law after the
recording of the credit line deed of trust, shall have
priority over any advances secured by the credit line
deed of trust that are not obligatory and that are made
by the secured party under the credit line deed of trust
after receipt by the secured party, at the address
provided for the purpose of notification in the credit line
deed of trust, of written notice of such mechanic's lien,
judgment lien, notice of lis pendens, other deed of trust
or other lien or encumbrance. However, any obligatory
advances made by the secured party that are secured
by the credit line deed of trust or any other related
agreement, and any taxes, insurance premiums and
obligations which the secured party has agreed to pay,
or which under the credit line deed of trust or otherwise
the secured party has the right to pay in connection with
such credit line deed of trust, shall continue to have the
priority created under subsection (b) of this section over
a mechanic's lien, judgment lien, notice of lis pendens,
deed of trust or other lien or encumbrance.

(f) 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
credit line deed of trust at such time as all indebtedness
or other obligations secured thereby have been paid in
full or otherwise satisfied and the secured party has
been duly released from any further obligation to make
future advances under any note or agreement secured
by the credit line 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

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 15th day of January, 1990.

Governor