

SB 366

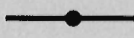
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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996



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COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 366

(By Senator MANCHIN, ET AL)



PASSED MARCH 9, 1996
In Effect NINETY DAYS FROM Passage

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COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 366

(SENATORS MANCHIN, HELMICK, BLATNIK, CHAFIN,
CRAIGO, DITTMAR, SHARPE, WAGNER, WIEDEBUSCH,
WOOTON, KIMBLE, SCOTT AND YODER, *original sponsors*)

[Passed March 9, 1996; in effect ninety days from passage.]

AN ACT to repeal article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections five and six, article one, chapter thirty-one-a of said code; to amend and reenact sections five and eight, article two of said chapter; to amend and reenact section twenty-two, article four of said chapter; to amend and reenact section two, article seven of said chapter; to amend and reenact section twelve-a, article eight of said chapter; to

amend and reenact sections one hundred two and one hundred three, article one, chapter forty-six-a of said code; to amend and reenact sections one hundred four and one hundred eleven, article three of said chapter; to amend and reenact sections one hundred one, one hundred two, one hundred three, one hundred four, one hundred five, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve and one hundred thirteen, article four of said chapter; to further amend said article by adding thereto a new section, designated section one hundred ten-a; to amend and reenact sections one hundred one and one hundred three, article five of said chapter; to amend and reenact sections one hundred three and one hundred fifteen, article seven of said chapter; to amend and reenact section one hundred one, article eight of said chapter; and to amend and reenact section five-d, article six, chapter forty-seven of said code, all relating to the supervision and regulation of banking institutions; eliminating separate licensing requirements for supervised lenders and industrial loan companies; creating a license requirement for regulated consumer lenders; defining and redefining terms; making certain technical revisions consistent with new terminology; removing obsolete and conflicting language; establishing the annual assessment for regulated consumer lenders; establishing limitations on finance charges; requiring the rebate of portion of unearned prepaid finance charges; requiring the registration and licensing of consumer lending offices other than mortgage loan companies operating in West Virginia; setting forth licensure requirements for regulated consumer lenders and establishing a fee therefor; when license may be revoked, suspended or forfeited; licensee to maintain records and file annual report with commissioner; providing for the examination by the commissioner of loans, business and records of every licensee at least every eighteen months; limiting authorized finance charges for regulated consumer lenders; setting forth restrictions on security interests; permissible conduct

other than making loans; prohibiting certain conduct; substantial benefit required when refinancing at higher rate; exceptions; providing for the continuation of and for the combination of certain licenses; setting forth civil and criminal liability; establishing civil and criminal penalties; providing for the division of administrative powers to enforce consumer credit and protection laws; notification to state tax commissioner; establishing operative date of legislative enactment; authorizing certain deductions upon rebate of unearned finance charges; and clarifying definition of "loan or credit investigation fees".

Be it enacted by the Legislature of West Virginia:

That article seven, chapter thirty-one of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections five and six, article one, chapter thirty-one-a of said code be amended and reenacted; that sections five and eight, article two, said chapter be amended and reenacted; that section twenty-two, article four of said chapter be amended and reenacted; that section two, article seven of said chapter be amended and reenacted; that section twelve-a, article eight of said chapter be amended and reenacted; that sections one hundred two and one hundred three, article one, chapter forty-six-a of said code be amended and reenacted; that sections one hundred four and one hundred eleven, article three of said chapter be amended and reenacted; that sections one hundred one, one hundred two, one hundred three, one hundred four, one hundred five, one hundred seven, one hundred eight, one hundred nine, one hundred ten, one hundred eleven, one hundred twelve and one hundred thirteen, article four of said chapter be amended and reenacted; that said article be further amended by adding thereto a new section, designated section one hundred ten-a; that sections one hundred one and one hundred three, article five of said chapter be amended and reenacted; that sections one hundred three and one hundred fifteen, article seven of said chapter be amended and reenacted; that section one hundred one, article eight of said chapter be amended and reenacted; and that section five-d, article six, chapter forty-

seven of said code be amended and reenacted, all to read as follows:

CHAPTER A. BANKS AND BANKING.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§31A-1-5. Lending and investing powers and authority of fiduciaries, financial institutions, governmental entities and other persons.

1 The state of West Virginia, counties, municipalities,
2 political subdivisions and agencies and instrumentalities
3 of any of them, fiduciaries, building and loan associa-
4 tions, regulated consumer lenders, insurance companies,
5 fraternal benefit societies and other persons lawfully
6 engaging in the lending and investing business and
7 services shall have and are hereby authorized and
8 empowered to exercise the same lawful rights and
9 privileges as are banking institutions under provisions of
10 sections twenty-seven, twenty-eight and twenty-nine,
11 article four of this chapter.

§31A-1-6. Deposit insurance required for banking and other depository institutions.

1 All credit unions established pursuant to article ten,
2 chapter thirty-one of this code and all banking institu-
3 tions governed by the provisions of this chapter shall
4 qualify for and obtain federal deposit insurance, or shall
5 obtain insurance as approved by the commissioner of
6 banking in an amount equal to that provided by the
7 federal deposit insurance corporation for eligible institu-
8 tions.

9 Each such institution which fails to obtain deposit
10 insurance as required herein by the first day of July, one
11 thousand nine hundred seventy-eight, shall be prohib-
12 ited from conducting any business as a lending institu-
13 tion until such insurance is obtained, except that the
14 commissioner may grant continuances for compliance
15 with this section for any institution showing good cause
16 for such a continuance.

ARTICLE 2. DIVISION OF BANKING.

§31A-2-5. Certificate or license to engage in business; filing of amendments to charter, bylaws and foreign statutes.

1 (a) No person shall engage or continue in the business
2 of a financial institution in this state without a license or
3 certificate to do so issued in accordance with this
4 section, or other applicable law, which license or certifi-
5 cate remains unsuspended, unexpired and unrevoked
6 except that a corporation which proposes to apply for
7 such license or certificate may secure its charter, adopt
8 bylaws, elect its directors and officers and perfect its
9 organization.

10 (b) No person shall operate an office in West Virginia
11 which regularly makes consumer loans in this state other
12 than first mortgage loans unless they are a financial
13 institution, licensed pawnbroker or a federally insured
14 depository institution authorized and qualified to do
15 business in this state. The purchase of consumer paper
16 does not constitute the making of consumer loans for the
17 purposes of this subsection, unless the purchase is made
18 by a business affiliated with the credit provider pursuant
19 to a standing arrangement.

20 (c) Application for such license or certificate shall be
21 upon such forms and contain such information as the
22 commissioner may prescribe. In connection with such
23 applications every corporate financial institution shall
24 file a certified copy of its charter and bylaws, a state-
25 ment as to the amount of capital that has been sub-
26 scribed and paid in and a statement of its financial
27 condition duly verified under oath by its president or
28 vice president and its cashier or secretary as the case
29 may be and every financial institution other than a
30 corporation shall file a verified statement of its financial
31 condition.

32 (d) If the application be that of a West Virginia state
33 banking institution, the commissioner of banking shall
34 examine the information, documents and statements

35 submitted and, if he finds that such banking institution
36 has adopted bylaws which provide practical, safe, just
37 and equitable rules and methods for the management of
38 its business and it has complied in all respects with the
39 provisions of this chapter and other applicable laws, he
40 shall issue to it a certificate or license permitting it to
41 engage in business. If the application be that of a finan-
42 cial institution other than a banking institution, the
43 commissioner of banking shall examine the information,
44 documents and statements submitted, and, if he finds
45 that such financial institution has adequate resources for
46 the proposed business and has provided practical, safe,
47 just and equitable rules and methods for the manage-
48 ment of its business, and it has complied in all respects
49 with the provisions of this chapter and other applicable
50 laws, and that the public convenience and advantage will
51 be promoted by the issuance of a certificate or license
52 thereto, he shall issue to it a certificate or license permit-
53 ting it to engage in business. Such certificate or license
54 shall be preserved and the original or copy thereof
55 displayed in all the places of business of such banking or
56 other financial institution located in this state.

57 (e) In addition to the requirements of subsections (b)
58 and (c) of this section, every foreign corporation applying
59 for a license or certificate to engage in the business of a
60 financial institution in this state, other than an out-of-
61 state banking institution, shall file with the commis-
62 sioner of banking a copy of the bylaws under which it
63 operates, together with a cite to the statutes of the
64 jurisdiction where it is organized which pertain to its
65 organization and powers and the conduct of its business.
66 The commissioner shall examine the information,
67 documents and statements submitted by such foreign
68 corporation and if he finds that they provide practical,
69 safe, just and equitable rules and methods for the
70 management of the business of the corporation, that it
71 has adequate resources for the proposed business and it
72 has complied in all respects with the provisions of this
73 chapter and other applicable laws, and that the public

74 convenience and advantage will be promoted by the
75 issuance of a license or certificate thereto, he shall issue
76 to such corporation a certificate or license permitting it
77 to engage in business in this state, which certificate or
78 license shall authorize such corporation to engage in the
79 business of the type of financial institution specified
80 therein, until the thirtieth day of the following June.
81 Thereafter a new certificate or license shall be secured
82 annually by any such foreign corporation, except where
83 annual renewal of the license or certificate is specifically
84 not required for the type of institution involved. The fee
85 for the original and each additional license or certificate
86 issued to a foreign corporation shall be one hundred
87 dollars, unless otherwise provided by statute. A verified
88 statement of the financial condition of every such foreign
89 corporation shall be filed with the commissioner before
90 the issuance of each annual certificate or license. Such
91 certificate or license shall be preserved and the original
92 or copy thereof displayed in the West Virginia place of
93 business of such corporation.

94 (f) Unless the institution is a federally insured deposi-
95 tory institution or it is otherwise provided for by statute,
96 a new certificate or license shall be secured annually by
97 all domestic state financial institutions, and the fee for
98 the original and each additional license or certificate
99 shall be one hundred dollars.

100 (g) No amendment of the charter or bylaws of any
101 domestic or foreign corporation, other than an out-of-
102 state banking institution, engaging in business in this
103 state as a financial institution shall become effective
104 until the proposed change shall have been submitted to
105 and approved by the commissioner of banking; but, if the
106 commissioner does not disapprove such proposed change
107 within twenty days after it is received by him, it shall be
108 deemed to have been approved.

