

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

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for

Senate Bill 601

BY SENATOR GAUNCH

[Originating in the Committee on the Judiciary;

reported on March 24, 2017]

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;
3 modifying the authority to make regulated consumer loans; providing that a person must
4 first obtain a license from the Commissioner of Banking authorizing him or her to make
5 regulated consumer loans before engaging in the business of making regulated consumer
6 loans, taking assignments of or undertaking direct collection of payments from or
7 enforcement of rights against consumers arising from regulated consumer loans; and
8 adjusting threshold amounts of consumer loans for which certain finance charges can be
9 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~~ \$3,500 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~~ \$3,500 to a loan of \$15,000 or which is secured by
8 real property, the loan finance charge, calculated according to the actuarial method, may not
9 exceed twenty-seven percent per year on the unpaid balance of the principal amount: *Provided,*
10 That the loan finance charge on any loan greater than ~~\$10,000~~ \$15,000 may not exceed eighteen
11 percent per year on the unpaid balance of the principal amount. Loans made by regulated
12 consumer lenders shall be subject to the restrictions and supervision set forth in this article
13 irrespective of their rate of finance charges.

14 (4) Where the loan is nonrevolving and is greater than ~~\$2,000~~ \$3,500, 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 cents if the billing cycle is monthly or longer or the pro
62 rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing
63 cycle bears to thirty if the billing cycle is shorter than monthly, but no charge may be made
64 pursuant to this subdivision if the lender has made an annual charge for the same period as
65 permitted by the 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~~ \$3,500
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.