

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

Senate Bill 601

BY SENATOR GAUNCH

[Originating in the Committee on Banking and
Insurance; reported on March 21, 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 authority to make loans; and adjusting limits on consumer loans for which
4 certain finance charges can be 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.

6 (1) With respect to a regulated consumer loan, including a revolving loan account, a
7 regulated consumer lender may contract for and receive a loan finance charge not exceeding that
8 permitted by this section.

9 (2) On a loan of ~~\$2,000~~ \$3,500 or less which is unsecured by real property, the loan
10 finance charge, calculated according to the actuarial method, may not exceed thirty-one percent
11 per year on the unpaid balance of the principal amount.

12 (3) On a loan of greater than ~~\$2,000~~ \$3,500 to a loan of \$15,000 or which is secured by
13 real property, the loan finance charge, calculated according to the actuarial method, may not
14 exceed twenty-seven percent per year on the unpaid balance of the principal amount: *Provided,*
15 That the loan finance charge on any loan greater than ~~\$40,000~~ \$15,000 may not exceed eighteen
16 percent per year on the unpaid balance of the principal amount. Loans made by regulated

17 consumer lenders shall be subject to the restrictions and supervision set forth in this article
18 irrespective of their rate of finance charges.

19 (4) Where the loan is nonrevolving and is greater than ~~\$2,000~~ \$3,500, the permitted
20 finance charge may include a charge of not more than a total of two percent of the amount
21 financed for any origination fee, points or investigation fee: *Provided*, That where any loan,
22 revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a
23 charge of not more than a total of five percent of the amount financed for any origination fee,
24 points or investigation fee. In any loan secured by real estate, the charges may not be imposed
25 again by the same or affiliated lender in any refinancing of that loan made within twenty-four
26 months thereof, unless these earlier charges have been rebated by payment or credit to the
27 consumer under the actuarial method, or the total of the earlier and proposed charges does not
28 exceed five percent of the amount financed. Charges permitted under this subsection shall be
29 included in the calculation of the loan finance charge. The financing of the charges ~~may be~~ is
30 permissible and ~~may~~ does not constitute charging interest on interest. In a revolving home equity
31 loan, the amount of the credit line extended ~~shall~~ is, for purposes of this subsection, ~~constitute~~
32 the amount financed. Other than herein provided, no points, origination fee, investigation fee or
33 other similar prepaid finance charges attributable to the lender or its affiliates may be levied.
34 Except as provided for by section one hundred nine, article three of this chapter, no additional
35 charges may be made; nor may any charge permitted by this section be assessed unless the loan
36 is made. To the extent that this section overrides the preemption on limiting points and other
37 charges on first lien residential mortgages contained in Section 501 of the United States
38 Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations
39 contained in this section ~~shall~~ apply. If the loan is precomputed:

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

42 (b) The effect of prepayment, refinancing or consolidation is governed by the provisions

43 on rebate upon prepayment, refinancing or consolidation contained in section one hundred
44 eleven, article three of this chapter.

45 (5) For the purposes of this section, the term of a loan commences on the date the loan is
46 made. Differences in the lengths of months are disregarded and a day may be counted as one
47 thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably
48 establish, a part of a month in excess of fifteen days may be treated as a full month if periods of
49 fifteen days or less are disregarded and if that procedure is not consistently used to obtain a
50 greater yield than would otherwise be permitted.

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

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

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

56 (ii) The balance of the debt at the beginning of the first day of the billing cycle, less all
57 payments on and credits to ~~such~~ the debt during ~~such~~ the billing cycle and excluding all additional
58 borrowings during the billing cycle.

59 For the purpose of this subdivision, a billing cycle is monthly if the billing statement dates
60 are on the same day each month or do not vary by more than four days therefrom.

61 (b) If the billing cycle is not monthly, the maximum loan finance charge which may be
62 made by a regulated consumer lender is that percentage which bears the same relation to an
63 applicable monthly percentage as the number of days in the billing cycle bears to thirty.

64 (c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid
65 balance on the date as of which the loan finance charge is applied, the licensee may contract for
66 and receive a charge not exceeding 50¢ if the billing cycle is monthly or longer or the pro rata part
67 of 50¢ which bears the same relation to 50¢ as the number of days in the billing cycle bears to
68 thirty if the billing cycle is shorter than monthly, but no charge may be made pursuant to this

69 subdivision if the lender has made an annual charge for the same period as permitted by the
70 provisions on additional charges.

71 (7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this
72 section, a regulated consumer lender may on a loan not secured by real estate of ~~\$2,000~~ \$3,500
73 or less contract for and receive interest at a rate of up to thirty-one percent per year on the unpaid
74 balance of the principal amount, together with a nonrefundable loan processing fee of not more
75 than two percent of the amount financed: *Provided*, That no other finance charges are imposed
76 on the loan. The processing fee permitted under this subsection shall be included in the
77 calculation of the loan finance charge and the financing of the fee shall be permissible and may
78 not constitute charging interest on interest.

79 (8) Notwithstanding any contrary provision in this section, a licensed regulated consumer
80 lender who is the assignee of a nonrevolving consumer loan unsecured by real property located
81 in this state, which loan contract was applied for by the consumer when he or she was in another
82 state, and which was executed and had its proceeds distributed in that other state, may collect,
83 receive and enforce the loan finance charge and other charges, including late fees, provided in
84 the contract under the laws of the state where executed: *Provided*, That the consumer was not
85 induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state
86 source affiliated with the assignee in an effort to evade the consumer protections afforded by this
87 chapter. Such charges may not be considered to be usurious or in violation of the provisions of
88 this chapter or any other provisions of this code.

NOTE: The purpose of this bill is to adjust limits on consumer loans in West Virginia for which certain finance charges may be imposed.

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