109 (h) Unless specifically provided for by this chapter,
110 nothing contained in this code shall authorize any person
111 to engage in the banking business in this state except

112 corporations chartered to conduct a banking business
113 under the laws of West Virginia and which hold a license
114 or certificate to do so issued under this section or
115 associations authorized to conduct a banking business in
116 West Virginia under the laws of the United States and
117 having their principal place of business in this state.

**§31A-2-8. Commissioner's assessments and examination fund;
assessments, costs and expenses of examina-
tions; collection.**

1 (a) All moneys collected by the commissioner from
2 financial institutions and bank holding companies for
3 assessments, examination fees, investigation fees or
4 other necessary expenses incurred by the commissioner
5 in administering such duties shall be paid to the commis-
6 sioner and paid by the commissioner to the treasurer of
7 the state to the credit of a special revenue account to be
8 known as the "Commissioner's Assessment and Exami-
9 nation Fund" which is hereby established. The assess-
10 ments and fees paid into this account shall be appropri-
11 ated by law and used to pay the costs and expenses of the
12 division of banking and all incidental costs and expenses
13 necessary for its operations. At the end of each fiscal
14 year, if the fund contains a sum of money in excess of
15 twenty percent of the appropriated budget of the divi-
16 sion of banking, the amount of the excess shall be
17 transferred to the general revenue fund of the state. The
18 Legislature may appropriate money to start the special
19 revenue account.

20 (b) The commissioner of banking shall charge and
21 collect from each state banking institution or other
22 financial institution or bank holding company and pay
23 into a special revenue account in the state treasury for
24 the division of banking assessments as follows:

25 (1) For each state banking institution, a semiannual
26 assessment payable on the first day of January and the
27 first day of July, each year, computed upon the total
28 assets of the banking institution shown on the report of
29 condition of the banking institution filed as of the

30 preceding thirtieth day of June and the thirty-first day
 31 of December respectively as follows:

32	Total Assets				
33		But Not			Of Excess
34	Over	Over	This	Plus	Over
35	Million	Million	Amount		Million
36	\$ 0	\$ 2	\$ 0	.001645020	0
37	2	20	3,290	.000205628	2
38	20	100	6,991	.000164502	20
39	100	200	20,151	.000106926	100
40	200	1,000	30,844	.000090476	200
41	1,000	2,000	103,225	.000074026	1,000
42	2,000	6,000	177,251	.000065801	2,000
43	6,000	20,000	440,454	.000055988	6,000
44	20,000	40,000	1,224,292	.000052670	20,000

45 (2) For each regulated consumer lender an annual
 46 assessment payable on the first day of July, each year,
 47 computed upon the total outstanding gross loan balances
 48 and installment sales contract balances net of unearned
 49 interest of the regulated consumer lender shown on the
 50 report of condition of the regulated consumer lender as
 51 of the preceding thirty-first day of December respec-
 52 tively as follows:

53	Total Outstanding Balances				
54		But Not	This		Of Excess
55	Over	Over	Amount	Plus	Over
56	\$ 0	\$ 1,000,000	800	—	—
57	1,000,000	5,000,000	800	.000400	1,000,000
58	5,000,000	10,000,000	2,400	.000200	5,000,000
59	10,000,000	—	4,200	.000100	10,000,000

60 If a regulated consumer lender's records or documents
 61 are maintained in more than one location in this state,
 62 then eight hundred dollars may be added to the assess-
 63 ment for each additional location.

64 (3) For each credit union, an annual assessment as
 65 provided for in section six, article ten, chapter thirty-one

66 of this code as follows:

67	Total Assets				
68		But Not	This		Of Excess
69	Over	Over	Amount	Plus	Over
70	\$ 0	\$ 100,000	100	—	—
71	100,000	500,000	300	—	—
72	500,000	1,000,000	500	—	—
73	1,000,000	5,000,000	500	.000400	1,000,000
74	5,000,000	10,000,000	2,100	.000200	5,000,000
75	10,000,000	—	3,100	.000100	10,000,000

76 (4) For each bank holding company, an annual assess-
 77 ment as provided for in section five, article eight-a of
 78 this chapter. The annual assessment shall not exceed ten
 79 dollars per million dollars in deposits rounded off to the
 80 nearest million dollars.

81 (c) The commissioner shall each December and each
 82 June prepare and send to each state banking institution
 83 a statement of the amount of the assessment due. The
 84 commissioner shall, further, each June, prepare and send
 85 to each regulated consumer lender and each state credit
 86 union a statement of the amount of the assessment due.
 87 The commissioner shall, annually, during the month of
 88 January, prepare and send to each bank holding com-
 89 pany a statement of the amount of the assessment due.

90 Assessments shall be prescribed annually, not later
 91 than the fifteenth day of June, by written order of the
 92 commissioner, but shall not exceed the maximums as set
 93 forth in subsection (b) of this section. In setting the
 94 assessments the primary consideration shall be the
 95 amount appropriated by the Legislature for the division
 96 of banking for the corresponding annual period. Reason-
 97 able notice of the assessments shall be made to all
 98 interested parties. All orders of the commissioner for the
 99 purpose of setting assessments are not subject to the
 100 provisions of the West Virginia administrative proce-
 101 dures act, under chapter twenty-nine-a of this code.

102 (d) For making an examination within the state of any
103 other financial institution for which assessments are not
104 provided by this code, the commissioner of banking shall
105 charge and collect from such other financial institution
106 and pay into the special revenue account for the division
107 of banking the actual and necessary costs and expenses
108 incurred in connection therewith, as fixed and deter-
109 mined by the commissioner.

110 (e) If the records of an institution are located outside
111 this state, the institution at its option shall make them
112 available to the commissioner at a convenient location
113 within the state, or pay the reasonable and necessary
114 expenses for the commissioner or his or her representa-
115 tives to examine them at the place where they are
116 maintained. The commissioner may designate represen-
117 tatives, including comparable officials of the state in
118 which the records are located, to inspect them on his or
119 her behalf.

120 (f) The commissioner of banking may maintain an
121 action for the recovery of all assessments, costs and
122 expenses in any court of competent jurisdiction.

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

**§31A-4-22. Reserves required of banking institutions; reports;
penalties.**

1 Each state banking institution shall at all times
2 maintain on hand as a reserve in lawful money of the
3 United States of America an amount equal to at least
4 seven percent of the aggregate of all of its deposits which
5 are subject to withdrawal on demand and three percent
6 of its time deposits. Whenever the commissioner of
7 banking shall determine that the maintenance of sound
8 banking practices or the prevention of injurious credit
9 expansion or contraction makes such action advisable,
10 he may by rule from time to time change such require-
11 ments as to reserves against demand or time deposits, or
12 both, but the reserves so prescribed shall in no event be
13 less than those specified in this section nor more than
14 twice those specified. Whenever such reserve shall fall

15 below that required, the institution shall not thereafter
16 make any new loan or investment until the required
17 reserve shall be restored. For the purpose of computing
18 such reserve, all deposits requiring notice of thirty days
19 or more for withdrawal and time certificates of deposit
20 and Christmas savings shall be deemed time deposits,
21 and all checking accounts, certified checks, cashier's
22 checks, demand certificates of deposit and balances due
23 other banks shall be deemed demand deposits. But in
24 lieu of lawful money on hand, four fifths of such reserve
25 may consist of balances payable on demand from any
26 national or state bank doing business in this state or
27 solvent banking institutions in other states. The reserve
28 balances required herein shall be computed on the basis
29 of average daily net deposit balances and average daily
30 currency and coin during biweekly periods. The required
31 reserve balance of each bank shall be computed at the
32 close of business each day based upon its net deposit
33 balances and currency and coin at the opening of busi-
34 ness on the same day. The biweekly period shall end at
35 the close of business on days to be fixed by the commis-
36 sioner in his promulgated rules. When, however, the
37 reserve computation period ends with a nonbusiness day,
38 or two or more consecutive nonbusiness days, such
39 nonbusiness day or days may, at the option of the
40 banking institution, and whether or not it had a defi-
41 ciency in reserve balances in such computation period,
42 be included in the next biweekly computation period.

43 The commissioner shall, by rule and regulation, require
44 regular reports from such banking institutions, which
45 reports shall be submitted at such times and contain
46 such information as will enable the commissioner to
47 adequately supervise the maintenance of reserves under
48 this section. Penalties for any deficiencies in the re-
49 quired reserves of any banking institution shall be
50 assessed monthly by the commissioner on the basis of
51 average daily deficiencies during each of the computa-
52 tion periods ending in the preceding calendar month.
53 Such penalties shall be assessed at a rate of two percent

54 per annum above the lowest rate applicable to bor-
55 rowings by member banks from the federal reserve bank
56 of the district in which such deficient institution is
57 located on the first day of the calendar month in which
58 the deficiencies occurred. Such penalties shall be paid by
59 the commissioner into the treasury of the state of West
60 Virginia and credited to the general fund.

61 Compliance on the part of any banking institution with
62 the reserve requirements of the federal reserve act, as
63 amended prior to the thirty-first day of January, one
64 thousand nine hundred eighty-one, shall be considered
65 full compliance with the provisions of this section. No
66 such bank may be required to carry or maintain a
67 reserve other than such as required under terms of the
68 federal reserve act, as amended prior to the thirty-first
69 day of January, one thousand nine hundred eighty-one.

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

§31A-7-2. Definitions.

1 As used in this article:

2 (a) "Commissioner" means the commissioner of bank-
3 ing of West Virginia and any authorized deputy or
4 employee thereof;

5 (b) "Federal law" means all the provisions of Title XII
6 of the United States Code and all rules and regulations
7 promulgated pursuant thereto;

8 (c) "Financial institution" means any bank, building
9 and loan association, industrial bank, regulated con-
10 sumer lender, credit union and any other person, firm or
11 corporation doing business under the jurisdiction and
12 supervision of the commissioner of banking of West
13 Virginia;

14 (d) A financial institution is "about to be insolvent"
15 when it would be unable to meet the demands of its
16 depositors or to make adequate provision for the timely
17 payment of its depositors if it were immediately closed
18 for the purpose of liquidation;

19 (e) A financial institution is "insolvent" when it is
20 unable to pay its debts to its depositors and other
21 creditors in the ordinary and usual course of business or
22 when it is in a state of balance sheet insolvency; and

23 (f) "Balance sheet insolvency" exists when the assets of
24 a financial institution are less than its liabilities, exclu-
25 sive of capital. For the purposes of ascertaining balance
26 sheet insolvency, assets shall be valued at their book
27 value, unless the commissioner of banking determines
28 that the assets are insufficient to meet liabilities within
29 a reasonable time making probable the liquidation of
30 assets; and if any such determination is made, the assets
31 shall be valued at fair market value.

