WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1996

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ENROLLED

Committee Substitute for

SENATE BILL NO. 366

(By Senator Manchin, et al.)

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PASSED March 9, 1996

In Effect NINTY DAYS FROM Passage
ENROLLED

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, political subdivisions and agencies and instrumentalities of any of them, fiduciaries, building and loan associations, regulated consumer lenders, insurance companies, fraternal benefit societies and other persons lawfully engaging in the lending and investing business and services shall have and are hereby authorized and empowered to exercise the same lawful rights and privileges as are banking institutions under provisions of sections twenty-seven, twenty-eight and twenty-nine, 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, chapter thirty-one of this code and all banking institutions governed by the provisions of this chapter shall qualify for and obtain federal deposit insurance, or shall obtain insurance as approved by the commissioner of banking in an amount equal to that provided by the federal deposit insurance corporation for eligible institutions.

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

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

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

(c) Application for such license or certificate shall be upon such forms and contain such information as the commissioner may prescribe. In connection with such applications every corporate financial institution shall file a certified copy of its charter and bylaws, a statement as to the amount of capital that has been subscribed and paid in and a statement of its financial condition duly verified under oath by its president or vice president and its cashier or secretary as the case may be and every financial institution other than a corporation shall file a verified statement of its financial condition.

(d) If the application be that of a West Virginia state banking institution, the commissioner of banking shall examine the information, documents and statements...
submitted and, if he finds that such banking institution
has adopted bylaws which provide practical, safe, just
and equitable rules and methods for the management of
its business and it has complied in all respects with the
provisions of this chapter and other applicable laws, he
shall issue to it a certificate or license permitting it to
engage in business. If the application be that of a finan-
cial institution other than a banking institution, the
commissioner of banking shall examine the information,
documents and statements submitted, and, if he finds
that such financial institution has adequate resources for
the proposed business and has provided practical, safe,
just and equitable rules and methods for the manage-
ment of its business, and it has complied in all respects
with the provisions of this chapter and other applicable
laws, and that the public convenience and advantage will
be promoted by the issuance of a certificate or license
thereto, he shall issue to it a certificate or license permit-
ing it to engage in business. Such certificate or license
shall be preserved and the original or copy thereof
displayed in all the places of business of such banking or
other financial institution located in this state.

(e) In addition to the requirements of subsections (b)
and (c) of this section, every foreign corporation applying
for a license or certificate to engage in the business of a
financial institution in this state, other than an out-of-
state banking institution, shall file with the commis-
ioner of banking a copy of the bylaws under which it
operates, together with a cite to the statutes of the
jurisdiction where it is organized which pertain to its
organization and powers and the conduct of its business.
The commissioner shall examine the information,
documents and statements submitted by such foreign
corporation and if he finds that they provide practical,
safe, just and equitable rules and methods for the
management of the business of the corporation, that it
has adequate resources for the proposed business and it
has complied in all respects with the provisions of this
chapter and other applicable laws, and that the public
convenience and advantage will be promoted by the issuance of a license or certificate thereto, he shall issue to such corporation a certificate or license permitting it to engage in business in this state, which certificate or license shall authorize such corporation to engage in the business of the type of financial institution specified therein, until the thirtieth day of the following June. Thereafter a new certificate or license shall be secured annually by any such foreign corporation, except where annual renewal of the license or certificate is specifically not required for the type of institution involved. The fee for the original and each additional license or certificate issued to a foreign corporation shall be one hundred dollars, unless otherwise provided by statute. A verified statement of the financial condition of every such foreign corporation shall be filed with the commissioner before the issuance of each annual certificate or license. Such certificate or license shall be preserved and the original or copy thereof displayed in the West Virginia place of business of such corporation.

(f) Unless the institution is a federally insured depository institution or it is otherwise provided for by statute, a new certificate or license shall be secured annually by all domestic state financial institutions, and the fee for the original and each additional license or certificate shall be one hundred dollars.

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

(h) Unless specifically provided for by this chapter, nothing contained in this code shall authorize any person to engage in the banking business in this state except
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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 examinations; 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
preceeding thirtieth day of June and the thirty-first day of December respectively as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not</th>
<th>Of Excess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over Million</td>
<td>Over Million</td>
<td>This Amount</td>
</tr>
<tr>
<td>$0</td>
<td>$2</td>
<td>$0</td>
</tr>
<tr>
<td>20</td>
<td>100</td>
<td>6,991</td>
</tr>
<tr>
<td>100</td>
<td>200</td>
<td>20,151</td>
</tr>
<tr>
<td>200</td>
<td>1,000</td>
<td>30,844</td>
</tr>
<tr>
<td>1,000</td>
<td>2,000</td>
<td>103,225</td>
</tr>
<tr>
<td>2,000</td>
<td>6,000</td>
<td>177,251</td>
</tr>
<tr>
<td>6,000</td>
<td>20,000</td>
<td>440,454</td>
</tr>
<tr>
<td>20,000</td>
<td>40,000</td>
<td>1,224,292</td>
</tr>
</tbody>
</table>

