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**ENROLLED**

**H. B. 4274**

(By Delegates Moore, Reynolds and Azinger)

[Passed March 9, 2012; in effect ninety days from passage.]

**FISCAL  
NOTE**

10 AN ACT to amend and reenact §46A-4-103 of the Code of West  
11 Virginia, 1931, as amended, relating to the authority of the  
12 Commissioner of Banking over regulated consumer lender  
13 licensees; authorizing the commissioner to impose a fine or  
14 penalty upon a licensee for violation of chapter forty-six-a  
15 or chapter thirty-one-a of this Code or any other law or rule  
16 that the Division of Banking is authorized to enforce that is  
17 applicable to regulated consumer lenders; and providing for an  
18 administrative hearing to contest a fine or penalty.

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

20 That §46A-4-103 of the Code of West Virginia, 1931, as  
21 amended, be amended and reenacted to read as follows:

22 **ARTICLE 4. REGULATED CONSUMER LENDERS.**

23 **§46A-4-103. Revocation, suspension or forfeiture of license.**

1           (a) The commissioner may issue to a person licensed to make  
2 regulated consumer loans an order to show cause why his or her  
3 license should not be revoked or should not be suspended for a  
4 period not in excess of six months. The order shall state the  
5 place for a hearing and set a time for the hearing that is no less  
6 than ten days from the date of the order. After the hearing the  
7 commissioner shall revoke or suspend the license if he or she finds  
8 that:

9           (1) The licensee has repeatedly and willfully violated this  
10 chapter or any rule or order lawfully made or issued pursuant to  
11 this article;

12           (2) The licensee has failed to remit their required annual  
13 assessment, or to maintain their status as a business in good  
14 standing with the office of the Secretary of State, notwithstanding  
15 notification in writing by the commissioner sent by certified mail  
16 to the licensee's last known address providing for thirty days to  
17 rectify such failure;

18           (3) The licensee has forfeited their license by failing to  
19 remain open for regulated consumer lending business in conformity  
20 with the rules or order of the commissioner; or

21           (4) Facts or conditions exist which would clearly have  
22 justified the commissioner in refusing to grant a license had these  
23 facts or conditions been known to exist at the time the application  
24 for the license was made.

1 (b) No revocation or suspension of a license under this  
2 article is lawful unless prior to institution of proceedings by the  
3 commissioner notice is given to the licensee of the facts or  
4 conduct which warrant the intended action, and the licensee is  
5 given an opportunity to show compliance with all lawful  
6 requirements for retention of the license.

7 (c) If the commissioner finds that probable cause for  
8 revocation of a license exists and that enforcement of this article  
9 requires immediate suspension of the license pending investigation,  
10 he or she may, after a hearing upon five days' written notice,  
11 enter an order suspending the license for not more than thirty  
12 days.

13 (d) Nothing in this section limits the authority of the  
14 commissioner to take action against a regulated consumer lender  
15 pursuant to chapter thirty-one-a of this code.

16 (e) Whenever the commissioner revokes or suspends a license,  
17 he or she shall enter an order to that effect and forthwith notify  
18 the licensee of the revocation or suspension. Within five days  
19 after the entry of the order he or she shall mail by registered or  
20 certified mail or deliver to the licensee a copy of the order and  
21 the findings supporting the order.

22 (f) Any person holding a license to make regulated consumer  
23 loans may relinquish the license by notifying the commissioner in  
24 writing of its relinquishment, but this relinquishment shall not

1 affect his or her liability for acts previously committed.

2 (g) No revocation, suspension, forfeiture or relinquishment of  
3 a license shall impair or affect the obligation of any preexisting  
4 lawful contract between the licensee and any consumer.

5 (h) The commissioner may reinstate a license, terminate a  
6 suspension or grant a new license to a person whose license has  
7 been revoked or suspended if no fact or condition then exists which  
8 clearly would have justified the commissioner in refusing to grant  
9 a license.

10 (i) In addition to the authority authorized by this section,  
11 the commissioner may impose a fine or penalty not exceeding \$2,000  
12 upon any regulated consumer lender required to be licensed under  
13 this article who violates this chapter, chapter thirty-one-a or any  
14 other law or rule that the Division of Banking is authorized to  
15 enforce with respect to companies licensed under this article. For  
16 the purposes of this section, each day, excluding Sundays and  
17 holidays, that an unlicensed person engages in the business or  
18 holds himself or herself out to the general public as a licensed  
19 consumer lender is a separate violation and, as such, each day is  
20 subject to the maximum fine of \$2,000 per day. Any fine or penalty  
21 imposed under this subsection may be contested by the licensee  
22 pursuant to article five, chapter twenty-nine-a of this code.

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