**ARTICLE 8. HEARINGS; ADMINISTRATIVE PROCEDURES; JUDICIAL
REVIEW; UNLAWFUL ACTS; PENALTIES.**

**§31A-8-12a. Banking from mobile units prohibited; prohibi-
tion not to include messenger services; limita-
tion of messenger services.**

1 It is illegal for any banking institution, building and
2 loan association, or regulated consumer lender to con-
3 duct its business in a facility that is a mobile unit not
4 permanently attached to the real estate upon which it is
5 located, except that such mobile units may be used as
6 temporary banking quarters pending construction of a
7 permanent bank building on the same or adjacent
8 property thereto if a charter for said bank has previously
9 been approved. This section shall not be construed or
10 interpreted to prohibit a financial institution from
11 providing messenger services to its customers by which
12 items are received by mail, armored car service or other
13 courier or delivery service for subsequent deposit:
14 *Provided*, That all such messenger services are confined
15 to the territorial boundaries of the county in which the
16 principal office of such financial institution is located or
17 within twenty-five miles of the principal office of such
18 financial institution.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.**

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:

3 (1) "Actuarial method" means the method, defined by
4 rules adopted by the commissioner, of allocating pay-
5 ments made on a debt between principal or amount
6 financed and loan finance charge or sales finance charge
7 pursuant to which a payment is applied first to the
8 accumulated loan finance charge or sales finance charge
9 and the balance is applied to the unpaid principal or
10 unpaid amount financed.

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

16 (3) "Agricultural purpose" means a purpose related to
17 the production, harvest, exhibition, marketing, transpor-
18 tation, processing or manufacture of agricultural prod-
19 ucts by a natural person who cultivates, plants, propa-
20 gates or nurtures the agricultural products. "Agricul-
21 tural products" includes agricultural, horticultural,
22 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 on
26 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 seller
34 pursuant to an agreement with the buyer to discharge a

35 security interest in or a lien on property traded in; and

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

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

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

41 (iii) Additional charges permitted by this chapter.

42 (5) "Average daily balance" in a billing cycle for which
43 a sales finance charge or loan finance charge is made is
44 the sum of the amount unpaid each day during that cycle
45 divided by the number of days in that cycle. The amount
46 unpaid on a day is determined by adding to the balance,
47 if any, unpaid as of the beginning of that day all pur-
48 chases and other debits and deducting all payments and
49 other credits made or received as of that day.

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

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

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

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

66 (c) Escrows for future payments of taxes and insur-
67 ance;

68 (d) Official fees and fees for notarizing deeds and other

69 documents;

70 (e) Appraisal fees; and

71 (f) Credit reports.

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

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

78 (10) "Commissioner" means the commissioner of
79 banking of West Virginia.

80 (11) "Conspicuous": A term or clause is conspicuous
81 when it is so written that a reasonable person against
82 whom it is to operate ought to have noticed it. Whether
83 a term or clause is conspicuous or not is for decision by
84 the court.

85 (12) "Consumer" means a natural person who incurs
86 debt pursuant to a consumer credit sale or a consumer
87 loan, or debt or other obligations pursuant to a consumer
88 lease.

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

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

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

96 (iii) The goods, services or interest in land are pur-
97 chased primarily for a personal, family, household or
98 agricultural purpose;

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

101 (v) With respect to a sale of goods or services, the

102 amount financed does not exceed forty-five thousand
103 dollars or the sale is of a factory-built home as defined
104 in section two, article fifteen, chapter thirty-seven of this
105 code.

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

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

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

115 (ii) In which the total of payments under the lease,
116 excluding payments for options to renew or buy, do not
117 exceed forty-five thousand dollars or in which the lease
118 is of a factory-built home as defined in section two,
119 article fifteen, chapter thirty-seven of this code; and

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

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

123 (15) "Consumer loan" is a loan made by a person
124 regularly engaged in the business of making loans in
125 which:

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

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

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

131 (d) Either the principal does not exceed forty-five
132 thousand dollars or the debt is secured by an interest in
133 land or a factory-built home as defined in section two,
134 article fifteen, chapter thirty-seven of this code.

135 (16) "Cosigner" means a natural person who assumes

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

151 (17) "Credit" means the privilege granted by a creditor
152 to a debtor to defer payment of debt or to incur debt and
153 defer its payment.

154 (18) "Earnings" means compensation paid or payable
155 to an individual or for his account for personal services
156 rendered or to be rendered by him, whether denominated
157 as wages, salary, commission, bonus or otherwise, and
158 includes periodic payments pursuant to a pension,
159 retirement or disability program.

160 (19) "Facsimile device" means a machine that receives
161 and copies reproductions or facsimiles of documents or
162 photographs that have been transmitted electronically or
163 telephonically over telecommunications lines.

164 (20) "Federal Consumer Credit Protection Act" means
165 the "Consumer Credit Protection Act" (Public Law 90-
166 321; 82 Stat. 146), as amended, and includes regulations
167 issued pursuant to that act.

168 (21) "Goods" includes goods not in existence at the
169 time the transaction is entered into and gift and mer-
170 chandise certificates, but excludes money, chattel paper,
171 documents of title and instruments.

172 (22) "Home solicitation sale" means a consumer credit

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

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

196 (24) "Lender credit card or similar arrangement"
197 means an arrangement or loan agreement, other than a
198 seller credit card, pursuant to which a lender gives a
199 debtor the privilege of using a credit card, letter of credit
200 or other credit confirmation or identification in transac-
201 tions out of which debt arises:

202 (a) By the lender's honoring a draft or similar order for
203 the payment of money drawn or accepted by the con-
204 sumer;

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

207 (c) By the lender's purchase from the obligee of the
208 consumer's obligations.

209 (25) "Loan" includes:

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

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

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

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

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

237 (b) If a lender makes a loan to a consumer by purchas-
238 ing or satisfying obligations of the consumer pursuant to
239 a lender credit card or similar arrangement, and the
240 purchase or satisfaction is made at less than the face
241 amount of the obligation, the discount is not part of the
242 loan finance charge.

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

247 (28) "Official fees" means:

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

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

260 (29) "Organization" means a corporation, government
261 or governmental subdivision or agency, trust, estate,
262 partnership, cooperative or association.

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

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

281 (32) "Person related to" with respect to an individual
282 means: (a) The spouse of the individual; (b) a brother,
283 brother-in-law, sister or sister-in-law of the individual;

284 (c) an ancestor or lineal descendant of the individual or
285 his spouse; and (d) any other relative, by blood or mar-
286 riage, of the individual or his spouse who shares the
287 same home with the individual. "Person related to" with
288 respect to an organization means: (a) A person directly or
289 indirectly controlling, controlled by or under common
290 control with the organization; (b) an officer or director
291 of the organization or a person performing similar
292 functions with respect to the organization or to a person
293 related to the organization; (c) the spouse of a person
294 related to the organization; and (d) a relative by blood or
295 marriage of a person related to the organization who
296 shares the same home with him.

297 (33) "Precomputed loan". A loan, refinancing or
298 consolidation is "precomputed" if:

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

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

309 (34) "Precomputed sale". A sale, refinancing or consol-
310 idation is "precomputed" if:

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

314 (B) The debt is expressed in terms of the principal
315 amount; the debt installment payments are a scheduled,
316 fixed amount including principal and interest and
317 assume payment on the installment due date; and
318 interest payments will not vary or result in an adjust-
319 ment during the term of the debt or at its final payment
320 as a result of the actual installment payment dates.

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

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

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

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

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

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

334 (ii) Additional charges permitted by this chapter.

335 (37) "Regulated consumer lender" means a person
336 authorized to make or take assignments of regulated
337 consumer loans.

338 (38) "Regulated consumer loan" means a consumer
339 loan, including a loan made pursuant to a revolving loan
340 account, in which the rate of the loan finance charge
341 exceeds eighteen percent per year as determined accord-
342 ing to the actuarial method, except where the loan
343 qualifies for federal law preemption from state interest
344 rate limitations, including federal law bank parity
345 provisions, or where the lender is specifically permitted
346 by state law other than article four of this chapter to
347 make the loan at that rate without a requirement the
348 lender hold a regulated consumer lender license.

349 (39) "Revolving charge account" means an agreement
350 between a seller and a buyer by which: (a) The buyer
351 may purchase goods or services on credit or a seller
352 credit card; (b) the balances of amounts financed and the
353 sales finance and other appropriate charges are debited
354 to an account; (c) a sales finance charge if made is not
355 precomputed but is computed periodically on the bal-

356 ances of the account from time to time; and (d) there is
357 the privilege of paying the balances in installments.

358 (40) "Revolving loan account" means an arrangement
359 between a lender and a consumer including, but not
360 limited to, a lender credit card or similar arrangement,
361 pursuant to which: (a) The lender may permit the con-
362 sumer to obtain loans from time to time; (b) the unpaid
363 balances of principal and the loan finance and other
364 appropriate charges are debited to an account; (c) a loan
365 finance charge if made is not precomputed but is com-
366 puted periodically on the outstanding unpaid balances of
367 the principal of the consumer's account from time to
368 time; and (d) there is the privilege of paying the balances
369 in installments.

370 (41) "Sale of goods" includes any agreement in the
371 form of a bailment or lease of goods if the bailee or lessee
372 agrees to pay as compensation for use a sum substan-
373 tially equivalent to or in excess of the aggregate value of
374 the goods involved and it is agreed that the bailee or
375 lessee will become, or for no other or a nominal consider-
376 ation has the option to become, the owner of the goods
377 upon full compliance with his obligations under the
378 agreement.

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

384 (43) "Sale of services" means furnishing or agreeing to
385 furnish services and includes making arrangements to
386 have services furnished by another.

387 (44) "Sales finance charge" means the sum of: (a) All
388 charges payable directly or indirectly by the buyer and
389 imposed directly or indirectly by the seller or issuer of a
390 seller credit card as an incident to the extension of
391 credit, including any of the following types of charges
392 which are applicable: Time-price differential, however

393 denominated, including service, carrying or other charge,
394 premium or other charge for any guarantee or insurance
395 protecting the seller against the buyer's default or other
396 credit loss; and (b) charges incurred for investigating the
397 collateral or credit worthiness of the buyer or for com-
398 missions or brokerage for obtaining the credit, irrespec-
399 tive of the person to whom the charges are paid or
400 payable; unless the seller had no notice of the charges
401 when the credit was granted. The term does not include
402 charges as a result of default, additional charges, delin-
403 quency charges or deferral charges. If the seller or issuer
404 of a seller credit card purchases or satisfies obligations
405 of the consumer and the purchase or satisfaction is made
406 at less than the face amount of the obligation, the
407 discount is not part of the sales finance charge.

