

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 344

BY SENATORS TRUMP, GAUNCH, AZINGER AND BLAIR

[Originating in the Committee on Banking and
Insurance; reported on February 28, 2017]

1 A BILL to amend and reenact §46A-2-115 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §46A-3-111, §46A-3-112 and §46A-3-113 of said code, all relating
3 to consumer credit sales and consumer loans, except credit cards; specifying application
4 of payments and partial payments; modifying provisions related to delinquency charges;
5 permitting certain payments be held in a suspense or unapplied funds account; and stating
6 requirements concerning funds held in a suspense or unapplied funds account.

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; that §46A-3-111, §46A-3-112 and §46A-3-113 of said code be amended and
3 reenacted, all 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 agreements that evidence 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) With respect to this subsection:

6 (1) The phrase "consumer loan" shall mean a consumer loan secured by real property:

7 (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an
8 unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage
9 Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage
10 Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the
11 Farmers Home Administration, the Veteran's Administration or the Department of Housing and
12 Urban Development.

13 (2) Except as provided in subdivision (3) of this subsection, the agreements that evidence
14 a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B)

15 an appraisal fee; (C) all costs incidental to a title examination including professional fees,
16 expenses incident to travel, and copies of real estate and tax records; (D) expenses incidental to
17 notice made to lienholders and other parties and entities having an interest in the real property to
18 be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to
19 a pending trustee's sale of the real property securing the consumer loan.

20 (3) For purposes of the charges expressly authorized by this subsection, no charge may
21 be assessed and collected from a consumer unless: (A) Each charge is reasonable in its amount;
22 (B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each
23 charge is actually incurred after the last day allowed for cure of the consumer's default pursuant
24 to section one hundred six, of this article and before the consumer reinstates the consumer loan
25 or otherwise cures the default; (D) the holder of the consumer loan and the consumer have agreed
26 to cancel any pending trustee's sale or other foreclosure on the real property securing the
27 consumer loan; and (E) in the case of an appraisal fee, no appraisal fee has been charged to the
28 consumer within the preceding six months.

29 (c) All payments made to a creditor in accordance with the terms ~~amounts paid to a creditor~~
30 ~~arising out~~ of any consumer credit sale or consumer loan shall be credited upon receipt against
31 payments due: *Provided*, That amounts received and applied during a cure period will not result
32 in a duty to provide a new notice of right to cure; *Provided, however*, That partial amounts received
33 during the period set forth in subdivision (3) subsection (b) of this section do not create an
34 automatic duty to reinstate and may be returned by the creditor; *Provided further*, That the
35 amendments to this subsection during the 2017 regular session of the Legislature do not apply to
36 credit card payments. Default charges shall be accounted for separately. Those recoverable
37 charges set forth in said subsection arising during the period described therein may be added to
38 principal.

39 (d) At least once every twelve months, the holder or servicer of each consumer loan
40 secured by real property against which the creditor assesses any default charge, and: (1) Not

41 serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a
42 federal home loan bank, the federal National Mortgage Association, the federal Home Loan
43 Mortgage Corporation, the Government National Mortgage Association, the West Virginia
44 Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home
45 Administration, the Veteran's Administration, Department of Housing and Urban Development,
46 shall transmit to the consumer an accounting of every default charge assessed within the previous
47 twelve months, including the date, amount and nature of the cost.

48 This subsection does not apply to delinquency charges permitted under sections one
49 hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit
50 fees; deferral charges permitted under section one hundred fourteen, article three of this chapter;
51 collateral protection insurance permitted under section one hundred nine-a, article three of this
52 chapter; and advances to pay taxes.

53 (e) A provision in violation of this section is unenforceable. The amendments to this section
54 by acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall
55 be retroactively applied to all agreements in effect on the date of passage of the amendments,
56 except where controversies arising under those agreements are pending prior to the date of
57 passage of the amendments.

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

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (1) ~~When a consumer credit sale or consumer loan is precomputed all~~ All payments made
2 to a creditor in accordance with the terms of a precomputed consumer credit sale or consumer
3 loan on account shall be applied to installments in the order in which they fall due, ~~except as~~

4 ~~provided in subsection (3), section one hundred twelve of this article. All payments made to a~~
5 ~~creditor which do not comply with the terms of a precomputed consumer credit sale or consumer~~
6 ~~loan may be held in a suspense or unapplied funds account. The creditor must disclose to the~~
7 ~~consumer the total amount of funds held in a suspense or unapplied funds account. On~~
8 ~~accumulation of funds sufficient to cover a full payment in accordance with terms of the~~
9 ~~precomputed consumer credit sale or consumer loan agreement, the creditor shall apply the~~
10 ~~payment in accordance with this section. The amendments to this subsection during the 2017~~
11 ~~regular session of the Legislature do not apply to credit card payments.~~

12 (2) When the total amount is payable in substantially equal consecutive monthly
13 installments, the portion of the sales finance charge or loan finance charge attributable to any
14 particular monthly installment period shall be that proportion of the sales finance charge or loan
15 finance charge originally contracted for, as the balance scheduled to be outstanding on the last
16 day of the monthly installment period before deducting the payment, if any, scheduled to be made
17 on that day bears to the sum of all the monthly installment balances under the original schedule
18 of payments. (This method of allocation is the sum of the digits method, commonly referred to as
19 the "Rule of 78").