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

<table>
<thead>
<tr>
<th>Total Outstanding Balances</th>
<th>But Not</th>
<th>Of Excess</th>
</tr>
</thead>
<tbody>
<tr>
<td>Over</td>
<td>Over</td>
<td>This Amount</td>
</tr>
<tr>
<td>$0</td>
<td>$1,000,000</td>
<td>800</td>
</tr>
<tr>
<td>1,000,000</td>
<td>5,000,000</td>
<td>800</td>
</tr>
<tr>
<td>5,000,000</td>
<td>10,000,000</td>
<td>2,400</td>
</tr>
<tr>
<td>10,000,000</td>
<td>—</td>
<td>4,200</td>
</tr>
</tbody>
</table>

If a regulated consumer lender’s records or documents are maintained in more than one location in this state, then eight hundred dollars may be added to the assessment for each additional location.

(3) For each credit union, an annual assessment as provided for in section six, article ten, chapter thirty-one
of this code as follows:

<table>
<thead>
<tr>
<th>Total Assets</th>
<th>But Not Over</th>
<th>This Amount</th>
<th>Plus Of Excess Over</th>
</tr>
</thead>
<tbody>
<tr>
<td>$0$</td>
<td>$0$</td>
<td>$100,000$</td>
<td>$100$</td>
</tr>
<tr>
<td>$100,000$</td>
<td>$500,000$</td>
<td>$300$</td>
<td>—</td>
</tr>
<tr>
<td>$500,000$</td>
<td>$1,000,000$</td>
<td>$500$</td>
<td>—</td>
</tr>
<tr>
<td>$1,000,000$</td>
<td>$5,000,000$</td>
<td>$500$ .000400</td>
<td>1,000,000</td>
</tr>
<tr>
<td>$5,000,000$</td>
<td>$10,000,000$</td>
<td>$2,100$ .000200</td>
<td>5,000,000</td>
</tr>
<tr>
<td>$10,000,000$</td>
<td>—</td>
<td>$3,100$ .000100</td>
<td>10,000,000</td>
</tr>
</tbody>
</table>

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

(c) The commissioner shall each December and each June prepare and send to each state banking institution a statement of the amount of the assessment due. The commissioner shall, further, each June, prepare and send to each regulated consumer lender and each state credit union a statement of the amount of the assessment due. The commissioner shall, annually, during the month of January, prepare and send to each bank holding company a statement of the amount of the assessment due.

Assessments shall be prescribed annually, not later than the fifteenth day of June, by written order of the commissioner, but shall not exceed the maximums as set forth in subsection (b) of this section. In setting the assessments the primary consideration shall be the amount appropriated by the Legislature for the division of banking for the corresponding annual period. Reasonable notice of the assessments shall be made to all interested parties. All orders of the commissioner for the purpose of setting assessments are not subject to the provisions of the West Virginia administrative procedures act, under chapter twenty-nine-a of this code.
(d) For making an examination within the state of any other financial institution for which assessments are not provided by this code, the commissioner of banking shall charge and collect from such other financial institution and pay into the special revenue account for the division of banking the actual and necessary costs and expenses incurred in connection therewith, as fixed and determined by the commissioner.

(e) If the records of an institution are located outside this state, the institution at its option shall make them available to the commissioner at a convenient location within the state, or pay the reasonable and necessary expenses for the commissioner or his or her representatives to examine them at the place where they are maintained. The commissioner may designate representatives, including comparable officials of the state in which the records are located, to inspect them on his or her behalf.

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

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.
§31A-4-22. Reserves required of banking institutions; reports; penalties.

Each state banking institution shall at all times maintain on hand as a reserve in lawful money of the United States of America an amount equal to at least seven percent of the aggregate of all of its deposits which are subject to withdrawal on demand and three percent of its time deposits. Whenever the commissioner of banking shall determine that the maintenance of sound banking practices or the prevention of injurious credit expansion or contraction makes such action advisable, he may by rule from time to time change such requirements as to reserves against demand or time deposits, or both, but the reserves so prescribed shall in no event be less than those specified in this section nor more than twice those specified. Whenever such reserve shall fall
below that required, the institution shall not thereafter
make any new loan or investment until the required
reserve shall be restored. For the purpose of computing
such reserve, all deposits requiring notice of thirty days
or more for withdrawal and time certificates of deposit
and Christmas savings shall be deemed time deposits,
and all checking accounts, certified checks, cashier's
checks, demand certificates of deposit and balances due
other banks shall be deemed demand deposits. But in
lieu of lawful money on hand, four fifths of such reserve
may consist of balances payable on demand from any
national or state bank doing business in this state or
solvent banking institutions in other states. The reserve
balances required herein shall be computed on the basis
of average daily net deposit balances and average daily
currency and coin during biweekly periods. The required
reserve balance of each bank shall be computed at the
close of business each day based upon its net deposit
balances and currency and coin at the opening of busi-
ness on the same day. The biweekly period shall end at
the close of business on days to be fixed by the commis-
sioner in his promulgated rules. When, however, the
reserve computation period ends with a nonbusiness day,
or two or more consecutive nonbusiness days, such
nonbusiness day or days may, at the option of the
banking institution, and whether or not it had a defi-
ciency in reserve balances in such computation period,
be included in the next biweekly computation period.