408 (45) Except as otherwise provided, "seller" includes an
409 assignee of the seller's right to payment but use of the
410 term does not in itself impose on an assignee any obliga-
411 tion of the seller.

412 (46) "Seller credit card" means an arrangement
413 pursuant to which a person gives to a buyer or lessee the
414 privilege of using a credit card, letter of credit, or other
415 credit confirmation or identification primarily for the
416 purpose of purchasing or leasing goods or services from
417 that person, that person and any other person or persons,
418 a person related to that person, or others licensed or
419 franchised or permitted to do business under his busi-
420 ness name or trade name or designation or on his behalf.

421 (47) "Services" includes: (a) Work, labor and other
422 personal services; (b) privileges with respect to transpor-
423 tation, use of vehicles, hotel and restaurant accommoda-
424 tions, education, entertainment, recreation, physical
425 culture, hospital accommodations, funerals, cemetery
426 accommodations, and the like; and (c) insurance.

427 (48) "Supervised financial organization" means any
428 organization, corporation or person, other than an
429 insurance company or other organization primarily
430 engaged in an insurance business, which is required

431 under state law to register or obtain a license from the
 432 commissioner of banking before conducting business in
 433 this state; or which is authorized under federal law to
 434 make consumer loans without a license from the state
 435 commissioner of banking, provided such loans are
 436 subject to supervision and examination by an official or
 437 agency of the United States.

**§46A-1-103. Effect of chapter on powers of persons making
 consumer credit sales and consumer loans,
 and others; consumer protection generally.**

1 (1) This chapter prescribes maximum charges for all
 2 creditors, except lessors and those excluded, making
 3 consumer credit sales and consumer loans, and sales and
 4 loans made subject to the provisions of this chapter by
 5 agreement, and except as otherwise provided by this
 6 chapter displaces any existing limitations and provisions
 7 regulating maximum interest and charges, minimum
 8 charges, additional charges, delinquency charges,
 9 deferral charges, allocation of charges and methods of
 10 computing rebates upon prepayment, refinancing or
 11 consolidation with respect to consumer credit sales and
 12 consumer loans, and the debtors' remedies and penalties
 13 provided by this chapter displace all existing provisions
 14 relating to remedies, penalties and forfeitures for usury
 15 and usurious contracts as to transactions covered by this
 16 chapter.

17 (2) Except as provided in subsection (1) of this section
 18 or elsewhere in this chapter, this chapter does not
 19 displace powers or limitation on powers which super-
 20 vised financial organizations are authorized to exercise
 21 under the laws of the United States or other laws of this
 22 state in effect after the operative date of this chapter.

23 (3) This chapter also prescribes in various articles
 24 protective measures for consumers in transactions not
 25 necessarily involving consumer credit.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-104. Finance charge for loans other than loans made

pursuant to revolving loan accounts; finance charge on assigned contracts; exceptions.

1 (1) With respect to a consumer loan, other than a
2 consumer loan made pursuant to a revolving loan
3 account: (a) A bank, as defined in section two, article
4 one, chapter thirty-one-a of this code, may contract for
5 and receive a loan finance charge not exceeding the
6 charge or interest permitted by the provisions of section
7 thirty, article four, chapter thirty-one-a or by the
8 provisions of section five, five-a or five-b, article six,
9 chapter forty-seven of this code, or that allowed under
10 section sixteen, article ten, chapter thirty-one of this
11 code; (b) a regulated consumer lender may contract for
12 and receive a loan finance charge not exceeding the
13 aggregate of the interest and charges permitted by
14 section one hundred seven, article four, chapter forty-
15 six-a of this code or by the provisions of section five,
16 five-a or five-b, article six, chapter forty-seven of this
17 code; (c) a credit union, as defined in section one, article
18 ten, chapter thirty-one of this code, may contract for and
19 receive a loan finance charge not exceeding the charge or
20 interest permitted by the provisions of section sixteen,
21 article ten, chapter thirty-one of this code, or by the
22 provisions of section five, article six, chapter forty-seven
23 of this code; and (d) any other lender may contract for
24 and receive a loan finance charge not exceeding the
25 charge or interest permitted by the provisions of section
26 five, five-a or five-b, article six, chapter forty-seven of
27 this code.

28 (2) This section does not limit or restrict the manner of
29 calculating the loan finance charge, whether by way of
30 add-on, discount or otherwise, so long as the rate of loan
31 finance charge does not exceed that permitted by this
32 section.

33 (3) If the loan is precomputed:

34 (a) The loan finance charge may be calculated on the
35 assumption that all scheduled payments will be made
36 when due; and

37 (b) The effect of prepayment, refinancing or consolida-
38 tion is governed by the provisions on rebate upon
39 prepayment, refinancing or consolidation contained in
40 section one hundred eleven of this article.

41 (4) Notwithstanding subsection (1) of this section, the
42 lender may contract for and receive a minimum loan
43 finance charge of not more than five dollars when the
44 amount loaned does not exceed seventy-five dollars, or
45 seven dollars and fifty cents when the amount loaned
46 exceeds seventy-five dollars.

47 (5) An assignee of a consumer credit sale contract may
48 collect, receive or enforce the sales finance charge
49 provided in said contract, and any such charge so
50 collected, received or enforced by an assignee shall not
51 be deemed usurious or in violation of this chapter or any
52 other provision of this code if such sales finance charge
53 does not exceed the limits permitted to be charged by a
54 seller under the provisions of this chapter.

55 (6) Notwithstanding subsection (5) of this section, a
56 resident lender who is the assignee of a consumer credit
57 sales contract from a credit grantor in another state, and
58 said contract was executed in such other state to finance
59 a retail purchase made by the consumer when the
60 consumer was in that other state, may collect, receive or
61 enforce the sales finance charge and other charges
62 including late fees provided in said contract under the
63 laws of the state where executed. Such charge shall not
64 be deemed to be usurious or in violation of the provisions
65 of this chapter or any other provisions of this code.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (1) When a consumer credit sale or consumer loan is
2 precomputed all payments on account shall be applied to
3 installments in the order in which they fall due, except
4 as provided in subsection (3), section one hundred twelve
5 of this article. When the total amount is payable in

6 substantially equal consecutive monthly installments,
7 the portion of the sales finance charge or loan finance
8 charge attributable to any particular monthly install-
9 ment period shall be that proportion of the sales finance
10 charge or loan finance charge originally contracted for,
11 as the balance scheduled to be outstanding on the last
12 day of the monthly installment period before deducting
13 the payment, if any, scheduled to be made on that day
14 bears to the sum of all the monthly installment balances
15 under the original schedule of payments. (This method of
16 allocation is the sum of the digits method, commonly
17 referred to as the "Rule of 78").

18 (2) Upon prepayment in full of a precomputed con-
19 sumer credit sale or consumer loan by cash, a new loan,
20 refinancing, consolidation or otherwise, the creditor
21 shall rebate to the consumer that portion of the sales
22 finance charge or loan finance charge in the manner
23 specified in section five-d, article six, chapter forty-
24 seven of this code: *Provided*, That no rebate of less than
25 one dollar need be made.

26 (3) Upon prepayment in full of a precomputed or
27 nonprecomputed consumer credit sale or consumer loan
28 by cash, execution of a new loan, refinancing, consolida-
29 tion or otherwise, except where the loan is a purchase
30 money loan secured by a first lien mortgage on residen-
31 tial property, or is made by a federally-insured deposi-
32 tory institution, the creditor shall rebate to the consumer
33 that portion of the unearned prepaid finance charges
34 attributable to loan or credit investigations fees, origina-
35 tion fees or points in the manner specified in subsection
36 (c), section five-d, article six, chapter forty-seven of this
37 code: *Provided*, That no rebate of less than one dollar
38 need be made: *Provided, however*, That if the loan was
39 made in furtherance of aiding or abetting a person to
40 whom the loan is assigned, evade this rebate, then the
41 rebate required herein shall apply.

42 (4) If the maturity of a precomputed consumer credit
43 sale or consumer loan is accelerated for any reason and

44 judgment is obtained, the debtor is entitled to the same
45 rebate as if the payment had been made on the date
46 judgment is entered and such judgment shall bear
47 interest until paid at the rate of ten percent per annum.

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-101. Authority to make loans.

1 Unless a person has first obtained a license from the
2 commissioner authorizing him to make regulated con-
3 sumer loans, he shall not engage in the business of:

4 (1) Making regulated consumer loans; or

5 (2) Taking assignments of and undertaking direct
6 collection of payments from or enforcement of rights
7 against consumers arising from regulated consumer
8 loans.

§46A-4-102. License to make regulated consumer loans.

1 (1) The commissioner shall receive and act on all
2 applications for licenses to make regulated consumer
3 loans under this chapter. Applications shall be under
4 oath, be filed in the manner prescribed by the commis-
5 sioner, and contain the information the commissioner
6 requires to make an evaluation of the financial responsi-
7 bility, experience, character and fitness of the applicant,
8 and the findings required of him before he may issue a
9 license. At the time of the filing of the application, the
10 sum of seven hundred fifty dollars shall be paid to the
11 commissioner as an investigation fee.

12 (2) No license shall be issued to a supervised financial
13 organization other than to one primarily engaged in the
14 business of making consumer loans through offices
15 located within this state, or to one licensed under the
16 provisions of the West Virginia secondary mortgage loan
17 act as contained in article seventeen, chapter thirty-one
18 of this code, or to any banking institution as defined by
19 the provisions of section two, article one, chapter thirty-
20 one-a of this code. No license will be granted to any
21 office located outside this state: *Provided*, That the

22 limitation of licensing contained in this subsection shall
23 not prevent any supervised financial organization from
24 making regulated consumer loans when the applicable
25 state or federal statute, law, rule or regulation permits.
26 No license shall be issued to any person unless the
27 commissioner, upon investigation, finds that the finan-
28 cial responsibility, experience, character and fitness of
29 the applicant, and of the members thereof (if the appli-
30 cant is a copartnership or association) and of the officers
31 and directors thereof (if the applicant is a corporation),
32 are such as to command the confidence of the community
33 and to warrant belief that the business will be operated
34 honestly, fairly and efficiently, within the purposes of
35 this chapter, and the applicant has available for the
36 operation of the business at least ten thousand dollars in
37 capital and has, for each specified location of operation
38 assets of at least two thousand dollars.

