

# **WEST VIRGINIA LEGISLATURE**

## **2018 REGULAR SESSION**

**Introduced**

### **House Bill 4418**

BY DELEGATES FLEISCHAUER, ROHRBACH, FLUHARTY,  
LOVEJOY, WILLIAMS, SPONAUGLE, CAMPBELL, PYLES,  
HORNBuckle, STORCH AND QUEEN

[Introduced February 5, 2018; Referred  
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §46A-2-122 of the Code of West Virginia, 1931, as amended; and  
 2 to amend and reenact §46A-6-101, §46A-6-102 and §46A-6-109 of said code, all relating  
 3 to the Consumer Credit and Protection Act; and declaring that its provisions apply to  
 4 residential leases, landlords, tenants and residential rental fees a landlord may charge in  
 5 a general lease of residential real property.

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

## **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

### **§46A-2-122. Definitions.**

1 For the purposes of this section and §46A-2-123, §46A-2-124, §46A-2-125, §46A-2-126,  
 2 §46A-2-127, §46A-2-128, §46A-2-129 and §46A-2-129a of this article, the following terms shall  
 3 have the following meanings:

4 (a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.

5 (b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising  
 6 out of a transaction, including a transaction for a general lease of residential real property, in  
 7 which the money, property, insurance or service which is the subject of the transaction is primarily  
 8 for personal, family or household purposes, whether ~~or not~~ such obligation has been reduced to  
 9 judgment.

10 (c) "Debt collection" means any action, conduct or practice of soliciting claims for collection  
 11 or in the collection of claims owed or due or alleged to be owed or due by a consumer.

12 (d) "Debt collector" means any person or organization engaging directly or indirectly in  
 13 debt collection. The term includes any person or organization who sells or offers to sell forms  
 14 which are, or are represented to be, a collection system, device or scheme, and are intended or  
 15 calculated to be used to collect claims. The term excludes attorneys representing creditors  
 16 provided the attorneys are licensed in West Virginia or otherwise authorized to practice law in the  
 17 State of West Virginia and handling claims and collections in their own name as an employee,  
 18 partner, member, shareholder or owner of a law firm and not operating a collection agency under

19 the management of a person who is not a licensed attorney.

## **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

### **§46A-6-101. Legislative declarations; statutory construction.**

1 (1) The Legislature hereby declares that the purpose of this article is to complement the  
2 body of federal law governing unfair competition and unfair, deceptive and fraudulent acts or  
3 practices in order to protect the public and foster fair and honest competition. It is the intent of the  
4 Legislature that, in construing this article, the courts be guided by the policies of the Federal Trade  
5 Commission and interpretations given by the Federal Trade Commission and the federal courts  
6 to Section 5(a)(1) of the Federal Trade Commission Act (15 U. S. C. § 45(a)(1)), as from time to  
7 time amended, and to the various other federal statutes dealing with the same or similar matters.  
8 To this end, this article shall be liberally construed so that its beneficial purposes may be served.

9 (2) It is, however, the further intent of the Legislature that this article not be construed to  
10 prohibit acts or practices which are reasonable in relation to the development and preservation of  
11 business or which are not injurious to the public interest, nor does this article repeal by implication  
12 the provisions of §47-11-1 et seq., §47-11A-1 et seq., and §47B-11-1 et seq. of this code.

13 (3) It is however, the further intent of the Legislature that this article be construed to apply  
14 to general leases, landlords, tenants and residential rental fees a landlord may charge a general  
15 lease of residential real property.

### **§46A-6-102. Definitions.**

1 When used in this article, the following words, terms and phrases, and any variations  
2 thereof required by the context, shall have the meaning ascribed to them in this article except  
3 where the context indicates a different meaning:

4 (1) "Advertisement" means the publication, dissemination or circulation of any matter, oral  
5 or written, including labeling, which tends to induce, directly or indirectly, any person to enter into  
6 any obligation, sign any contract or acquire any title or interest in any goods or services and  
7 includes every word device to disguise any form of business solicitation by using such terms as

8 "renewal", "invoice", "bill", "statement" or "reminder" to create an impression of existing obligation  
9 when there is none or other language to mislead any person in relation to any sought-after  
10 commercial transaction.

11 (2) "Consumer" means a natural person to whom a sale or lease is made in a consumer  
12 transaction and a "consumer transaction" means a sale or lease to a natural person or persons  
13 for a personal, family, household or agricultural purpose and includes a general lease of  
14 residential real property.

15 (3) "Cure offer" means a written offer of one or more things of value, including, but not  
16 limited to, the payment of money, that is made by a merchant or seller and that is delivered by  
17 certified mail to a person claiming to have suffered a loss as a result of a transaction or to the  
18 attorney for such person.

19 (4) "Merchantable" means, in addition to the qualities prescribed in §46-2-314 of this code,  
20 that the goods conform in all material respects to applicable state and federal statutes and  
21 regulations establishing standards of quality and safety of goods and, in the case of goods with  
22 mechanical, electrical or thermal components, that the goods are in good working order and will  
23 operate properly in normal usage for a reasonable period of time.

24 (5) "Sale" includes any sale, offer for sale or attempt to sell any goods for cash or credit  
25 or any services or offer for services for cash or credit.

