

HB# 4507

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# WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



# ENROLLED

*Com. Sub. For*

HOUSE BILL No. 4507

(By Delegate *Phillips*)



Passed *March 10,* 1994

In Effect *90 Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 4507**

(By DELEGATE PHILLIPS)

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[Passed March 10, 1994; in effect ninety days from passage.]

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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, relating to the definitions of "precomputed loan" and "precomputed sale" under the "West Virginia Consumer Credit and Protection Act."

*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 to read as follows:

**ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.**

**§46A-1-102. General definitions.**

1 In addition to definitions appearing in subsequent  
2 articles, in this chapter: (1) "Actuarial method" means  
3 the method, defined by rules adopted by the commis-  
4 sioner, of allocating payments made on a debt between  
5 principal or amount financed and loan finance charge  
6 or sales finance charge pursuant to which a payment is  
7 applied first to the accumulated loan finance charge or  
8 sales finance charge and the balance is applied to the  
9 unpaid principal or unpaid amount financed.

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

16 (3) "Agricultural purpose" means a purpose related to  
17 the production, harvest, exhibition, marketing, trans-  
18 portation, processing or manufacture of agricultural  
19 products by a natural person who cultivates, plants,  
20 propagates or nurtures the agricultural products.  
21 "Agricultural products" includes agricultural, horticul-  
22 tural, viticultural and dairy products, livestock, wildlife,  
23 poultry, bees, forest products, fish and shellfish, and any  
24 products thereof, including processed and manufactured  
25 products, and any and all products raised or produced  
26 on farms and any processed or manufactured products  
27 thereof.

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

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

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

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

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

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

42 (iii) Additional charges permitted by this chapter.

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

48 to the balance, if any, unpaid as of the beginning of that  
49 day all purchases and other debits and deducting all  
50 payments and other credits made or received as of that  
51 day.

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

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

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

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

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

70 (d) Official fees and fees for notarizing deeds and  
71 other documents;

72 (e) Appraisal fees; and

73 (f) Credit reports.

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

76 (9) "Commercial facsimile transmission" means the  
77 electronic or telephonic transmission in the state to a  
78 facsimile device to encourage a person to purchase  
79 goods, realty or services.

80 (10) "Commissioner" means the commissioner of  
81 banking of West Virginia.

82 (11) "Conspicuous": A term or clause is conspicuous  
83 when it is so written that a reasonable person against

84 whom it is to operate ought to have noticed it. Whether  
85 a term or clause is conspicuous or not is for decision by  
86 the court.

87 (12) "Consumer" means a natural person who incurs  
88 debt pursuant to a consumer credit sale or a consumer  
89 loan.

90 (13) (a) Except as provided in paragraph (b), "con-  
91 sumer credit sale" is a sale of goods, services or an interest  
92 in land in which:

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

96 (ii) The buyer is a person other than an organization;

97 (iii) The goods, services or interest in land are  
98 purchased primarily for a personal, family, household or  
99 agricultural purpose;

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

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

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

109 (14) (a) "Consumer lease" means a lease of goods:

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

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

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

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

120 (15) "Consumer loan" is a loan made by a person  
121 regularly engaged in the business of making loans in  
122 which:

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

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

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

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

131 (16) "Cosigner" means a natural person who assumes  
132 liability for the obligation on a consumer credit sale or  
133 consumer loan without receiving goods, services or  
134 money in return for the obligation or, in the case of a  
135 revolving charge account or revolving loan account of a  
136 consumer, without receiving the contractual right to  
137 obtain extensions of credit under the account. The term  
138 cosigner includes any person whose signature is re-  
139 quested as a condition to granting credit to a consumer  
140 or as a condition for forbearance on collection of a  
141 consumer's obligation that is in default. The term  
142 cosigner does not include a spouse whose signature is  
143 required to perfect a security interest. A person who  
144 meets the definition in this paragraph is a "cosigner"  
145 whether or not the person is designated as such on the  
146 credit obligation.

147 (17) "Credit" means the privilege granted by a  
148 creditor to a debtor to defer payment of debt or to incur  
149 debt and defer its payment.

150 (18) "Earnings" means compensation paid or payable  
151 to an individual or for his account for personal services  
152 rendered or to be rendered by him, whether denomi-  
153 nated as wages, salary, commission, bonus or otherwise,  
154 and includes periodic payments pursuant to a pension,  
155 retirement or disability program.

156 (19) "Facsimile device" means a machine that receives  
157 and copies reproductions or facsimiles of documents or

158 photographs that have been transmitted electronically  
159 or telephonically over telecommunications lines.

160 (20) "Federal Consumer Credit Protection Act" means  
161 the "Consumer Credit Protection Act" (Public Law 90-  
162 321; 82 Stat. 146), as amended, and includes regulations  
163 issued pursuant to that act.

164 (21) "Goods" includes goods not in existence at the  
165 time the transaction is entered into and gift and  
166 merchandise certificates, but excludes money, chattel  
167 paper, documents of title and instruments.