39 (3) Upon written request, the applicant is entitled to a
40 hearing on the question of his qualifications for a license
41 if: (a) The commissioner has notified the applicant in
42 writing that his application has been denied; or (b) the
43 commissioner has not issued a license within sixty days
44 after the application for the license was filed. A request
45 for a hearing may not be made more than fifteen days
46 after the commissioner has mailed a writing to the
47 applicant notifying him that the application has been
48 denied and stating in substance the commissioner's
49 findings supporting denial of the application.

50 (4) Not more than one place of business shall be
51 maintained under the same license, but the commissioner
52 may issue more than one license to the same licensee
53 upon compliance with all the provisions of this article
54 governing an original issuance of a license, for each such
55 new license. Each license shall remain in full force and
56 effect until surrendered, forfeited, suspended or revoked.

57 (5) Upon giving the commissioner at least fifteen days'
58 prior written notice, a licensee may: (a) Change the
59 location of any place of business located within a munic-

60 ipality to any other location within that same municipal-
 61 ity; or (b) change the location of any place of business
 62 located outside of a municipality to a location no more
 63 than five miles from the originally licensed location, but
 64 in no case may a licensee move any place of business
 65 located outside a municipality to a location within a
 66 municipality. A licensee may not move the location of
 67 any place of business located within a municipality to
 68 any other location outside of that municipality.

69 (6) A licensee may conduct the business of making
 70 regulated consumer loans only at or from a place of
 71 business for which he holds a license and not under any
 72 other name than that stated in the license.

73 (7) A license issued under the provisions of this section
 74 shall not be transferable or assignable.

75 (8) A licensee must be incorporated under the laws of
 76 this state. The licensee may, however, be a subsidiary of
 77 an out-of-state company or financial institution.

§46A-4-103. Revocation, suspension or forfeiture of license.

1 (1) The commissioner may issue to a person licensed to
 2 make regulated consumer loans an order to show cause
 3 why his license should not be revoked or should not be
 4 suspended for a period not in excess of six months. The
 5 order shall state the place for a hearing and set a time
 6 for the hearing that is no less than ten days from the date
 7 of the order. After the hearing the commissioner shall
 8 revoke or suspend the license if he finds that:

9 (a) The licensee has repeatedly and willfully violated
 10 this chapter or any rule or order lawfully made or issued
 11 pursuant to this article;

12 (b) The licensee has failed to remit their required
 13 annual assessment, or to maintain their status as a
 14 business in good standing with the office of the secretary
 15 of state, notwithstanding notification in writing by the
 16 commissioner sent by certified mail to the licensee's last
 17 known address providing for thirty days to rectify such

18 failure;

19 (c) The licensee has forfeited their license by failing to
20 remain open for regulated consumer lending business in
21 conformity with the rules or order of the commissioner;
22 or

23 (d) Facts or conditions exist which would clearly have
24 justified the commissioner in refusing to grant a license
25 had these facts or conditions been known to exist at the
26 time the application for the license was made.

27 (2) No revocation or suspension of a license under this
28 article is lawful unless prior to institution of proceedings
29 by the commissioner notice is given to the licensee of the
30 facts or conduct which warrant the intended action, and
31 the licensee is given an opportunity to show compliance
32 with all lawful requirements for retention of the license.

33 (3) If the commissioner finds that probable cause for
34 revocation of a license exists and that enforcement of
35 this article requires immediate suspension of the license
36 pending investigation, he may, after a hearing upon five
37 days' written notice, enter an order suspending the
38 license for not more than thirty days.

39 (4) Nothing in this section limits the authority of the
40 commissioner to take action against a regulated con-
41 sumer lender pursuant to chapter thirty-one-a of this
42 code.

43 (5) Whenever the commissioner revokes or suspends a
44 license, he shall enter an order to that effect and forth-
45 with notify the licensee of the revocation or suspension.
46 Within five days after the entry of the order he shall mail
47 by registered or certified mail or deliver to the licensee
48 a copy of the order and the findings supporting the
49 order.

50 (6) Any person holding a license to make regulated
51 consumer loans may relinquish the license by notifying
52 the commissioner in writing of its relinquishment, but
53 this relinquishment shall not affect his liability for acts

54 previously committed.

55 (7) No revocation, suspension, forfeiture or relinquish-
56 ment of a license shall impair or affect the obligation of
57 any preexisting lawful contract between the licensee and
58 any consumer.

59 (8) The commissioner may reinstate a license, termi-
60 nate a suspension or grant a new license to a person
61 whose license has been revoked or suspended if no fact
62 or condition then exists which clearly would have
63 justified the commissioner in refusing to grant a license.

§46A-4-104. Records; annual reports.

1 (1) Every licensee shall maintain records in conformity
2 with generally accepted accounting principles and
3 practices in a manner which will enable the commis-
4 sioner to determine whether the licensee is complying
5 with the provisions of this article. The record-keeping
6 system of a licensee shall be sufficient if he makes the
7 required information reasonably available. The records
8 need not be kept in the place of business where regulated
9 consumer loans are made, if the commissioner is given
10 free access to the records wherever located. The records
11 pertaining to any loan need not be preserved for more
12 than two years after making the final entry relating to
13 the loan, but in the case of a revolving loan account such
14 two-year period is measured from the date of each entry.

15 (2) On or before the fifteenth day of February each
16 year, every licensee shall file with the commissioner a
17 composite annual report in the form prescribed by the
18 commissioner relating to all regulated consumer loans
19 made by him. The commissioner shall consult with
20 comparable officials in other states for the purpose of
21 making the kinds of information required in annual
22 reports uniform among the states. Information contained
23 in annual reports shall be confidential and may be
24 published only in composite form.

§46A-4-105. Examinations; assessments and investigations.

1 (1) The commissioner shall examine at least every
2 eighteen months the loans, business and records of every
3 licensee. In addition, for the purpose of discovering
4 violations of this article or securing information lawfully
5 required, the attorney general or the commissioner may
6 at any time investigate the loans, business and records of
7 any regulated consumer lender. For these purposes he
8 shall have free and reasonable access to the offices,
9 places of business and records of the lender.

10 (2) If the lender's records are located outside this state,
11 the lender at his option shall make them available to the
12 commissioner at a convenient location within this state,
13 or pay the reasonable and necessary expenses for the
14 commissioner or his representatives to examine them at
15 the place where they are maintained. The commissioner
16 may designate representatives, including comparable
17 officials of the state in which the records are located, to
18 inspect them on his behalf.

19 (3) For the purposes of this section, the commissioner
20 may administer oaths or affirmations, and upon his own
21 motion or upon request of any party, may subpoena
22 witnesses, compel their attendance, adduce evidence and
23 require the production of any matter which is relevant to
24 the investigation, including the existence, description,
25 nature, custody, condition and location of any books,
26 documents or other tangible things and the identity and
27 location of persons having knowledge of relevant facts,
28 or any other matter reasonably calculated to lead to the
29 discovery of admissible evidence.

30 (4) Upon failure without lawful excuse to obey a
31 subpoena or to give testimony and upon reasonable
32 notice to all persons affected thereby, the commissioner
33 may apply to any circuit court of this state for an order
34 compelling compliance.

35 (5) The commissioner of banking shall charge and
36 collect from each regulated consumer lender and pay
37 into a special revenue account in the state treasury for
38 the department of banking an annual assessment payable

39 on the first day of July computed upon the total out-
 40 standing gross loan balances and installment sales
 41 contract balances net of unearned interest as is set out in
 42 section eight, article two, chapter thirty-one-a of this
 43 code.

§46A-4-107. Loan finance charge for regulated consumer lenders.

1 (1) With respect to a regulated consumer loan, includ-
 2 ing a revolving loan account, a regulated consumer
 3 lender may contract for and receive a loan finance
 4 charge not exceeding that permitted by this section.

5 (2) On a loan of two thousand dollars or less, which is
 6 unsecured by real property the loan finance charge,
 7 calculated according to the actuarial method, may not
 8 exceed thirty-one percent per year on the unpaid balance
 9 of the principal amount.

10 (3) On a loan of greater than two thousand dollars or
 11 which is secured by real property the loan finance
 12 charge, calculated according to the actuarial method,
 13 may not exceed twenty-seven percent per year on the
 14 unpaid balance of the principal amount: *Provided*, That
 15 the loan finance charge on any loan greater than ten
 16 thousand dollars may not exceed eighteen percent per
 17 year on the unpaid balance of the principal amount.
 18 Loans made by regulated consumer lenders shall be
 19 subject to the restrictions and supervision set forth in
 20 this article irrespective of their rate of finance charges.

21 (4) Where the loan is nonrevolving and is greater than
 22 two thousand dollars, the permitted finance charge may
 23 include a charge of not more than a total of two percent
 24 of the amount financed for any origination fee, points, or
 25 investigation fee: *Provided*, That where any loan, revolv-
 26 ing or nonrevolving, is secured by real estate the permit-
 27 ted finance charge may include a charge of not more
 28 than a total of five percent of the amount financed for
 29 any origination fee, points or investigation fee. In any

30 loan secured by real estate, such charges may not be
31 imposed again by the same or affiliated lender in any
32 refinancing of that loan made within twenty-four
33 months thereof, unless these earlier charges have been
34 rebated by payment or credit to the consumer under the
35 actuarial method, or the total of the earlier and proposed
36 charges does not exceed five percent of the amount
37 financed. Charges permitted under this subsection shall
38 be included in the calculation of the loan finance charge.
39 The financing of such charges shall be permissible and
40 shall not constitute charging interest on interest. In a
41 revolving home equity loan, the amount of the credit line
42 extended shall for purposes of this subsection constitute
43 the amount financed. Other than herein provided, no
44 points, origination fee, investigation fee or other similar
45 prepaid finance charges attributable to the lender or its
46 affiliates may be levied. Except as provided for by
47 section one hundred nine, article three, chapter forty-
48 six-a of this code, no additional charges may be made;
49 nor may any charge permitted by this section be assessed
50 unless the loan is made. To the extent that this section
51 overrides the preemption on limiting points and other
52 such charges on first lien residential mortgages con-
53 tained in Section 501 of the United States Depository
54 Institutions Deregulation and Monetary Control Act of
55 1980, the state law limitations contained in this section
56 shall apply. If the loan is precomputed:

57 (a) The loan finance charge may be calculated on the
58 assumption that all scheduled payments will be made
59 when due; and

60 (b) The effect of prepayment, refinancing or consolida-
61 tion is governed by the provisions on rebate upon
62 prepayment, refinancing or consolidation contained in
63 section one hundred eleven, article three of this chapter.