20 ~~(2)~~ (3) Upon prepayment in full of a precomputed consumer credit sale or consumer loan
21 by cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the
22 consumer that portion of the sales finance charge or loan finance charge in the manner specified
23 in section five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than
24 \$1 need be made.

25 ~~(3)~~ (4) Upon prepayment in full of a precomputed or nonprecomputed consumer credit
26 sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise,
27 except where the loan is a purchase money loan secured by a first lien mortgage on residential
28 property, or is made by a federally-insured depository institution, the creditor shall rebate to the
29 consumer that portion of the unearned prepaid finance charges attributable to loan or credit

30 investigations fees, origination fees or points in the manner specified in subsection (c), section
31 five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than \$1 need
32 be made: *Provided, however*, That if the loan was made in furtherance of aiding or abetting a
33 person to whom the loan is assigned, evade this rebate, then the rebate required herein shall
34 apply.

35 (4) (5) If the maturity of a precomputed consumer credit sale or consumer loan is
36 accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as
37 if the payment had been made on the date judgment is entered and such judgment shall bear
38 interest until paid at the rate of ten percent per annum.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or
2 consolidation, the parties may contract for a delinquency charge on any installment not paid in full
3 within ten days after its scheduled due date in an amount not exceeding the greater of:

- 4 (a) Five percent of the unpaid amount of the installment, not to exceed \$30; or
- 5 (b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid
6 amount of the installment for the period that it is delinquent.

7 (2) A delinquency charge under subdivision (a), subsection (1) of this section may be
8 collected only once on an installment however long it remains in default. No delinquency charge
9 may be collected with respect to a deferred installment unless the installment is not paid in full
10 within ten days after its deferred due date. A delinquency charge may be collected at the time it
11 accrues or at any time thereafter.

12 (3) No delinquency charge may be collected on an installment which is paid in full within
13 ten days after its scheduled or deferred installment due date, even though ~~an earlier maturing~~
14 ~~installment~~ or a delinquency or deferral charge on an earlier installment may not have been paid

15 in full. ~~For purposes of this subsection, payments shall be applied first to current installments,~~
16 ~~then to delinquent installments and then to delinquency and other charges.~~ The amendments to
17 this subsection during the 2017 regular session of the Legislature do not apply to credit cards.

18 (4) If two installments, or parts thereof, of a precomputed consumer credit sale or
19 consumer loan are in default for ten days or more, the creditor may elect to convert such sale or
20 loan from a precomputed sale or loan to one in which the sales finance charge or loan finance
21 charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to
22 the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of
23 any installment then delinquent and thereafter may make a sales finance charge or loan finance
24 charge as authorized by the appropriate provisions on sales finance charges or loan finance
25 charges for consumer credit sales or consumer loans. The amount of the rebate may not be
26 reduced by the amount of any permitted minimum charge. If the creditor proceeds under this
27 subsection, any delinquency or deferral charges made with respect to installments due at or after
28 the maturity date of the delinquent installments shall be rebated and no further delinquency or
29 deferral charges shall be made.

30 (5) The commissioner shall prescribe by rule the method or procedure for the calculation
31 of delinquency charges consistent with the other provisions of this chapter where the
32 precomputed consumer credit sale or consumer loan is payable in unequal or irregular
33 installments.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance charge or loan finance charge on a
2 delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan,
3 refinancing or consolidation, repayable in installments, the parties may contract for a delinquency
4 charge on any installment not paid in full within ten days after its scheduled due date of five

5 percent of the unpaid amount of the installment, not to exceed \$30.

6 (2) A delinquency charge under subsection (1) of this section may be collected only once
7 on an installment however long it remains in default. A delinquency charge may be collected at
8 the time it accrues or at any time thereafter.

9 (3) No delinquency charge may be collected on an installment which is paid in full within
10 ten days after its scheduled or deferred installment due date, even though ~~an earlier maturing~~
11 ~~installment or a delinquency or deferral charge on an earlier installment may not have been paid~~
12 ~~in full. For purposes of this subsection, payments shall be applied first to current installments,~~
13 ~~then to delinquent installments and then to delinquency and other charges.~~ The amendments to
14 this subsection during the 2017 regular session of the Legislature do not apply to credit cards.

NOTE: The purpose of this bill is to eliminate conflicting provisions within current code relating to the application of payments and the assessment of delinquency fees on consumer credit sales and consumer loans, except credit cards. The bill also permits a lender to hold a partial or nonconforming payment in suspense until such time as a full payment can be applied.

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