The commissioner shall, by rule and regulation, require
regular reports from such banking institutions, which
reports shall be submitted at such times and contain
such information as will enable the commissioner to
adequately supervise the maintenance of reserves under
this section. Penalties for any deficiencies in the re-
quired reserves of any banking institution shall be
assessed monthly by the commissioner on the basis of
average daily deficiencies during each of the computa-
tion periods ending in the preceding calendar month.
Such penalties shall be assessed at a rate of two percent
per annum above the lowest rate applicable to borrowings by member banks from the federal reserve bank of the district in which such deficient institution is located on the first day of the calendar month in which the deficiencies occurred. Such penalties shall be paid by the commissioner into the treasury of the state of West Virginia and credited to the general fund.

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

ARTICLE 7. REGULATION OF FAILING FINANCIAL INSTITUTIONS.

§31A-7-2. Definitions.

As used in this article:

(a) “Commissioner” means the commissioner of banking of West Virginia and any authorized deputy or employee thereof;

(b) “Federal law” means all the provisions of Title XII of the United States Code and all rules and regulations promulgated pursuant thereto;

(c) “Financial institution” means any bank, building and loan association, industrial bank, regulated consumer lender, credit union and any other person, firm or corporation doing business under the jurisdiction and supervision of the commissioner of banking of West Virginia;

(d) A financial institution is “about to be insolvent” when it would be unable to meet the demands of its depositors or to make adequate provision for the timely payment of its depositors if it were immediately closed for the purpose of liquidation;
(e) A financial institution is "insolvent" when it is unable to pay its debts to its depositors and other creditors in the ordinary and usual course of business or when it is in a state of balance sheet insolvency; and

(f) "Balance sheet insolvency" exists when the assets of a financial institution are less than its liabilities, exclusive of capital. For the purposes of ascertaining balance sheet insolvency, assets shall be valued at their book value, unless the commissioner of banking determines that the assets are insufficient to meet liabilities within a reasonable time making probable the liquidation of assets; and if any such determination is made, the assets 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; prohibition not to include messenger services; limitation of messenger services.

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

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.
ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


1. In addition to definitions appearing in subsequent articles, in this chapter:

(1) "Actuarial method" means the method, defined by rules adopted by the commissioner, of allocating payments made on a debt between principal or amount financed and loan finance charge or sales finance charge pursuant to which a payment is applied first to the accumulated loan finance charge or sales finance charge and the balance is applied to the unpaid principal or unpaid amount financed.

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

(3) "Agricultural purpose" means a purpose related to the production, harvest, exhibition, marketing, transportation, processing or manufacture of agricultural products by a natural person who cultivates, plants, propagates or nurtures the agricultural products. "Agricultural products" includes agricultural, horticultural, viticultural and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

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

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

(b) The amount actually paid or to be paid by the seller pursuant to an agreement with the buyer to discharge a
security interest in or a lien on property traded in; and
(c) If not included in the cash price:
(i) Any applicable sales, use, privilege, excise or
documentary stamp taxes;
(ii) Amounts actually paid or to be paid by the seller
for registration, certificate of title or license fees; and
(iii) Additional charges permitted by this chapter.
(5) "Average daily balance" in a billing cycle for which
a sales finance charge or loan finance charge is made is
the sum of the amount unpaid each day during that cycle
divided by the number of days in that cycle. The amount
unpaid on a day is determined by adding to the balance,
if any, unpaid as of the beginning of that day all pur-
chases and other debits and deducting all payments and
other credits made or received as of that day.
(6) The "cash price" of goods, services or an interest in
land means the price at which the goods, services or
interest in land are offered for sale by the seller to cash
buyers in the ordinary course of business, and may
include: (a) Applicable sales, use, privilege, and excise
and documentary stamp taxes; (b) the cash price of
accessories or related services such as delivery, installa-
tion, servicing, repairs, alterations and improvements;
and (c) amounts actually paid or to be paid by the seller
for registration, certificate of title or license fees.
(7) "Closing costs" with respect to a debt secured by an
interest in land include:
(a) Fees or premiums for title examination, title
insurance or similar purposes including surveys;
(b) Fees for preparation of a deed, deed of trust,
mortgage, settlement statement or other documents;
(c) Escrows for future payments of taxes and insur-
ance;
(d) Official fees and fees for notarizing deeds and other
documents;

(e) Appraisal fees; and

(f) Credit reports.