64 (5) For the purposes of this section, the term of a loan
65 commences on the date the loan is made. Differences in
66 the lengths of months are disregarded and a day may be
67 counted as one thirtieth of a month. Subject to classifi-

68 cations and differentiations the licensee may reasonably
69 establish, a part of a month in excess of fifteen days may
70 be treated as a full month if periods of fifteen days or
71 less are disregarded and if that procedure is not consis-
72 tently used to obtain a greater yield than would other-
73 wise be permitted.

74 (6) With respect to a revolving loan account:

75 (a) A charge may be made by a regulated consumer
76 lender in each monthly billing cycle which is one twelfth
77 of the maximum annual rates permitted by this section
78 computed on an amount not exceeding the greatest of:

79 (i) The average daily balance of the debt; or

80 (ii) The balance of the debt at the beginning of the first
81 day of the billing cycle, less all payments on and credits
82 to such debt during such billing cycle and excluding all
83 additional borrowings during such billing cycle.

84 For the purpose of this subdivision a billing cycle is
85 monthly if the billing statement dates are on the same
86 day each month or do not vary by more than four days
87 therefrom.

88 (b) If the billing cycle is not monthly, the maximum
89 loan finance charge which may be made by a regulated
90 consumer lender is that percentage which bears the same
91 relation to an applicable monthly percentage as the
92 number of days in the billing cycle bears to thirty.

93 (c) Notwithstanding subdivisions (a) and (b) of this
94 subsection, if there is an unpaid balance on the date as
95 of which the loan finance charge is applied, the licensee
96 may contract for and receive a charge not exceeding fifty
97 cents if the billing cycle is monthly or longer, or the pro
98 rata part of fifty cents which bears the same relation to
99 fifty cents as the number of days in the billing cycle
100 bears to thirty if the billing cycle is shorter than
101 monthly, but no charge may be made pursuant to this
102 subdivision if the lender has made an annual charge for
103 the same period as permitted by the provisions on

104 additional charges.

105 (7) As an alternative to the loan finance charges
106 allowed by subsections (2) and (4) of this section, a
107 regulated consumer lender may on a loan of one thou-
108 sand two hundred dollars or less contract for and receive
109 interest at a rate of up to thirty-one percent per year on
110 the unpaid balance of the principal amount, together
111 with a nonrefundable loan processing fee of not more
112 than two percent of the amount financed: *Provided*, That
113 no other finance charges are imposed on the loan.

114 (8) Notwithstanding any contrary provision in this
115 section, a licensed regulated consumer lender who is the
116 assignee of a nonrevolving consumer loan unsecured by
117 real property located in this state, which loan contract
118 was applied for by the consumer when he or she was in
119 another state, and which was executed and had its
120 proceeds distributed in that other state, may collect,
121 receive and enforce the loan finance charge and other
122 charges, including late fees, provided in said contract
123 under the laws of the state where executed: *Provided*,
124 That the consumer was not induced by the assignee or its
125 in-state affiliates to apply and obtain the loan from an
126 out-of-state source affiliated with the assignee in an
127 effort to evade the consumer protections afforded by this
128 chapter. Such charges shall not be deemed to be usurious
129 or in violation of the provisions of this chapter or any
130 other provisions of this code.

§46A-4-108. Use of multiple loan agreements.

1 A regulated consumer lender may not use multiple loan
2 agreements with intent to obtain a higher loan finance
3 charge than would otherwise be permitted by the provi-
4 sions of this article. A regulated consumer lender uses
5 multiple loan agreements if, with intent to obtain a
6 higher loan finance charge than would otherwise be
7 permitted, he allows any person, or husband and wife, to
8 become obligated in any way under more than one loan
9 agreement with the regulated consumer lender for a
10 regulated consumer loan under this article.

11 The excess amount of the loan finance charge provided
 12 for in agreements in violation of this section is an excess
 13 charge for the purposes of the provisions on effect of
 14 violations on rights of parties.

**§46A-4-109. Restrictions on interest in land as security;
 assignment of earnings to regulated consumer
 lender prohibited; when security interest on
 household furniture goods not valid; prohibi-
 tions as to renegotiation of loan discharged in
 bankruptcy.**

1 (1) No consumer loan of two thousand dollars or less
 2 may be secured by an interest in land, other than a
 3 purchase money loan for that land, unless the lender is
 4 licensed in this state as a regulated consumer lender or
 5 as a secondary mortgage lender, or is a federally insured
 6 depository institution permitted to conduct lending in
 7 West Virginia. A security interest taken in violation of
 8 this subsection is void..

9 (2) Notwithstanding the provisions of section one
 10 hundred sixteen, article two of this chapter, no regulated
 11 consumer lender shall take any assignment of or order
 12 for payment of any earnings to secure any loan made by
 13 any regulated consumer lender under this article. An
 14 assignment or order taken in violation of this subsection
 15 is void. This subsection does not prohibit a court from
 16 ordering a garnishment to affect recovery of moneys
 17 owed by a borrower to a lender as part of a judgment in
 18 favor of said lender.

19 (3) Other than for a purchase money lien, no regulated
 20 consumer lender may take a security interest in house-
 21 hold goods in the possession and use of the borrower.
 22 Where federal law permits a security interest in certain
 23 nonpurchase items deemed not to be household goods,
 24 the security agreement creating such security interest
 25 must be in writing, signed in person by the borrower,
 26 and if the borrower is married, signed in person by both
 27 husband and wife: *Provided*, That the signature of both
 28 husband and wife shall not be required when they have

29 been living separate and apart for a period of at least
30 five months prior to the making of such security agree-
31 ment. A security interest taken in violation of this
32 subsection is void.

33 (4) A regulated consumer lender may not renegotiate
34 the original loan, or any part thereof, or make a new
35 contract covering the original loan, or any part thereof,
36 with any borrower, who has received a discharge in
37 bankruptcy of the original loan or any balance due
38 thereon at the time of said discharge from any court of
39 the United States of America exercising jurisdiction in
40 insolvency and bankruptcy matters, unless said regu-
41 lated consumer lender shall pay to and deliver to the
42 borrower the full amount of the loan shown on said note,
43 promise to pay, or security, less any deductions for
44 charges herein specifically authorized.

§46A-4-110. Conduct of business other than making loans.

1 (1) No licensee shall conduct the business of making
2 loans under the provisions of this article within any
3 office, room or place of business in which any other
4 business is solicited or engaged in, or in association or
5 conjunction therewith, except as may be authorized in
6 writing by the commissioner upon his finding that the
7 character of such other business is sufficiently related to
8 that of a financial institution and is such that the
9 granting of such authority would not facilitate evasions
10 of this article or of the rules lawfully made hereunder,
11 except nothing herein shall prohibit the licensee from
12 purchasing installment sales contracts or the sale or
13 provision of insurance authorized by section one hun-
14 dred nine, article three of this chapter, or from making
15 loans authorized under the provisions of the West
16 Virginia secondary mortgage loan act as set forth in
17 article seventeen, chapter thirty-one of this code, or from
18 engaging in any business previously approved by the
19 commissioner prior to September first, one thousand
20 nine hundred ninety-six.

21 (2) A licensee may purchase, hold and convey real
22 property as follows:

23 (a) As shall be necessary for the convenient transaction
 24 of its business;

25 (b) As is mortgaged to it in good faith by way of
 26 security for loans made by or money due to such regu-
 27 lated consumer lender;

28 (c) As is conveyed to it in satisfaction of debts previ-
 29 ously contracted in the course of its dealings;

30 (d) As is acquired by the sale on execution or judgment
 31 or decree of any court in its favor.

32 (3) A licensee shall not purchase, hold or convey any
 33 real property in any other case or for any other purpose
 34 whatever. Real property shall be conveyed only by
 35 authority of the board of directors of any such regulated
 36 consumer lender. No real property acquired upon
 37 foreclosure in the cases contemplated in subdivision (b),
 38 or acquired under subdivisions (c) and (d) of this section
 39 shall be held for a longer time than ten years, unless such
 40 period shall be extended by the commissioner of bank-
 41 ing.

§46A-4-110a. Prohibited conduct.

1 (1) A regulated consumer lender shall not:

2 (a) Accept or receive deposits or sell or offer for sale its
 3 secured or unsecured evidences or certificates of indebt-
 4 edness; or

5 (b) Pay any fees, bonuses, commissions, rewards or
 6 other consideration to any person, firm or corporation
 7 for the privilege of using any plan of operation, scheme
 8 or device for the organization or carrying on of business
 9 under this article, or the use of any name, trademark or
 10 copyright to be so used: *Provided*, That nothing herein
 11 prevents a regulated consumer lender from agreeing in
 12 connection with a loan to pay a broker fee, finders fee or
 13 dealer participation fee, or to split the origination fee or
 14 points paid: *Provided, however*, That the fee or fee split
 15 is disclosed to the borrower and where proper is in-
 16 cluded in the finance charge.

17 (2) Unless preempted by federal law, no consumer loan
18 by a regulated consumer lender may contain any sched-
19 uled balloon payment as set forth in this chapter. Nor
20 may any regulated consumer lender loan contain terms
21 of repayment which result in negative amortization:
22 *Provided*, That nothing herein prevents unequal payment
23 schedules resulting from a variable rate loan or a revolv-
24 ing line of credit.

25 (3) A regulated consumer lender may not make revolv-
26 ing loans for the retail purchase of consumer goods and
27 services by use of a lender credit card.

**§46A-4-111. Substantial benefit upon refinancing of a loan at
higher rate.**

1 (1) Any nonrevolving consumer loan or credit that is
2 refinanced and consolidated with a new loan under this
3 article after the first day of September, one thousand
4 nine hundred ninety-six, at a higher finance rate than
5 allowed merchants by section one hundred one, article
6 three of this chapter must either provide the consumer
7 with a substantial benefit or provide the disclosures set
8 forth in this section. A substantial benefit accrues to the
9 consumer if the transaction:

10 (a) Provides the consumer at least five hundred dollars
11 in new funds for the consumer's own use, excluding any
12 charges connected with the loan; or

13 (b) Provides the consumer with new funds in an
14 amount equal to the original amount of the loan or
15 credit.

