

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

Senate Bill 344

BY SENATORS TRUMP, GAUNCH, AZINGER AND BLAIR

[Introduced February 17, 2017; Referred
to the Committee on Banking and Insurance; and then
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; and
2 to amend and reenact §46A-3-111, §46A-3-112 and §46A-3-113 of said code, all relating
3 to application of payments and partial payments on a consumer credit sale and consumer
4 loans; and assessing delinquency charges on such loans.

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. (b) With respect to this subsection: (1) The phrase "consumer
5 loan" shall mean a consumer loan secured by real property: (A) Originated by a bank or savings
6 and loan association, or an affiliate, not solicited by an unaffiliated broker; (B) 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 (C) insured or guaranteed by the Farmers Home Administration, the
10 Veteran's Administration or the Department of Housing and Urban Development.

11 (2) Except as provided in subdivision (3) of this subsection, the agreements that evidence
12 a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B)
13 an appraisal fee; (C) all costs incidental to a title examination including professional fees,
14 expenses incident to travel, and copies of real estate and tax records; (D) expenses incidental to
15 notice made to lienholders and other parties and entities having an interest in the real property to
16 be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to

17 a pending trustee's sale of the real property securing the consumer loan.

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

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

35 (d) At least once every twelve months, the holder or servicer of each consumer loan
36 secured by real property against which the creditor assesses any default charge, and: (1) Not
37 serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a
38 federal home loan bank, the federal National Mortgage Association, the federal Home Loan
39 Mortgage Corporation, the Government National Mortgage Association, the West Virginia
40 Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home
41 Administration, the Veteran's Administration, Department of Housing and Urban Development,
42 shall transmit to the consumer an accounting of every default charge assessed within the previous

43 twelve months, including the date, amount and nature of the cost.

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

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

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

5 (b) All payments made to a creditor which do not comply with the terms of a precomputed
 6 consumer credit sale or consumer loan may be held in a suspense or unapplied funds account.
 7 The creditor must disclose to the consumer the total amount of funds held in a suspense or
 8 unapplied funds account. On accumulation of funds sufficient to cover a full payment in
 9 accordance with terms of the precomputed consumer credit sale or consumer loan agreement.

10 the creditor shall apply the payment in accordance with subsection (a) of this section.

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

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

24 ~~(3)~~ (e) Upon prepayment in full of a precomputed or nonprecomputed consumer credit
25 sale or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise,
26 except where the loan is a purchase money loan secured by a first lien mortgage on residential
27 property, or is made by a federally-insured depository institution, the creditor shall rebate to the
28 consumer that portion of the unearned prepaid finance charges attributable to loan or credit
29 investigations fees, origination fees or points in the manner specified in subsection (c), section
30 five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than \$1 need
31 be made: *Provided, however*, That if the loan was made in furtherance of aiding or abetting a
32 person to whom the loan is assigned, evade this rebate, then the rebate required herein shall
33 apply.

34 ~~(4)~~ (f) If the maturity of a precomputed consumer credit sale or consumer loan is
 35 accelerated for any reason and judgment is obtained, the debtor is entitled to the same rebate as
 36 if the payment had been made on the date judgment is entered and such judgment shall bear
 37 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~~

17 (4) If two installments, or parts thereof, of a precomputed consumer credit sale or

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

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

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. 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.