168 (22) "Home solicitation sale" means a consumer credit  
169 sale in excess of twenty-five dollars in which the buyer  
170 receives a solicitation of the sale at a place other than  
171 the seller's business establishment at a fixed location  
172 and the buyer's agreement or offer to purchase is there  
173 given to the seller or a person acting for the seller. The  
174 term does not include a sale made pursuant to a  
175 preexisting open-end credit account with the seller in  
176 existence for at least three months prior to the transac-  
177 tion, a sale made pursuant to prior negotiations between  
178 the parties at the seller's business establishment at a  
179 fixed location, a sale of motor vehicles, mobile homes or  
180 farm equipment or a sale which may be rescinded under  
181 the Federal Truth in Lending Act (being Title I of the  
182 Federal Consumer Credit Protection Act). A sale which  
183 would be a home solicitation sale if credit were extended  
184 by the seller is a home solicitation sale although the  
185 goods or services are paid for, in whole or in part, by  
186 a consumer loan in which the creditor is subject to  
187 claims and defenses arising from the sale.

188 (23) Except as otherwise provided, "lender" includes  
189 an assignee of the lender's right to payment but use of  
190 the term does not in itself impose on an assignee any  
191 obligation of the lender.

192 (24) "Lender credit card or similar arrangement"  
193 means an arrangement or loan agreement, other than  
194 a seller credit card, pursuant to which a lender gives  
195 a debtor the privilege of using a credit card, letter of  
196 credit, or other credit confirmation or identification in  
197 transactions out of which debt arises:

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

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

203 (c) By the lender's purchase from the obligee of the  
204 consumer's obligations.

205 (25) "Loan" includes:

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

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

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

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

216 (26) (a) "Loan finance charge" means the sum of (i) all  
217 charges payable directly or indirectly by the debtor and  
218 imposed directly or indirectly by the lender as an  
219 incident to the extension of credit, including any of the  
220 following types of charges which are applicable: Interest  
221 or any amount payable under a point, discount, or other  
222 system of charges, however denominated, premium or  
223 other charge for any guarantee or insurance protecting  
224 the lender against the consumer's default or other credit  
225 loss; and (ii) charges incurred for investigating the  
226 collateral or credit worthiness of the consumer or for  
227 commissions or brokerage for obtaining the credit,  
228 irrespective of the person to whom the charges are paid  
229 or payable, unless the lender had no notice of the  
230 charges when the loan was made. The term does not  
231 include charges as a result of default, additional  
232 charges, delinquency charges or deferral charges.

233 (b) If a lender makes a loan to a consumer by  
234 purchasing or satisfying obligations of the consumer  
235 pursuant to a lender credit card or similar arrange-

236 ment, and the purchase or satisfaction is made at less  
237 than the face amount of the obligation, the discount is  
238 not part of the loan finance charge.

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

244 (28) "Official fees" means:

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

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

257 (29) "Organization" means a corporation, government  
258 or governmental subdivision or agency, trust, estate,  
259 partnership, cooperative or association.

260 (30) "Payable in installments" means that payment is  
261 required or permitted by agreement to be made in (a)  
262 two or more periodic payments, excluding a down  
263 payment, with respect to a debt arising from a consumer  
264 credit sale pursuant to which a sales finance charge is  
265 made, (b) four or more periodic payments, excluding a  
266 down payment, with respect to a debt arising from a  
267 consumer credit sale pursuant to which no sales finance  
268 charge is made, or (c) two or more periodic payments  
269 with respect to a debt arising from a consumer loan. If  
270 any periodic payment other than the down payment  
271 under an agreement requiring or permitting two or  
272 more periodic payments is more than twice the amount  
273 of any other periodic payment, excluding the down  
274 payment, the consumer credit sale or consumer loan is

275 “payable in installments.”

276 (31) “Person” or “party” includes a natural person or  
277 an individual, and an organization.

278 (32) “Person related to” with respect to an individual  
279 means (a) the spouse of the individual, (b) a brother,  
280 brother-in-law, sister or sister-in-law of the individual,  
281 (c) an ancestor or lineal descendant of the individual or  
282 his spouse, and (d) any other relative, by blood or  
283 marriage, of the individual or his spouse who shares the  
284 same home with the individual. “Person related to” with  
285 respect to an organization means (a) a person directly  
286 or indirectly controlling, controlled by or under common  
287 control with the organization, (b) an officer or director  
288 of the organization or a person performing similar  
289 functions with respect to the organization or to a person  
290 related to the organization, (c) the spouse of a person  
291 related to the organization, and (d) a relative by blood  
292 or marriage of a person related to the organization who  
293 shares the same home with him.

294 (33) “Precomputed loan.” A loan, refinancing or  
295 consolidation is “precomputed” if:

296 (A) The debt is expressed as a sum comprising the  
297 principal and the amount of the loan finance charge  
298 computed in advance; or

299 (B) The loan is expressed in terms of the principal  
300 amount; the loan installment payments are a scheduled,  
301 fixed amount including principal and interest and  
302 assume payment on the installment due date; and  
303 interest payments will not vary or result in an adjust-  
304 ment during the term of the loan or at its final payment  
305 as a result of the actual installment payment dates.