26 (6) "Trade" or "commerce" means the advertising, offering for sale, sale or distribution of  
27 any goods or services and shall include any trade or commerce, directly or indirectly, affecting  
28 the people of this state.

29 (7) "Unfair methods of competition and unfair or deceptive acts or practices" means and  
30 includes, but is not limited to, any one or more of the following:

31 (A) Passing off goods or services as those of another;

32 (B) Causing likelihood of confusion or of misunderstanding as to the source, sponsorship,  
33 approval or certification of goods or services;

34 (C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or  
35 association with or certification by another;

36 (D) Using deceptive representations or designations of geographic origin in connection  
37 with goods or services;

38 (E) Representing that goods or services have sponsorship, approval, characteristics,  
39 ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship,  
40 approval, status, affiliation or connection that he does not have;

41 (F) Representing that goods are original or new if they are deteriorated, altered,  
42 reconditioned, reclaimed, used or secondhand;

43 (G) Representing that goods or services are of a particular standard, quality or grade, or  
44 that goods are of a particular style or model if they are of another;

45 (H) Disparaging the goods, services or business of another by false or misleading  
46 representation of fact;

47 (I) Advertising goods or services with intent not to sell them as advertised;

48 (J) Advertising goods or services with intent not to supply reasonably expectable public  
49 demand, unless the advertisement discloses a limitation of quantity;

50 (K) Making false or misleading statements of fact concerning the reasons for, existence of  
51 or amounts of price reductions;

52 (L) Engaging in any other conduct which similarly creates a likelihood of confusion or of  
53 misunderstanding;

54 (M) The act, use or employment by any person of any deception, fraud, false pretense,  
55 false promise or misrepresentation, or the concealment, suppression or omission of any material  
56 fact with intent that others rely upon such concealment, suppression or omission, in connection  
57 with the sale or advertisement of any goods or services, whether or not any person has in fact  
58 been misled, deceived or damaged thereby;

59 (N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to

60 be advertised, printed, displayed, published, distributed or broadcast in any manner, any  
61 statement or representation with regard to the sale of goods or the extension of consumer credit  
62 including the rates, terms or conditions for the sale of such goods or the extension of such credit,  
63 which is false, misleading or deceptive or which omits to state material information which is  
64 necessary to make the statements therein not false, misleading or deceptive;

65 (O) Representing that any person has won a prize, one of a group of prizes or any other  
66 thing of value if receipt of the prize or thing of value is contingent upon any payment of a service  
67 charge, mailing charge, handling charge or any other similar charge by the person or upon  
68 mandatory attendance by the person at a promotion or sales presentation at the seller's place of  
69 business or any other location: *Provided*, That a person may be offered one item or the choice of  
70 several items conditioned on the person listening to a sales promotion or entering a consumer  
71 transaction if the true retail value and an accurate description of the item or items are clearly and  
72 conspicuously disclosed along with the person's obligations upon accepting the item or items;  
73 such description and disclosure shall be typewritten or printed in at least eight point regular type,  
74 in upper or lower case, where appropriate; or

75 (P) Violating any provision or requirement of article six-b of this chapter.

76 (8) "Warranty" means express and implied warranties described and defined in §46-2-313,  
77 §46-2-314, and §46-2-315 of this code and expressions or actions of a merchant which assure  
78 the consumer that the goods have described qualities or will perform in a described manner.

**§46A-6-109. The use of plain language in consumer transactions.**

1 (a) Every written agreement entered into by a consumer after April 1, 1982, or the  
2 purchase or lease of goods or services in consumer transactions, whether for the rental of space  
3 to be occupied for residential purposes or for the sale of goods or services for personal, family,  
4 household or agricultural purposes or a general lease of residential real property, must: (1) Be  
5 written in a clear and coherent manner, using words with common and everyday meanings; (2)  
6 use type of an easily readable size and ink which adequately contrasts with the paper; and (3) be

7 appropriately organized and captioned by its various sections to be easily understood.

8 (b) A violation of the provisions of this section ~~shall~~ may not render any agreement void or  
9 voidable: *Provided*, That if a consumer at the time of entering into a consumer transaction or  
10 anytime thereafter, requests of the other party thereto that the agreement evidencing the  
11 consumer transaction be changed or written in a manner to conform with this section, and that  
12 request is refused, then a consumer ~~shall have~~ has a cause of action to require a consumer  
13 agreement not in conformity with the provisions of this section to be reformed. This section ~~shall~~  
14 may not be construed to prohibit the use of words or phrases specifically required or specifically  
15 permitted by state or federal law, rule or regulation. This section ~~shall~~ may not be construed to  
16 preclude a consumer from asserting a claim or defense which would have been available to the  
17 consumer if this provision were not in effect. A consumer may not waive the rights provided by  
18 this section, and any attempted waiver ~~shall be~~ is void.

NOTE: The purpose of this bill is to declare that the provisions of the Consumer Credit and Protection Act apply to general leases, landlords, tenants and residential rental fees a landlord may charge a general lease of residential real property.

The West Virginia Supreme Court of Appeals held to the contrary in the case of *Morrissey v Copper Beech Townhouses*, 806 S.E. 2d 172 (W.Va. Oct. 12, 2017), citing, basically, the absence of specific legislative intent that this Act apply to general leases of residential real property.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.