

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 547**

BY SENATORS GAUNCH, CARMICHAEL AND CLINE

[Introduced February 8, 2016;

Referred to the Committee on Banking and Insurance; and

then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931,  
 2 as amended, all relating to requirements for making consumer loans in West Virginia; and  
 3 adjusting limits on consumer loans in West Virginia for which certain finance charges can  
 4 be imposed.

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

1 That §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931, as amended, be  
 2 amended and reenacted, all to read as follows:

**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 or her  
 2 to make regulated consumer loans, he ~~shall~~ or she may not engage in the business of:

- 3 (1) Making regulated consumer loans; or
- 4 (2) Taking assignments of ~~and~~ or undertaking direct collection of payments from or  
 5 enforcement of rights against consumers arising from regulated consumer loans.

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

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

4 (2) On a loan of ~~\$2,000~~ \$5,000 or less which is unsecured by real property, the loan  
 5 finance charge, calculated according to the actuarial method, may not exceed thirty-one percent  
 6 per year on the unpaid balance of the principal amount.

7 (3) On a loan of greater than ~~\$2,000~~ \$5,000 or which is secured by real property, the loan  
 8 finance charge, calculated according to the actuarial method, may not exceed twenty-seven  
 9 percent per year on the unpaid balance of the principal amount: *Provided*, That the loan finance  
 10 charge on any loan greater than ~~\$40,000~~ \$15,000 may not exceed eighteen percent per year on  
 11 the unpaid balance of the principal amount. Loans made by regulated consumer lenders ~~shall be~~

12 are subject to the restrictions and supervision set forth in this article irrespective of their rate of  
13 finance charges.

14 (4) Where the loan is nonrevolving and is greater than ~~\$2,000~~ \$5,000, the permitted  
15 finance charge may include a charge of not more than a total of two percent of the amount  
16 financed for any origination fee, points or investigation fee: *Provided*, That where any loan,  
17 revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a  
18 charge of not more than a total of five percent of the amount financed for any origination fee,  
19 points or investigation fee. In any loan secured by real estate, the charges may not be imposed  
20 again by the same or affiliated lender in any refinancing of that loan made within twenty-four  
21 months thereof, unless these earlier charges have been rebated by payment or credit to the  
22 consumer under the actuarial method or the total of the earlier and proposed charges does not  
23 exceed five percent of the amount financed. Charges permitted under this subsection shall be  
24 included in the calculation of the loan finance charge. The financing of the charges ~~may be~~ is  
25 permissible and ~~may~~ does not constitute charging interest on interest. In a revolving home equity  
26 loan, the amount of the credit line extended ~~shall~~ is, for purposes of this subsection, ~~constitute~~  
27 the amount financed. Other than herein provided, no points, origination fee, investigation fee or  
28 other similar prepaid finance charges attributable to the lender or its affiliates may be levied.  
29 Except as provided for by section one hundred nine, article three of this chapter, no additional  
30 charges may be made; nor may any charge permitted by this section be assessed unless the loan  
31 is made. To the extent that this section overrides the preemption on limiting points and other  
32 charges on first lien residential mortgages contained in Section 501 of the United States  
33 Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations  
34 contained in this section ~~shall~~ apply. If the loan is precomputed:

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

37 (b) The effect of prepayment, refinancing or consolidation is governed by the provisions

38 on rebate upon prepayment, refinancing or consolidation contained in section one hundred  
39 eleven, article three of this chapter.

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

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

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

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

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

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

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

59 (c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid  
60 balance on the date as of which the loan finance charge is applied, the licensee may contract for  
61 and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer or the pro rata part  
62 of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to  
63 thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this

64 subdivision if the lender has made an annual charge for the same period as permitted by the  
65 provisions on additional charges.

66 (7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this  
67 section, a regulated consumer lender may on a loan not secured by real estate of ~~\$2,000~~ \$5,000  
68 or less contract for and receive interest at a rate of up to thirty-one percent per year on the unpaid  
69 balance of the principal amount, together with a nonrefundable loan processing fee of not more  
70 than two percent of the amount financed: *Provided*, That no other finance charges are imposed  
71 on the loan. The processing fee permitted under this subsection shall be included in the  
72 calculation of the loan finance charge and the financing of the fee shall be permissible and may  
73 not constitute charging interest on interest.

74 (8) Notwithstanding any contrary provision in this section, a licensed regulated consumer  
75 lender who is the assignee of a nonrevolving consumer loan unsecured by real property located  
76 in this state, which loan contract was applied for by the consumer when he or she was in another  
77 state, and which was executed and had its proceeds distributed in that other state, may collect,  
78 receive and enforce the loan finance charge and other charges, including late fees, provided in  
79 the contract under the laws of the state where executed: *Provided*, That the consumer was not  
80 induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state  
81 source affiliated with the assignee in an effort to evade the consumer protections afforded by this  
82 chapter. Such charges may not be considered to be usurious or in violation of the provisions of  
83 this chapter or any other provisions of this code.

NOTE: The purpose of this bill is to modify requirements for making consumer loans in West Virginia and adjust limits on consumer loans in West Virginia for which certain finance charges may be imposed.

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