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

(9) “Commercial facsimile transmission” means the electronic or telephonic transmission in the state to a facsimile device to encourage a person to purchase goods, realty or services.

(10) “Commissioner” means the commissioner of banking of West Virginia.

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

(12) “Consumer” means a natural person who incurs debt pursuant to a consumer credit sale or a consumer loan, or debt or other obligations pursuant to a consumer lease.

(13) (a) Except as provided in paragraph (b), “consumer credit sale” is a sale of goods, services or an interest in land in which:

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

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

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

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

(v) With respect to a sale of goods or services, the
amount financed does not exceed forty-five thousand dollars or the sale is of a factory-built home as defined in section two, article fifteen, chapter thirty-seven of this code.

(b) “Consumer credit sale” does not include a sale in which the seller allows the buyer to purchase goods or services pursuant to a lender credit card or similar arrangement.

(14) (a) “Consumer lease” means a lease of goods:

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

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

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

(b) “Consumer lease” does not include a lease made pursuant to a lender credit card or similar arrangement.

(15) “Consumer loan” is a loan made by a person regularly engaged in the business of making loans in which:

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

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

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

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

(16) “Cosigner” means a natural person who assumes
liability for the obligation on a consumer credit sale or consumer loan without receiving goods, services or money in return for the obligation or, in the case of a revolving charge account or revolving loan account of a consumer, without receiving the contractual right to obtain extensions of credit under the account. The term cosigner includes any person whose signature is requested as a condition to granting credit to a consumer or as a condition for forbearance on collection of a consumer's obligation that is in default. The term cosigner does not include a spouse whose signature is required to perfect a security interest. A person who meets the definition in this paragraph is a "cosigner" whether or not the person is designated as such on the credit obligation.

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

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

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

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

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

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

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

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

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

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

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

(25) "Loan" includes:
(a) The creation of debt by the lender's payment of or agreement to pay money to the consumer or to a third party for the account of the consumer other than debts created pursuant to a seller credit card;

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

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

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

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

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

(27) "Merchandise certificate" or "gift certificate" means a writing issued by a seller or issuer of a seller credit card, not redeemable in cash and usable in its face amount in lieu of cash in exchange for goods or services.
(28) “Official fees” means:

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

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

(29) “Organization” means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative or association.

(30) “Payable in installments” means that payment is required or permitted by agreement to be made in: (a) Two or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which a sales finance charge is made; (b) four or more periodic payments, excluding a down payment, with respect to a debt arising from a consumer credit sale pursuant to which no sales finance charge is made; or (c) two or more periodic payments with respect to a debt arising from a consumer credit sale or consumer loan. If any periodic payment other than the down payment under an agreement requiring or permitting two or more periodic payments is more than twice the amount of any other periodic payment, excluding the down payment, the consumer credit sale or consumer loan is “payable in installments”.

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

(32) “Person related to” with respect to an individual means: (a) The spouse of the individual; (b) a brother, brother-in-law, sister or sister-in-law of the individual;
(c) an ancestor or lineal descendant of the individual or
his spouse; and (d) any other relative, by blood or mar-
riage, of the individual or his spouse who shares the
same home with the individual. “Person related to” with
respect to an organization means: (a) A person directly or
indirectly controlling, controlled by or under common
control with the organization; (b) an officer or director
of the organization or a person performing similar
functions with respect to the organization or to a person
related to the organization; (c) the spouse of a person
related to the organization; and (d) a relative by blood or
marriage of a person related to the organization who
shares the same home with him.

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

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

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

(34) “Precomputed sale”. A sale, refinancing or consol-
idation is “precomputed” if:

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

(B) The debt is expressed in terms of the principal
amount; the debt installment payments are a scheduled,
fixed amount including principal and interest and
assume payment on the installment due date; and
interest payments will not vary or result in an adjust-
ment during the term of the debt or at its final payment
as a result of the actual installment payment dates.
(35) "Presumed" or "presumption" means that the trier of fact must find the existence of the fact presumed unless and until evidence is introduced which would support a finding of its nonexistence.

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

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

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

(c) To the extent that payment is deferred:

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

(ii) Additional charges permitted by this chapter.

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

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

(39) "Revolving charge account" means an agreement between a seller and a buyer by which: (a) The buyer may purchase goods or services on credit or a seller credit card; (b) the balances of amounts financed and the sales finance and other appropriate charges are debited to an account; (c) a sales finance charge if made is not precomputed but is computed periodically on the bal-
(40) “Revolving loan account” means an arrangement between a lender and a consumer including, but not limited to, a lender credit card or similar arrangement, pursuant to which: (a) The lender may permit the consumer to obtain loans from time to time; (b) the unpaid balances of principal and the loan finance and other appropriate charges are debited to an account; (c) a loan finance charge if made is not precomputed but is computed periodically on the outstanding unpaid balances of the principal of the consumer’s account from time to time; and (d) there is the privilege of paying the balances in installments.