306 (34) “Precomputed sale.” A sale, refinancing or  
307 consolidation is “precomputed” if:

308 (A) The debt is expressed as a sum comprising the  
309 amount financed and the amount of the sales finance  
310 charge computed in advance; or

311 (B) The debt is expressed in terms of the principal  
312 amount; the debt installment payments are a scheduled,

313 fixed amount including principal and interest and  
314 assume payment on the installment due date; and  
315 interest payments will not vary or result in an adjust-  
316 ment during the term of the debt or at its final payment  
317 as a result of the actual installment payment dates.

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

322 (36) "Principal" of a loan means the total of:

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

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

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

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

331 (ii) Additional charges permitted by this chapter.

332 (37) "Revolving charge account" means an agreement  
333 between a seller and a buyer by which (a) the buyer may  
334 purchase goods or services on credit or a seller credit  
335 card, (b) the balances of amounts financed and the sales  
336 finance and other appropriate charges are debited to an  
337 account, (c) a sales finance charge if made is not  
338 precomputed but is computed periodically on the  
339 balances of the account from time to time, and (d) there  
340 is the privilege of paying the balances in installments.

341 (38) "Revolving loan account" means an arrangement  
342 between a lender and a consumer including, but not  
343 limited to, a lender credit card or similar arrangement,  
344 pursuant to which (a) the lender may permit the  
345 consumer to obtain loans from time to time, (b) the  
346 unpaid balances of principal and the loan finance and  
347 other appropriate charges are debited to an account, (c)  
348 a loan finance charge if made is not precomputed but  
349 is computed periodically on the outstanding unpaid  
350 balances of the principal of the consumer's account from

351 time to time, and (d) there is the privilege of paying the  
352 balances in installments.

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

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

367 (41) "Sale of services" means furnishing or agreeing  
368 to furnish services and includes making arrangements  
369 to have services furnished by another.

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

391 finance charge.

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

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

406 (45) "Services" includes (a) work, labor and other  
407 personal services, (b) privileges with respect to transpor-  
408 tation, use of vehicles, hotel and restaurant accommoda-  
409 tions, education, entertainment, recreation, physical  
410 culture, hospital accommodations, funerals, cemetery  
411 accommodations, and the like, and (c) insurance.

412 (46) "Supervised financial organization" means a  
413 person, other than a supervised lender or an insurance  
414 company or other organization primarily engaged in an  
415 insurance business:

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

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

423 (47) "Supervised lender" means a person authorized to  
424 make or take assignments of supervised loans.

425 (48) "Supervised loan" means a consumer loan made  
426 by other than a supervised financial organization,  
427 including a loan made pursuant to a revolving loan  
428 account, where the principal does not exceed two

429 thousand dollars, and in which the rate of the loan  
430 finance charge exceeds eight percent per year as  
431 determined according to the actuarial method.

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



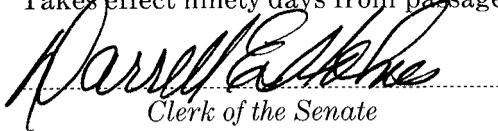
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*Chairman Senate Committee*



.....  
*Ernest C. Moore*  
*Chairman House Committee*

Originating in the House.

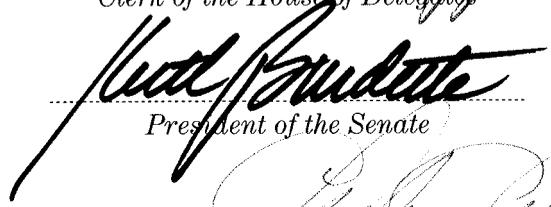
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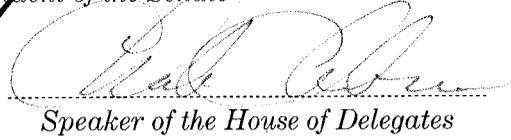
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*Clerk of the Senate*



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*Clerk of the House of Delegates*

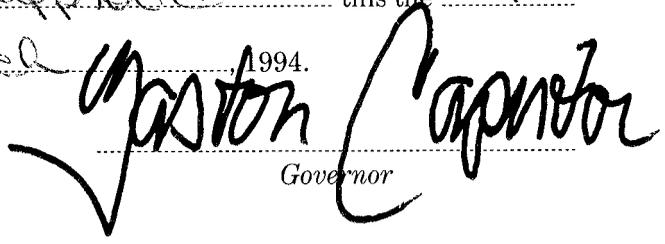


.....  
*President of the Senate*



.....  
*Speaker of the House of Delegates*

The within approved this the 29<sup>th</sup>  
day of March 1994.



.....  
*Governor*



PRESENTED TO THE  
GOVERNOR

Date 3/25/94

Time 9:45 am