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2001 MAY -2 A 11: 15

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**

*Regular Session, 2001*



**ENROLLED**

*Committee Substitute for*

**SENATE BILL NO.** *524*

**(By Senator** *Sharpe, Snyder & Facemyer* **)**



**PASSED** *April 14, 2001*

**In Effect** *90 days from* **Passage**

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2001 MAY -2 A 11: 17

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COMMITTEE SUBSTITUTE

FOR

**Senate Bill No. 526**

(SENATORS SHARPE, SNYDER AND FACEMYER, *original sponsors*)

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[Passed April 14, 2001; in effect ninety days from passage.]

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AN ACT to amend and reenact sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred seven, article four of said chapter, all relating to the consumer credit and protection act and regulated consumer lenders; modifying the late payment fees on precomputed and nonprecomputed credit sales or consumer loans, and modifying the unsecured loan amounts on which an origination fee and thirty-one percent interest can be charged.

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

That sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended

and reenacted; and that section one hundred seven, article four of said chapter be amended and reenacted, all to read as follows:

**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  
2 or consumer loan, refinancing or consolidation, the parties  
3 may contract for a delinquency charge on any installment  
4 not paid in full within ten days after its scheduled due  
5 date in an amount not exceeding the greater of:

6 (a) Five percent of the unpaid amount of the installment,  
7 not to exceed fifteen dollars; or

8 (b) An amount equivalent to the deferral charge that  
9 would be permitted to defer the unpaid amount of the  
10 installment for the period that it is delinquent.

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

18 (3) No delinquency charge may be collected on an  
19 installment which is paid in full within ten days after its  
20 scheduled or deferred installment due date, even though  
21 an earlier maturing installment or a delinquency or  
22 deferral charge on an earlier installment may not have  
23 been paid in full. For purposes of this subsection, pay-  
24 ments shall be applied first to current installments, then to  
25 delinquent installments and then to delinquency and other  
26 charges.

27 (4) If two installments, or parts thereof, of a  
28 precomputed consumer credit sale or consumer loan are in  
29 default for ten days or more, the creditor may elect to

30 convert such sale or loan from a precomputed sale or loan  
31 to one in which the sales finance charge or loan finance  
32 charge is based on unpaid balances. In such event, the  
33 creditor shall make a rebate pursuant to the provisions on  
34 rebate upon prepayment, refinancing or consolidation as  
35 of the maturity date of any installment then delinquent  
36 and thereafter may make a sales finance charge or loan  
37 finance charge as authorized by the appropriate provisions  
38 on sales finance charges or loan finance charges for  
39 consumer credit sales or consumer loans.

40 The amount of the rebate may not be reduced by the  
41 amount of any permitted minimum charge. If the creditor  
42 proceeds under this subsection, any delinquency or  
43 deferral charges made with respect to installments due at  
44 or after the maturity date of the delinquent installments  
45 shall be rebated and no further delinquency or deferral  
46 charges shall be made.

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

**§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  
2 charge or loan finance charge on a delinquent installment  
3 with respect to a nonprecomputed consumer credit sale or  
4 consumer loan, refinancing or consolidation, repayable in  
5 installments, the parties may contract for a delinquency  
6 charge on any installment not paid in full within ten days  
7 after its scheduled due date of five percent of the unpaid  
8 amount of the installment, not to exceed fifteen dollars.

9 (2) A delinquency charge under subsection (1) of this  
10 section may be collected only once on an installment

11 however long it remains in default. A delinquency charge  
12 may be collected at the time it accrues or at any time  
13 thereafter.

14 (3) No delinquency charge may be collected on an  
15 installment which is paid in full within ten days after its  
16 scheduled due date, even though an earlier maturing  
17 installment or a delinquency or deferral charge on an  
18 earlier installment may not have been paid in full. For  
19 purposes of this subsection, payments shall be applied first  
20 to current installments, then to delinquent installments  
21 and then to delinquency and other charges.

**ARTICLE 4. REGULATED CONSUMER LENDERS.**

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

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

5 (2) On a loan of two thousand dollars or less which is  
6 unsecured by real property, the loan finance charge,  
7 calculated according to the actuarial method, may not  
8 exceed thirty-one percent per year on the unpaid balance  
9 of the principal amount.

10 (3) On a loan of greater than two thousand dollars or  
11 which is secured by real property, the loan finance charge,  
12 calculated according to the actuarial method, may not  
13 exceed twenty-seven percent per year on the unpaid  
14 balance of the principal amount: *Provided*, That the loan  
15 finance charge on any loan greater than ten thousand  
16 dollars may not exceed eighteen percent per year on the  
17 unpaid balance of the principal amount. Loans made by  
18 regulated consumer lenders shall be subject to the restric-  
19 tions and supervision set forth in this article irrespective  
20 of their rate of finance charges.