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

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

(43) “Sale of services” means furnishing or agreeing to furnish services and includes making arrangements to have services furnished by another.

(44) “Sales finance charge” means the sum of: (a) All charges payable directly or indirectly by the buyer and imposed directly or indirectly by the seller or issuer of a seller credit card as an incident to the extension of credit, including any of the following types of charges which are applicable: Time-price differential, however
denominated, including service, carrying or other charge, premium or other charge for any guarantee or insurance protecting the seller against the buyer's default or other credit loss; and (b) charges incurred for investigating the collateral or credit worthiness of the buyer or for commissions or brokerage for obtaining the credit, irrespective of the person to whom the charges are paid or payable; unless the seller had no notice of the charges when the credit was granted. The term does not include charges as a result of default, additional charges, delinquency charges or deferral charges. If the seller or issuer of a seller credit card purchases or satisfies obligations of the consumer and the purchase or satisfaction is made at less than the face amount of the obligation, the discount is not part of the sales finance charge.

(45) Except as otherwise provided, “seller” includes an assignee of the seller’s right to payment but use of the term does not in itself impose on an assignee any obligation of the seller.

(46) “Seller credit card” means an arrangement pursuant to which a person gives to a buyer or lessee the privilege of using a credit card, letter of credit, or other credit confirmation or identification primarily for the purpose of purchasing or leasing goods or services from that person, that person and any other person or persons, a person related to that person, or others licensed or franchised or permitted to do business under his business name or trade name or designation or on his behalf.

(47) “Services” includes: (a) Work, labor and other personal services; (b) privileges with respect to transportation, use of vehicles, hotel and restaurant accommodations, education, entertainment, recreation, physical culture, hospital accommodations, funerals, cemetery accommodations, and the like; and (c) insurance.

(48) “Supervised financial organization” means any organization, corporation or person, other than an insurance company or other organization primarily engaged in an insurance business, which is required
§46A-1-103. Effect of chapter on powers of persons making consumer credit sales and consumer loans, and others; consumer protection generally.

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

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

(3) This chapter also prescribes in various articles protective measures for consumers in transactions not 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) With respect to a consumer loan, other than a consumer loan made pursuant to a revolving loan account: (a) A bank, as defined in section two, article one, chapter thirty-one-a of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section thirty, article four, chapter thirty-one-a or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code, or that allowed under section sixteen, article ten, chapter thirty-one of this code; (b) a regulated consumer lender may contract for and receive a loan finance charge not exceeding the aggregate of the interest and charges permitted by section one hundred seven, article four, chapter forty-six-a of this code or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code; (c) a credit union, as defined in section one, article ten, chapter thirty-one of this code, may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section sixteen, article ten, chapter thirty-one of this code, or by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code; and (d) any other lender may contract for and receive a loan finance charge not exceeding the charge or interest permitted by the provisions of section five, five-a or five-b, article six, chapter forty-seven of this code.

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

(3) If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and
(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven of this article.

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

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

(6) Notwithstanding subsection (5) of this section, a resident lender who is the assignee of a consumer credit sales contract from a credit grantor in another state, and said contract was executed in such other state to finance a retail purchase made by the consumer when the consumer was in that other state, may collect, receive or enforce the sales finance charge and other charges including late fees provided in said contract under the laws of the state where executed. Such charge shall not be deemed to be usurious or in violation of the provisions 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) When a consumer credit sale or consumer loan is precomputed all payments on account shall be applied to installments in the order in which they fall due, except as provided in subsection (3), section one hundred twelve of this article. When the total amount is payable in
substantially equal consecutive monthly installments, the portion of the sales finance charge or loan finance charge attributable to any particular monthly installment period shall be that proportion of the sales finance charge or loan finance charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78").

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

(3) Upon prepayment in full of a precomputed or nonprecomputed consumer credit sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise, except where the loan is a purchase money loan secured by a first lien mortgage on residential property, or is made by a federally-insured depository institution, the creditor shall rebate to the consumer that portion of the unearned prepaid finance charges attributable to loan or credit investigations fees, origination fees or points in the manner specified in subsection (c), section five-d, article six, chapter forty-seven of this code: Provided, That no rebate of less than one dollar need be made: Provided, however, That if the loan was made in furtherance of aiding or abetting a person to whom the loan is assigned, evade this rebate, then the rebate required herein shall apply.

