

H. B. 4274

(BY DELEGATES MOORE, REYNOLDS AND AZINGER)

[Introduced January 24, 2012; referred to the
Committee on Banking and Insurance then Finance.]

A BILL to amend and reenact §46A-4-103 of the Code of West Virginia, 1931, as amended, relating to the authority of the Commissioner of Banking over consumer lender licensees; providing for a penalty of not more than \$2,000 for each day a violation exists; and providing for hearings.

Be it enacted by the Legislature of West Virginia:

That §46A-4-103 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 4. REGULATED CONSUMER LENDERS.

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

- 1 (†) (a) The commissioner may issue to a person licensed
- 2 to make regulated consumer loans an order to show cause
- 3 why his or her license should not be revoked or should not be

4 suspended for a period not in excess of six months. The
5 order shall state the place for a hearing and set a time for the
6 hearing that is no less than ten days from the date of the
7 order. After the hearing the commissioner shall revoke or
8 suspend the license if he or she finds that:

9 ~~(a)~~ (1) The licensee has repeatedly and willfully violated
10 this chapter or any rule or order lawfully made or issued
11 pursuant to this article;

12 ~~(b)~~ (2) The licensee has failed to remit their required
13 annual assessment, or to maintain their status as a business in
14 good standing with the office of the Secretary of State,
15 notwithstanding notification in writing by the commissioner
16 sent by certified mail to the licensee's last known address
17 providing for thirty days to rectify such failure;

18 ~~(c)~~ (3) The licensee has forfeited their license by failing
19 to remain open for regulated consumer lending business in
20 conformity with the rules or order of the commissioner; or

21 ~~(d)~~ (4) Facts or conditions exist which would clearly have
22 justified the commissioner in refusing to grant a license had

23 these facts or conditions been known to exist at the time the
24 application for the license was made.

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

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

37 ~~(4)~~ (d) Nothing in this section limits the authority of the
38 commissioner to take action against a regulated consumer
39 lender pursuant to chapter thirty-one-a of this code.

40 ~~(5)~~ (e) Whenever the commissioner revokes or suspends
41 a license, he or she shall enter an order to that effect and

42 forthwith notify the licensee of the revocation or suspension.
43 Within five days after the entry of the order he or she shall
44 mail by registered or certified mail or deliver to the licensee
45 a copy of the order and the findings supporting the order.

46 ~~(6)~~ (f) Any person holding a license to make regulated
47 consumer loans may relinquish the license by notifying the
48 commissioner in writing of its relinquishment, but this
49 relinquishment shall not affect his or her liability for acts
50 previously committed.

51 ~~(7)~~ (g) No revocation, suspension, forfeiture or
52 relinquishment of a license shall impair or affect the
53 obligation of any preexisting lawful contract between the
54 licensee and any consumer.

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

60 (i) In addition to the authority authorized by this section,
61 the commissioner may impose a fine or penalty not exceeding
62 \$2,000 upon any regulated consumer lender required to be
63 licensed under this article who violates this chapter, chapter
64 thirty-one-a or any other law or rule that the Division of
65 Banking is authorized to enforce with respect to companies
66 licensed under this article. For the purposes of this section,
67 each day, excluding Sundays and holidays, that an unlicensed
68 person engages in the business or holds himself or herself out
69 to the general public as a licensed consumer lender is a
70 separate violation and, as such, each day is subject to the
71 maximum fine of \$2,000 per day. Any fine or penalty imposed
72 under this subsection may be contested by the licensee
73 pursuant to article five, chapter twenty-nine-a of this code.

NOTE: The purpose of this bill is to expand the authority of the Commissioner of Banking over regulated consumer lender licensees. The bill provides for a penalty of not more than \$2,000 for each day a violation exists and for hearings.

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