16 (2) If no substantial benefit is provided, the lender
17 must comply with the following requirements, except
18 where such an agreement would violate section one
19 hundred eight of this article:

20 (a) The lender must in a fixed rate transaction give the
21 following disclosures in writing to the borrower prior to
22 the execution of the new agreement:

23 "If you do agree to consolidate your existing obliga-

24 tion, you will be paying an annual percentage rate of
25 _____% on the existing balance of \$_____, instead of the
26 rate of _____% which you are now paying.

27 I acknowledge receipt of this information _____
28 (initials of borrower).”;

29 (b) The lender must allow the borrower the choice of
30 repaying his or her existing loan/credit balance at the
31 originally agreed upon rate and obtaining any additional
32 extension of credit as a separate agreement, notwith-
33 standing any law other than section one hundred eight of
34 this article which may limit the borrower’s ability to
35 have multiple loan agreements with the same lender;

36 (c) The lender, where it holds the prior agreement,
37 must refund or credit to the borrower’s account any
38 unearned finance charge and any returned insurance
39 premiums upon cancellation of the insurance sold in
40 connection with the prior agreement;

41 (d) The lender shall, where applicable, provide the
42 borrower prior to the loan’s execution, conspicuous
43 written notice of the provisions of subdivisions (a), (b)
44 and (c) of this subsection;

45 (e) The commissioner may provide and require a
46 modified disclosure form for similar transactions involv-
47 ing adjustable or variable rates, and where applicable,
48 prior to the loan’s execution, the borrower must be given
49 conspicuous written notice of the provisions of subdivi-
50 sions (b) and (c) of this subsection, together with the
51 disclosure form as may be required by this section; and

52 (f) Nothing in this section shall prohibit the receipt of
53 goods or services by the borrower at the time the consoli-
54 dated loan agreement is made, nor shall this section
55 prohibit or pertain to any loan where the refinancing
56 results in the consumer paying a lower finance charge
57 rate.

**§46A-4-112. Code reference to supervised lenders and indus-
trial loan companies; authority of the commis-**

sioner.

1 All references in other chapters of this code to super-
2 vised loans, supervised lenders, industrial loans, indus-
3 trial loan companies and licensees thereof, as well as to
4 article seven, chapter thirty-one of this code, shall, after
5 the operative date of this chapter, and despite the repeal
6 of said statute, be read, construed and understood to
7 mean and to have reference, respectively, to regulated
8 consumer loans, regulated consumer lenders, regulated
9 consumer lender licensees, and to this article.

10 All authority vested by this chapter in the commis-
11 sioner shall be deemed to be in addition to, and not in
12 limitation of, the authority vested in the commissioner of
13 banking by provisions contained in other chapters of this
14 code.

§46A-4-113. Continuation of licensing.

1 All persons licensed under the provisions of article
2 seven, chapter thirty-one of this code, or as supervised
3 lenders under the prior provisions of this article on the
4 operative date of this chapter, are licensed to make
5 regulated consumer loans under the provisions of this
6 article, and all provisions of this article shall after the
7 operative date of this chapter apply to the persons so
8 previously licensed, including without limitation the
9 provisions governing notification contained in article
10 seven of this chapter.

11 The commissioner may, but is not required to, deliver
12 evidence of licensing to the persons so previously li-
13 censed. Persons holding both supervised lender and
14 industrial loan company licenses, or operating such a
15 licensed business in the same office will be combined
16 and provided a single regulated lender license.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

**§46A-5-101. Effect of violations on rights of parties; limita-
tion of actions.**

1 (1) If a creditor has violated the provisions of this

2 chapter applying to collection of excess charges, security
3 in sales and leases, disclosure with respect to consumer
4 leases, receipts, statements of account and evidences of
5 payment, limitations on default charges, assignment of
6 earnings, authorizations to confess judgment, illegal,
7 fraudulent or unconscionable conduct, any prohibited
8 debt collection practice, or restrictions on interest in
9 land as security, assignment of earnings to regulated
10 consumer lender, security agreement on household goods
11 for benefit of regulated consumer lender, and renegotia-
12 tion by regulated consumer lender of loan discharged in
13 bankruptcy, the consumer has a cause of action to
14 recover actual damages and in addition a right in an
15 action to recover from the person violating this chapter
16 a penalty in an amount determined by the court not less
17 than one hundred dollars nor more than one thousand
18 dollars. With respect to violations arising from consumer
19 credit sales or consumer loans made pursuant to revolv-
20 ing charge accounts or revolving loan accounts, or from
21 sales as defined in article six of this chapter, no action
22 pursuant to this subsection may be brought more than
23 four years after the violations occurred. With respect to
24 violations arising from other consumer credit sales or
25 consumer loans, no action pursuant to this subsection
26 may be brought more than one year after the due date of
27 the last scheduled payment of the agreement.

28 (2) If a creditor has violated the provisions of this
29 chapter respecting authority to make regulated con-
30 sumer loans, the loan is void and the consumer is not
31 obligated to pay either the principal or the loan finance
32 charge. If he has paid any part of the principal or of the
33 finance charge, he has a right to recover in an action the
34 payment from the person violating this chapter or from
35 an assignee of that person's rights who undertakes direct
36 collection of payments or enforcement of rights arising
37 from the debt. With respect to violations arising from
38 regulated consumer loans made pursuant to revolving
39 loan accounts, no action pursuant to this subsection may
40 be brought more than four years after the violation

41 occurred. With respect to violations arising from other
42 regulated consumer loans, no action pursuant to this
43 subsection may be brought more than one year after the
44 due date of the last scheduled payment of the agreement
45 pursuant to which the charge was paid.

46 (3) A consumer is not obligated to pay a charge in
47 excess of that allowed by this chapter, and if he has paid
48 an excess charge he has a right to a refund. A refund
49 may be made by reducing the consumer's obligation by
50 the amount of the excess charge. If the consumer has
51 paid an amount in excess of the lawful obligation under
52 the agreement, the consumer may recover in an action
53 the excess amount from the person who made the excess
54 charge or from an assignee of that person's rights who
55 undertakes direct collection of payments from or en-
56 forcement of rights against the consumer arising from
57 the debt.

58 (4) If a creditor has contracted for or received a charge
59 in excess of that allowed by this chapter, the consumer
60 may, in addition to recovering such excess charge, also
61 recover from the creditor or the person liable in an
62 action a penalty in an amount determined by the court
63 not less than one hundred dollars nor more than one
64 thousand dollars. With respect to excess charges arising
65 from consumer credit sales or consumer loans made
66 pursuant to revolving charge accounts or revolving loan
67 accounts, no action pursuant to this subsection may be
68 brought more than four years after the time the excess
69 charge was made. With respect to excess charges arising
70 from other consumer credit sales or consumer loans no
71 action pursuant to this subsection may be brought more
72 than one year after the due date of the last scheduled
73 payment of the agreement pursuant to which the charge
74 was made.

75 (5) Except as otherwise provided, a violation of this
76 chapter does not impair rights on a debt.

77 (6) If an employer discharges an employee in violation
78 of the provisions prohibiting discharge, the employee

79 may within ninety days bring a civil action for recovery
80 of wages lost as a result of the violation and for an order
81 requiring the reinstatement of the employee. Damages
82 recoverable shall not exceed lost wages for six weeks.

83 (7) A creditor has no liability for a penalty under
84 subsection (1) or subsection (4) of this section if within
85 fifteen days after discovering an error, and prior to the
86 institution of an action under this section or the receipt
87 of written notice of the error, the creditor notifies the
88 person concerned of the error and corrects the error. If
89 the violation consists of a prohibited agreement, giving
90 the consumer a corrected copy of the writing containing
91 the error is sufficient notification and correction. If the
92 violation consists of an excess charge, correction shall be
93 made by an adjustment or refund.

94 (8) If the creditor establishes by a preponderance of
95 evidence that a violation is unintentional or the result of
96 a bona fide error of fact notwithstanding the mainte-
97 nance of procedures reasonably adapted to avoid any
98 such violation or error, no liability is imposed under
99 subsections (1), (2) and (4) of this section, and the valid-
100 ity of the transaction is not affected.

§46A-5-103. Willful violations.

1 (1) A regulated consumer lender who willfully makes
2 charges in excess of those permitted by the provisions of
3 article four of this chapter, pertaining to regulated
4 consumer lenders, shall be guilty of a misdemeanor, and,
5 upon conviction, shall be fined not more than five
6 thousand dollars, or imprisoned not more than one year,
7 or both fined and imprisoned.

8 (2) A person who willfully engages in the business of
9 making regulated consumer loans without a license in
10 violation of the provisions of article four of this chapter
11 applying to authority to make regulated consumer loans
12 shall be guilty of a misdemeanor, and, upon conviction,
13 shall be fined not more than five thousand dollars, or
14 imprisoned not more than one year, or both fined and

15 imprisoned.

16 (3) A person who willfully engages in the business of
17 making consumer credit sales or consumer loans, or of
18 taking assignments of rights against consumers arising
19 therefrom and undertakes direct collection of payments
20 or enforcement of these rights, without complying with
21 the provisions of section one hundred fifteen, article
22 seven of this chapter, concerning notification, shall be
23 guilty of a misdemeanor, and, upon conviction, shall be
24 fined not more than one hundred dollars.

25 (4) Any person who willfully violates any of the provi-
26 sions of sections one hundred twenty-three through one
27 hundred twenty-eight, inclusive, article two of this
28 chapter, by committing any of the specifically described
29 and enumerated acts contained therein, shall be guilty of
30 a misdemeanor, and, upon conviction thereof, shall be
31 fined not more than one thousand dollars, or imprisoned
32 in the county jail not more than one year, or both fined
33 and imprisoned.

ARTICLE 7. ADMINISTRATION.

§46A-7-103. Division of administrative powers; investigation and administration.

1 (1) With respect to regulated consumer lenders and
2 other supervised financial organizations, the powers of
3 examination and investigation and administrative
4 enforcement shall be exercised by the official or agency
5 to whose supervision the organization is subject. All
6 other powers of the attorney general under this chapter
7 may be exercised by him with respect to any financial
8 organization whether or not a supervised financial
9 organization. Notwithstanding the first sentence of this
10 subsection and notwithstanding subsection (3) of this
11 section, the attorney general may pursue any investiga-
12 tion, prosecute any suit and take any other proper action
13 relating to the enforcement of any consumer protection
14 provision in this chapter.