(4) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated for any reason and
judgment is obtained, the debtor is entitled to the same rebate as if the payment had been made on the date judgment is entered and such judgment shall bear 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 commissioner authorizing him to make regulated consumer loans, he shall not engage in the business of:

4 (1) Making regulated consumer loans; or

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

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

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

12 (2) No license shall be issued to a supervised financial organization other than to one primarily engaged in the business of making consumer loans through offices located within this state, or to one licensed under the provisions of the West Virginia secondary mortgage loan act as contained in article seventeen, chapter thirty-one of this code, or to any banking institution as defined by the provisions of section two, article one, chapter thirty-one of this code. No license will be granted to any office located outside this state: Provided, That the
limitation of licensing contained in this subsection shall not prevent any supervised financial organization from making regulated consumer loans when the applicable state or federal statute, law, rule or regulation permits. No license shall be issued to any person unless the commissioner, upon investigation, finds that the financial responsibility, experience, character and fitness of the applicant, and of the members thereof (if the applicant is a copartnership or association) and of the directors thereof (if the applicant is a corporation), are such as to command the confidence of the community and to warrant belief that the business will be operated honestly, fairly and efficiently, within the purposes of this chapter, and the applicant has available for the operation of the business at least ten thousand dollars in capital and has, for each specified location of operation assets of at least two thousand dollars.

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

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

(5) Upon giving the commissioner at least fifteen days' prior written notice, a licensee may: (a) Change the location of any place of business located within a munic-
ipality to any other location within that same municipal-
ity; or (b) change the location of any place of business
located outside of a municipality to a location no more
than five miles from the originally licensed location, but
in no case may a licensee move any place of business
located outside a municipality to a location within a
municipality. A licensee may not move the location of
any place of business located within a municipality to
any other location outside of that municipality.

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

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

(8) A licensee must be incorporated under the laws of
this state. The licensee may, however, be a subsidiary of
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
make regulated consumer loans an order to show cause
why his license should not be revoked or should not be
suspended for a period not in excess of six months. The
order shall state the place for a hearing and set a time
for the hearing that is no less than ten days from the date
of the order. After the hearing the commissioner shall
revoke or suspend the license if he finds that:

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

(b) The licensee has failed to remit their required
annual assessment, or to maintain their status as a
business in good standing with the office of the secretary
of state, notwithstanding notification in writing by the
commissioner sent by certified mail to the licensee’s last
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
(7) No revocation, suspension, forfeiture or relinquishment of a license shall impair or affect the obligation of any preexisting lawful contract between the licensee and any consumer.

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

§46A-4-104. Records; annual reports.

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

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

§46A-4-105. Examinations; assessments and investigations.
(1) The commissioner shall examine at least every eighteen months the loans, business and records of every licensee. In addition, for the purpose of discovering violations of this article or securing information lawfully required, the attorney general or the commissioner may at any time investigate the loans, business and records of any regulated consumer lender. For these purposes he shall have free and reasonable access to the offices, places of business and records of the lender.

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

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

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

(5) The commissioner of banking shall charge and collect from each regulated consumer lender and pay into a special revenue account in the state treasury for the department of banking an annual assessment payable
on the first day of July computed upon the total out-
standing gross loan balances and installment sales
contract balances net of unearned interest as is set out in
section eight, article two, chapter thirty-one-a of this
code.

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

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

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

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

(4) Where the loan is nonrevolving and is greater than
two thousand dollars, the permitted finance charge may
include a charge of not more than a total of two percent
of the amount financed for any origination fee, points, or
investigation fee: Provided, That where any loan, revolv-
ing or nonrevolving, is secured by real estate the permit-
ted finance charge may include a charge of not more
than a total of five percent of the amount financed for
any origination fee, points or investigation fee. In any
loan secured by real estate, such charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within twenty-four months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method, or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of such charges shall be permissible and shall not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended shall for purposes of this subsection constitute the amount financed. Other than herein provided, no points, origination fee, investigation fee or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by section one hundred nine, article three, chapter forty-six-a of this code, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other such charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

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

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

(5) For the purposes of this section, the term of a loan commences on the date the loan is made. Differences in the lengths of months are disregarded and a day may be counted as one thirtieth of a month. Subject to classifi-
cations and differentiations the licensee may reasonably establish, a part of a month in excess of fifteen days may be treated as a full month if periods of fifteen days or less are disregarded and if that procedure is not consistently used to obtain a greater yield than would otherwise be permitted.

(6) With respect to a revolving loan account:

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

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

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

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

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

(c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid balance on the date as of which the loan finance charge is applied, the licensee may contract for and receive a charge not exceeding fifty cents if the billing cycle is monthly or longer, or the pro rata part of fifty cents which bears the same relation to fifty cents as the number of days in the billing cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this subdivision if the lender has made an annual charge for 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.
§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; prohibitions as to renegotiation of loan discharged in bankruptcy.

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

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

3. Other than for a purchase money lien, no regulated consumer lender may take a security interest in household goods in the possession and use of the borrower. Where federal law permits a security interest in certain nonpurchase items deemed not to be household goods, the security agreement creating such security interest must be in writing, signed in person by the borrower, and if the borrower is married, signed in person by both husband and wife: Provided, That the signature of both husband and wife shall not be required when they have
been living separate and apart for a period of at least
five months prior to the making of such security agree-
ment. A security interest taken in violation of this
subsection is void.