21 (4) Where the loan is nonrevolving and is greater than  
22 two thousand dollars, the permitted finance charge may  
23 include a charge of not more than a total of two percent of  
24 the amount financed for any origination fee, points or  
25 investigation fee: *Provided*, That where any loan, revolv-  
26 ing or nonrevolving, is secured by real estate, the permit-  
27 ted finance charge may include a charge of not more than  
28 a total of five percent of the amount financed for any  
29 origination fee, points or investigation fee. In any loan  
30 secured by real estate, the charges may not be imposed  
31 again by the same or affiliated lender in any refinancing of  
32 that loan made within twenty-four months thereof, unless  
33 these earlier charges have been rebated by payment or  
34 credit to the consumer under the actuarial method or the  
35 total of the earlier and proposed charges does not exceed  
36 five percent of the amount financed. Charges permitted  
37 under this subsection shall be included in the calculation  
38 of the loan finance charge. The financing of the charges  
39 may be permissible and may not constitute charging  
40 interest on interest. In a revolving home equity loan, the  
41 amount of the credit line extended shall, for purposes of  
42 this subsection, constitute the amount financed. Other  
43 than herein provided, no points, origination fee, investiga-  
44 tion fee or other similar prepaid finance charges attribut-  
45 able to the lender or its affiliates may be levied. Except as  
46 provided for by section one hundred nine, article three of  
47 this chapter, no additional charges may be made; nor may  
48 any charge permitted by this section be assessed unless the  
49 loan is made. To the extent that this section overrides the  
50 preemption on limiting points and other charges on first  
51 lien residential mortgages contained in Section 501 of the  
52 United States Depository Institutions Deregulation and  
53 Monetary Control Act of 1980, the state law limitations  
54 contained in this section shall apply. If the loan is  
55 precomputed:

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

59 (b) The effect of prepayment, refinancing or consolida-  
60 tion is governed by the provisions on rebate upon prepay-  
61 ment, refinancing or consolidation contained in section  
62 one hundred eleven, article three of this chapter.

63 (5) For the purposes of this section, the term of a loan  
64 commences on the date the loan is made. Differences in  
65 the lengths of months are disregarded and a day may be  
66 counted as one thirtieth of a month. Subject to classifica-  
67 tions and differentiations the licensee may reasonably  
68 establish, a part of a month in excess of fifteen days may  
69 be treated as a full month if periods of fifteen days or less  
70 are disregarded and if that procedure is not consistently  
71 used to obtain a greater yield than would otherwise be  
72 permitted.

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

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

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

79 (ii) The balance of the debt at the beginning of the first  
80 day of the billing cycle, less all payments on and credits to  
81 such debt during such billing cycle and excluding all  
82 additional borrowings during the billing cycle.

83 For the purpose of this subdivision, a billing cycle is  
84 monthly if the billing statement dates are on the same day  
85 each month or do not vary by more than four days there-  
86 from.

87 (b) If the billing cycle is not monthly, the maximum loan  
88 finance charge which may be made by a regulated con-  
89 sumer lender is that percentage which bears the same  
90 relation to an applicable monthly percentage as the  
91 number of days in the billing cycle bears to thirty.

92 (c) Notwithstanding subdivisions (a) and (b) of this  
93 subsection, if there is an unpaid balance on the date as of

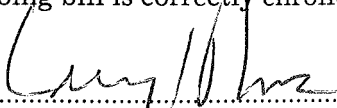
94 which the loan finance charge is applied, the licensee may  
95 contract for and receive a charge not exceeding fifty cents  
96 if the billing cycle is monthly or longer or the pro rata part  
97 of fifty cents which bears the same relation to fifty cents  
98 as the number of days in the billing cycle bears to thirty if  
99 the billing cycle is shorter than monthly, but no charge  
100 may be made pursuant to this subdivision if the lender has  
101 made an annual charge for the same period as permitted  
102 by the provisions on additional charges.

103 (7) As an alternative to the loan finance charges allowed  
104 by subsections (2) and (4) of this section, a regulated  
105 consumer lender may on a loan not secured by real estate  
106 of two thousand dollars or less contract for and receive  
107 interest at a rate of up to thirty-one percent per year on  
108 the unpaid balance of the principal amount, together with  
109 a nonrefundable loan processing fee of not more than two  
110 percent of the amount financed: *Provided*, That no other  
111 finance charges are imposed on the loan. The processing  
112 fee permitted under this subsection shall be included in the  
113 calculation of the loan finance charge and the financing of  
114 the fee shall be permissible and may not constitute charg-  
115 ing interest on interest.

116 (8) Notwithstanding any contrary provision in this  
117 section, a licensed regulated consumer lender who is the  
118 assignee of a nonrevolving consumer loan unsecured by  
119 real property located in this state, which loan contract was  
120 applied for by the consumer when he or she was in another  
121 state, and which was executed and had its proceeds  
122 distributed in that other state, may collect, receive and  
123 enforce the loan finance charge and other charges, includ-  
124 ing late fees, provided in the contract under the laws of the  
125 state where executed: *Provided*, That the consumer was  
126 not induced by the assignee or its in-state affiliates to  
127 apply and obtain the loan from an out-of-state source  
128 affiliated with the assignee in an effort to evade the  
129 consumer protections afforded by this chapter. Such  
130 charges may not be considered to be usurious or in viola-  
131 tion of the provisions of this chapter or any other provi-  
132 sions of this code.



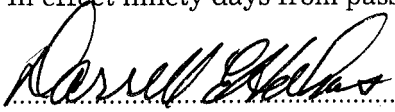
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

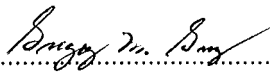
  
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Chairman Senate Committee

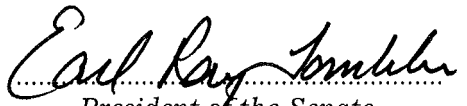
  
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Chairman House Committee

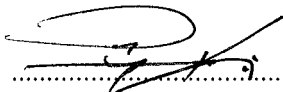
Originated in the Senate.

In effect ninety days from passage.

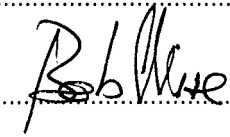
  
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Clerk of the Senate

  
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Clerk of the House of Delegates

  
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President of the Senate

  
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Speaker House of Delegates

The within is approved this the 1<sup>st</sup>  
Day of May, 2001.

  
.....  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/30/01

Time 2:50 pm