15 (2) If the attorney general receives a complaint or other

16 information concerning noncompliance with this chapter
 17 by any supervised financial organization, he shall inform
 18 the official or agency having supervisory authority over
 19 the organization concerned. The attorney general may
 20 request information about financial organizations from
 21 the officials or agencies supervising them.

22 (3) The attorney general and any official or agency of
 23 this state having supervisory authority over a financial
 24 organization are authorized and directed to consult and
 25 assist one another in maintaining compliance with this
 26 chapter. They may jointly pursue investigations, prose-
 27 cute actions and take other official actions, as they deem
 28 appropriate, if either of them otherwise is empowered to
 29 take the action.

§46A-7-115. Notification.

1 (1) Every person engaged in this state in making
 2 consumer credit sales or consumer loans, including any
 3 person subject to the provisions of section five-a, article
 4 twenty-three, chapter eleven of this code as a result of
 5 their consumer lending or any person who regularly
 6 purchases retail installment contracts or other consumer
 7 paper from a business with which it is affiliated, and
 8 every person having an office or place of business in this
 9 state who takes assignments of and undertakes direct
 10 collection of payments from or enforcement of rights
 11 against debtors arising from such sales or loans shall file
 12 notification with the state tax department within thirty
 13 days after commencing business in this state, and,
 14 thereafter, on or before the thirty-first day of January of
 15 each year. A notification shall be deemed to be in
 16 compliance with this section if the information hereinaf-
 17 ter required is given in an application for a business
 18 registration certificate provided for in section four,
 19 article twelve, chapter eleven of this code. The state tax
 20 commissioner shall make any information required by
 21 this section available to the attorney general or commis-
 22 sioner upon request. The notification shall state:

23 (a) Name of the person;

24 (b) Name in which business is transacted if different
25 from subdivision (a) of this subsection;

26 (c) Address of principal office, which may be outside
27 this state;

28 (d) Address of all of its offices, if any, in this state at
29 which consumer loans are made, or in the case of a
30 lender credit card, a description of its affiliation to any
31 store chain, or national or regional credit card accep-
32 tance system, or in the case of a person taking assign-
33 ments of obligations, the offices or places of business
34 within this state at which business is transacted;

35 (e) If consumer credit sales or consumer loans, includ-
36 ing loans secured by real property, are made otherwise
37 than at its retail store or office in this state, a brief
38 description of the manner in which they are made;

39 (f) Address of designated agent upon whom service of
40 process may be made in this state; and

41 (g) Whether regulated consumer loans are made.

42 (2) If information in a notification becomes inaccurate
43 after filing, accurate information must be filed within
44 thirty days.

45 (3) The provisions of this section are not applicable to
46 a seller whose credit sales consist entirely of sales made
47 pursuant to a seller's credit card so long as the issuer of
48 the card has fully complied with the provisions of this
49 section, nor are the provisions of this section applicable
50 to a person whose consumer lending in West Virginia is
51 incidental and confined to access through a nonpropri-
52 etary automatic teller machine or similar electronic
53 communication terminal.

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

**§46A-8-101. Time of becoming operative; provisions for
transition; enforceability of prior transac-
tions.**

1 (1) Except as otherwise provided in this section, this

2 chapter shall become operative at 12:01 a. m. on the first
 3 day of September, one thousand nine hundred seventy-
 4 four.

5 (2) Notwithstanding the provisions of subsection (1) of
 6 this section, in order to allow sufficient time to prepare
 7 for the implementation and operation of this chapter and
 8 to act on applications for licenses to make regulated
 9 consumer loans under this chapter as amended, the
 10 provisions of article four of this chapter, relating to
 11 regulated consumer lender, and the provisions of article
 12 seven of this chapter, relating to their administration,
 13 shall, to the extent necessary, become operative for such
 14 purposes at 12:01 a. m. on the first day of September, one
 15 thousand nine hundred ninety-six.

16 (3) Transactions entered into before this chapter
 17 becomes operative and the rights, duties and interests
 18 flowing from them thereafter may be terminated, com-
 19 pleted, consummated or enforced as required or permit-
 20 ted by any statute, rule of law or other law amended,
 21 repealed or modified by this chapter as though the
 22 repeal, amendment or modification had not occurred, but
 23 this chapter applies to:

24 (a) Refinancings and consolidations made after this
 25 chapter becomes operative of consumer credit sales,
 26 consumer leases and consumer loans whenever made;

27 (b) Consumer credit sales or consumer loans made after
 28 this chapter becomes operative pursuant to revolving
 29 charge accounts or revolving loan accounts entered into,
 30 arranged or contracted for before this chapter becomes
 31 operative; and

32 (c) All consumer credit transactions made before this
 33 chapter becomes operative insofar as this chapter limits
 34 the remedies of creditors.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 6. MONEY AND INTEREST.

§47-6-5d. Rebate upon prepayment, refinancing, consolida- tion or otherwise; liability and penalties for

excess charges.

1 (a) Upon prepayment in full of a precomputed loan,
2 credit sale or transaction, forbearance or similar trans-
3 action repayable according to its original terms over a
4 period of thirty-six months or less, the creditor shall
5 rebate that portion of the finance charge attributable to
6 the prepaid periodic installment periods. When the total
7 is payable in substantially equal consecutive monthly
8 installments, the portion of such finance charge attribut-
9 able to any particular monthly installment period shall
10 be that proportion of charge originally contracted for, as
11 the balance scheduled to be outstanding on the last day
12 of the monthly installment period before deducting the
13 payment, if any, scheduled to be made on that day bears
14 to the sum of all the monthly installment balances under
15 the original schedule of payments. (This method of
16 allocation is the sum of the digits method, commonly
17 referred to as the "Rule of 78"). For prepayment in full
18 of a precomputed loan, credit sale or transaction, for-
19 bearance or similar transaction: (i) Repayable according
20 to its original terms over a period of thirty-six months or
21 less; (ii) in which unequal or irregular or other than
22 substantially equal consecutive monthly installments are
23 payable, the commissioner of banking shall prescribe by
24 rule the method or procedure for the allocation of
25 charges and the calculation or rebates consistent with
26 the Rule of 78.

27 (b) Upon prepayment in full of a precomputed loan,
28 credit sale or transaction, forbearance or similar trans-
29 action, repayable by its original terms over a period of
30 greater than thirty-six months, an amount shall be
31 rebated of not less than the unearned portion of the
32 finance charge calculated by applying the rate of finance
33 charge which was required by applicable law to be
34 disclosed in the transaction according to the actuarial
35 method to the unpaid balance for the time remaining as
36 originally scheduled or as extended by deferral or
37 otherwise for the period following prepayment. In
38 instances where no rate of finance charge was required

39 by law or otherwise to be disclosed, the unearned portion
40 of the finance charge shall be calculated by applying the
41 finance charge which was charged in the transaction
42 according to the actuarial method to the unpaid balance
43 for the time remaining as originally scheduled or as
44 extended by deferral or otherwise for the period follow-
45 ing prepayment.

46 (c) Unearned prepaid finance charges upon prepay-
47 ment includes all prepaid finance charges for points,
48 loan or credit origination fees or loan or credit investiga-
49 tion fees retained by the lender or creditor or its affili-
50 ates: *Provided*, That: (i) In calculating the rebate for a
51 consumer loan or credit sale unsecured by real property
52 where such prepaid finance charges have been imposed,
53 the lender or creditor may deduct such charges up to a
54 maximum of two percent of the amount financed; and (ii)
55 in calculating the rebate for a consumer loan or credit
56 sale secured by real property where such prepaid finance
57 charges have been imposed, the lender or creditor may
58 deduct such charges up to a maximum of five percent of
59 the amount financed: *Provided, however*, That no such
60 deduction totaling more than five percent of the amount
61 financed may be made by the same lender within a
62 twenty-four month period as a result of a refinancing.
63 Upon prepayment in full of a consumer loan or credit
64 sale, any unearned prepaid finance charges may be
65 rebated by using the Rule of 78 where the original loan
66 term is thirty-six months or less. Where the original loan
67 term is greater than thirty-six months, any such charges
68 shall be rebated by using the actuarial method. To the
69 extent that this section overrides the preemption on
70 limiting points and other such charges on first lien
71 residential mortgages for nonpurchase money loans
72 contained in Section 501 of the United States Depository
73 Institutions Deregulation and Monetary Control Act of
74 1980, the state law limitations contained in this section
75 shall apply: *Provided further*, That this subsection does
76 not apply to loans made by federally-insured depository
77 institutions.

78 (d) For purposes of the rebate of unearned finance
79 charges as required by this section, a prepayment in full
80 shall include repayment by a new loan, extension of
81 credit, refinancing, consolidation, forbearance or other-
82 wise. The term "loan or credit investigation fees" does
83 not include the reasonable costs of credit reports paid to
84 third parties as part of the bona fide closing costs in real
85 estate transactions, where such costs are not included as
86 part of the finance charge.

87 (e) As an alternative to the Rule of 78 method of rebate
88 of determining the unearned finance charge required by
89 this section, a creditor may rebate unearned finance
90 charges under any other method which gives a greater
91 rebate to the debtor than the rebate determined by the
92 Rule of 78.

93 (f) The provisions governing rebates as set forth in this
94 section shall apply to all transactions entered into on or
95 after the first day of September, one thousand nine
96 hundred ninety-six. For transactions entered into prior
97 to the first day of September, one thousand nine hundred
98 ninety-six, the provisions in effect prior to the effective
99 date of this section of the respective chapters of this code
100 shall be utilized to determine the rebate of unearned
101 finance charges.

102 (g) For consumer credit sales or consumer loans subject
103 to the provisions of chapter forty-six-a of this code the
104 provisions of article five of said chapter, govern the
105 imposition of liability and penalties for charging interest
106 or a finance charge in excess of the maximum rate
107 allowed under the provisions of this section. In all other
108 instances, the provisions of this article govern the
109 imposition of liability and penalties for charging interest
110 or a finance charge in excess of the maximum allowed
111 under this section.

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

Karl Schoonover
.....
Chairman Senate Committee

Andy Seavitt
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage

Carroll E. Wood
.....
Clerk of the Senate

Gregory M. Gray
.....
Clerk of the House of Delegates

Carl By Tomblin
.....
President of the Senate

Bill Calhoun
.....
Speaker House of Delegates

The within *is approved* this the *15th*
day of *April*, 1996.

Gaston Caperton
.....
Governor

PRESENTED TO THE

GOVERNOR

Date

3/27/96

Time

10:20am