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

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

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

(2) A licensee may purchase, hold and convey real
property as follows:
(a) As shall be necessary for the convenient transaction of its business;

(b) As is mortgaged to it in good faith by way of security for loans made by or money due to such regulated consumer lender;

(c) As is conveyed to it in satisfaction of debts previously contracted in the course of its dealings;

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

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

§46A-4-110a. Prohibited conduct.

(1) A regulated consumer lender shall not:

(a) Accept or receive deposits or sell or offer for sale its secured or unsecured evidences or certificates of indebtedness; or

(b) Pay any fees, bonuses, commissions, rewards or other consideration to any person, firm or corporation for the privilege of using any plan of operation, scheme or device for the organization or carrying on of business under this article, or the use of any name, trademark or copyright to be so used: Provided, That nothing herein prevents a regulated consumer lender from agreeing in connection with a loan to pay a broker fee, finders fee or dealer participation fee, or to split the origination fee or points paid: Provided, however, That the fee or fee split is disclosed to the borrower and where proper is included in the finance charge.
(2) Unless preempted by federal law, no consumer loan by a regulated consumer lender may contain any scheduled balloon payment as set forth in this chapter. Nor may any regulated consumer lender loan contain terms of repayment which result in negative amortization: Provided, That nothing herein prevents unequal payment schedules resulting from a variable rate loan or a revolving line of credit.

(3) A regulated consumer lender may not make revolving loans for the retail purchase of consumer goods and services by use of a lender credit card.

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

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

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

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

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

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

"If you do agree to consolidate your existing obliga-
tion, you will be paying an annual percentage rate of ___% on the existing balance of $____, instead of the rate of ___% which you are now paying.

I acknowledge receipt of this information ________

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

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

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

(e) The commissioner may provide and require a modified disclosure form for similar transactions involving adjustable or variable rates, and where applicable, prior to the loan's execution, the borrower must be given conspicuous written notice of the provisions of subdivisions (b) and (c) of this subsection, together with the disclosure form as may be required by this section; and

(f) Nothing in this section shall prohibit the receipt of goods or services by the borrower at the time the consolidated loan agreement is made, nor shall this section prohibit or pertain to any loan where the refinancing results in the consumer paying a lower finance charge rate.

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

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

1 All authority vested by this chapter in the commissioner shall be deemed to be in addition to, and not in limitation of, the authority vested in the commissioner of banking by provisions contained in other chapters of this code.

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

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

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

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.


1 (1) If a creditor has violated the provisions of this
chapter applying to collection of excess charges, security
in sales and leases, disclosure with respect to consumer
leases, receipts, statements of account and evidences of
payment, limitations on default charges, assignment of
earnings, authorizations to confess judgment, illegal,
fradulent or unconclsonable conduct, any prohibited
debt collection practice, or restrictions on interest in
land as security, assignment of earnings to regulated
consumer lender, security agreement on household goods
for benefit of regulated consumer lender, and renegotia-
tion by regulated consumer lender of loan discharged in
bankruptcy, the consumer has a cause of action to
recover actual damages and in addition a right in an
action to recover from the person violating this chapter
a penalty in an amount determined by the court not less
than one hundred dollars nor more than one thousand
dollars. With respect to violations arising from consumer
credit sales or consumer loans made pursuant to revolv-
ing charge accounts or revolving loan accounts, or from
sales as defined in article six of this chapter, no action
pursuant to this subsection may be brought more than
four years after the violations occurred. With respect to
violations arising from other consumer credit sales or
consumer loans, no action pursuant to this subsection
may be brought more than one year after the due date of
the last scheduled payment of the agreement.

(2) If a creditor has violated the provisions of this
chapter respecting authority to make regulated con-
sumer loans, the loan is void and the consumer is not
obligated to pay either the principal or the loan finance
charge. If he has paid any part of the principal or of the
finance charge, he has a right to recover in an action the
payment from the person violating this chapter or from
an assignee of that person's rights who undertakes direct
collection of payments or enforcement of rights arising
from the debt. With respect to violations arising from
regulated consumer loans made pursuant to revolving
loan accounts, no action pursuant to this subsection may
be brought more than four years after the violation
(3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the consumer's obligation by the amount of the excess charge. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against the consumer arising from the debt.

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

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

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge, the employee
may within ninety days bring a civil action for recovery
of wages lost as a result of the violation and for an order
requiring the reinstatement of the employee. Damages
recoverable shall not exceed lost wages for six weeks.

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

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

§46A-5-103. Willful violations.

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

(2) A person who willfully engages in the business of
making regulated consumer loans without a license in
violation of the provisions of article four of this chapter
applying to authority to make regulated consumer loans
shall be guilty of a misdemeanor, and, upon conviction,
shall be fined not more than five thousand dollars, or
imprisoned not more than one year, or both fined and
(3) A person who willfully engages in the business of making consumer credit sales or consumer loans, or of taking assignments of rights against consumers arising therefrom and undertakes direct collection of payments or enforcement of these rights, without complying with the provisions of section one hundred fifteen, article seven of this chapter, concerning notification, shall be guilty of a misdemeanor, and, upon conviction, shall be fined not more than one hundred dollars.

