

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 612**

BY SENATORS GAUNCH AND ASHELY

[Introduced February 17, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §46A-2-115 of the Code of West Virginia, 1931, as amended,  
 2 relating to limits on charges a secured lender may recover from a consumer borrower  
 3 upon default.

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

1 That §46A-2-115 of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 2. CONSUMER CREDIT PROTECTION.**

**§46A-2-115. Limitation on default charges.**

1 (a) Except for reasonable expenses including costs and fees authorized by statute  
 2 incurred in realizing on a security interest, the agreement with respect to a consumer credit sale  
 3 or a consumer loan may not provide for charges as a result of default by the consumer other than  
 4 those authorized by this chapter.

5 ~~(b) A consumer loan secured by real property: (1) Originated by a bank or savings and~~  
 6 ~~loan association, or an affiliate, and not solicited by an unaffiliated broker; (2) held by a federal~~  
 7 ~~home loan bank, the federal national mortgage association, the federal home loan mortgage~~  
 8 ~~corporation, the government national mortgage association, the West Virginia Housing~~  
 9 ~~Development Fund; or (3) insured or guaranteed by the farmers home administration, the~~  
 10 ~~veteran's administration, department of housing and urban development, which includes in the~~  
 11 ~~loan agreement a reinstatement period beginning with the trustee notice of foreclosure and ending~~  
 12 ~~prior to foreclosure sale, may, in addition to those authorized by this chapter, permit the recovery~~  
 13 ~~of the following actual reasonable reinstatement period expenses paid or owed to third parties:~~  
 14 ~~(i) Publication costs paid to the publisher of the notice; (ii) appraisal fee when required by the~~  
 15 ~~circumstances or by a regulatory authority and only after the loan has been referred to a trustee~~  
 16 ~~for foreclosure; (iii) title check and lienholder notification fee not to exceed \$200, as adjusted from~~  
 17 ~~time to time by the increase in the consumer price index for all consumers published by the United~~  
 18 ~~States Department of Labor; and (iv) certified mailing costs~~ With respect to this subsection: (1)

19 The phrase “consumer loan” means a consumer loan secured by real property: (A) Originated by  
20 a bank or savings and loan association, or an affiliate, not solicited by an unaffiliated broker; (B)  
21 Held by a federal home loan bank, the federal National Mortgage Association, the federal Home  
22 Loan Mortgage Corporation, the Government National Mortgage Association, the West Virginia  
23 Housing Development Fund; or (C) Insured or guaranteed by the Farmers Home Administration,  
24 the Veteran's Administration, or Department of Housing and Urban Development.

25 (2) Except as provided in subdivision (3) of this subsection, the agreements that evidence  
26 a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B)  
27 an appraisal fee; (C) all costs incidental to a title examination including, without limitation,  
28 professional fees, fees and expenses incident to travel, and copies of real estate and tax records;  
29 (D) expenses incidental to notice made to lienholders and other parties and entities having an  
30 interest in the real property to be sold; (E) certified mailing costs; and (F) all costs, fees and  
31 expenses incurred by a trustee incident to a pending trustee's sale of the real property securing  
32 the consumer loan.

33 (3) For purposes of the charges expressly authorized by this subsection, no charge may  
34 be assessed and collected from a consumer unless: (A) Each charge is reasonable in its amount;  
35 B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each  
36 charge is actually incurred after the last day allowed for cure of the consumer's default, and before  
37 the consumer reinstates the consumer loan or otherwise cures the default; (D) the holder of the  
38 consumer loan and the consumer have agreed to cancel any pending trustee's sale or other  
39 foreclosure on the real property securing the consumer loan; and (E) in the case of an appraisal  
40 fee, no appraisal fee has been charged to the consumer within the preceding six months.

41 (c) All amounts paid to a creditor arising out of any consumer credit sale or consumer loan  
42 shall be credited upon receipt against payments due: *Provided*, That amounts received and  
43 applied during a cure period will not result in a duty to provide a new notice of right to cure; and  
44 ~~provided~~ *Provided however, That* ~~further that~~ partial amounts received during the reinstatement

45 period set forth in subsection (b)(3) of this section do not create an automatic duty to reinstate  
46 and may be returned by the creditor. Default charges shall be accounted for separately; those set  
47 forth in subsection (b) arising during ~~such a reinstatement~~ the period prescribed therein may be  
48 added to principal.

49 (d) At least once every twelve months, the holder or servicer of each consumer loan  
50 secured by real property against which the creditor assesses any default charge, and: (1) Not  
51 serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a  
52 federal home loan bank, the federal National Mortgage Association, the federal Home Loan  
53 Mortgage Corporation, the Government National Mortgage Association, the West Virginia  
54 Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home  
55 Administration, the Veteran's Administration, Department of Housing and Urban Development,  
56 shall transmit to the consumer an accounting of every default charge assessed within the previous  
57 twelve months, including the date, amount and nature of the cost.

58 ~~For purposes of this~~ This subsection ~~this notice requirement~~ does not apply to delinquency  
59 charges permitted under sections one hundred twelve and one hundred thirteen, article three of  
60 this chapter; credit line over-the-limit fees; deferral charges permitted under section one hundred  
61 fourteen, article three of this chapter; collateral protection insurance permitted under section one  
62 hundred nine-a, article three of this chapter; and, advances to pay taxes.

63 (e) A provision in violation of this section is unenforceable. The amendments to this section  
64 by Acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall  
65 be retroactively applied to all agreements in effect on the date of passage of the amendments,  
66 except where controversies arising under those agreements are pending prior to the date of  
67 passage of the amendments.

68 (f) Nothing in this section limits the expenses incidental to a trustee's sale of real property  
69 that are recoverable pursuant to section seven, article one, chapter thirty-eight of this code.

NOTE: The purpose of this bill is to clarify and expand the list of charges that are recoverable by a secured lender from a consumer borrower upon the borrower's default.

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