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

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

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

(2) If the attorney general receives a complaint or other
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information concerning noncompliance with this chapter
by any supervised financial organization, he shall inform
the official or agency having supervisory authority over
the organization concerned. The attorney general may
request information about financial organizations from
the officials or agencies supervising them.

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

§46A-7-115. Notification.

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

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

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

d) Address of all of its offices, if any, in this state at which consumer loans are made, or in the case of a lender credit card, a description of its affiliation to any store chain, or national or regional credit card acceptance system, or in the case of a person taking assignments of obligations, the offices or places of business within this state at which business is transacted;

e) If consumer credit sales or consumer loans, including loans secured by real property, are made otherwise than at its retail store or office in this state, a brief description of the manner in which they are made;

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

g) Whether regulated consumer loans are made.

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

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

ARTICLE 8. OPERATIVE DATE AND PROVISIONS FOR TRANSITION.

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

(1) Except as otherwise provided in this section, this
chapter shall become operative at 12:01 a. m. on the first
day of September, one thousand nine hundred seventy-
four.

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

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

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

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

(c) All consumer credit transactions made before this
chapter becomes operative insofar as this chapter limits
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.

(a) Upon prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction repayable according to its original terms over a period of thirty-six months or less, the creditor shall rebate that portion of the finance charge attributable to the prepaid periodic installment periods. When the total is payable in substantially equal consecutive monthly installments, the portion of such finance charge attributable to any particular monthly installment period shall be that proportion of charge originally contracted for, as the balance scheduled to be outstanding on the last day of the monthly installment period before deducting the payment, if any, scheduled to be made on that day bears to the sum of all the monthly installment balances under the original schedule of payments. (This method of allocation is the sum of the digits method, commonly referred to as the "Rule of 78"). For prepayment in full of a precomputed loan, credit sale or transaction, forbearance or similar transaction: (i) Repayable according to its original terms over a period of thirty-six months or less; (ii) in which unequal or irregular or other than substantially equal consecutive monthly installments are payable, the commissioner of banking shall prescribe by rule the method or procedure for the allocation of charges and the calculation or rebates consistent with the Rule of 78.

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

(c) Unearned prepaid finance charges upon prepay-
ment includes all prepaid finance charges for points,
loan or credit origination fees or loan or credit investiga-
tion fees retained by the lender or creditor or its affili-
ates: Provided, That: (i) In calculating the rebate for a
consumer loan or credit sale unsecured by real property
where such prepaid finance charges have been imposed,
the lender or creditor may deduct such charges up to a
maximum of two percent of the amount financed; and (ii)
in calculating the rebate for a consumer loan or credit
sale secured by real property where such prepaid finance
charges have been imposed, the lender or creditor may
deduct such charges up to a maximum of five percent of
the amount financed: Provided, however, That no such
deduction totaling more than five percent of the amount
financed may be made by the same lender within a
twenty-four month period as a result of a refinancing.
Upon prepayment in full of a consumer loan or credit
sale, any unearned prepaid finance charges may be
rebated by using the Rule of 78 where the original loan
term is thirty-six months or less. Where the original loan
term is greater than thirty-six months, any such charges
shall be rebated by using the actuarial method. To the
extent that this section overrides the preemption on
limiting points and other such charges on first lien
residential mortgages for nonpurchase money loans
contained in Section 501 of the United States Depository
Institutions Deregulation and Monetary Control Act of
1980, the state law limitations contained in this section
shall apply: Provided further, That this subsection does
not apply to loans made by federally-insured depository
institutions.
(d) For purposes of the rebate of unearned finance charges as required by this section, a prepayment in full shall include repayment by a new loan, extension of credit, refinancing, consolidation, forbearance or otherwise. The term "loan or credit investigation fees" does not include the reasonable costs of credit reports paid to third parties as part of the bona fide closing costs in real estate transactions, where such costs are not included as part of the finance charge.

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

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

(g) For consumer credit sales or consumer loans subject to the provisions of chapter forty-six-a of this code the provisions of article five of said chapter, govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum rate allowed under the provisions of this section. In all other instances, the provisions of this article govern the imposition of liability and penalties for charging interest or a finance charge in excess of the maximum allowed under this section.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Signature]
Chairman Senate Committee

[Signature]
Chairman House Committee

Originated in the Senate.
In effect ninety days from passage.

[Signature]
Clerk of the Senate

[Signature]
Clerk of the House of Delegates

[Signature]
President of the Senate

[Signature]
Speaker House of Delegates

The within is approved this the ______ day of _______ April, 1996.

[Signature]
Governor