

WEST VIRGINIA LEGISLATURE

2018 REGULAR SESSION

Introduced

Senate Bill 398

BY SENATORS GAUNCH, CLINE, AND PLYMALE

[Introduced January 26, 2018; Referred
to the Committee on Banking and Insurance]

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:

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 31 percent per year
6 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 27 percent per year on the unpaid balance of the principal amount: *Provided*, That the
10 loan finance charge on any loan greater than ~~\$10,000~~ \$15,000 may not exceed 18 percent per
11 year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders
12 shall be subject to the restrictions and supervision set forth in this article irrespective of their rate
13 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 24 months
21 thereof, unless these earlier charges have been rebated by payment or credit to the consumer
22 under the actuarial method or the total of the earlier and proposed charges does not exceed five
23 percent of the amount financed. Charges permitted under this subsection shall be included in the
24 calculation of the loan finance charge. The financing of the charges ~~may be~~ is permissible and
25 ~~may does~~ not constitute charging interest on interest. In a revolving home equity loan, the amount
26 of the credit line extended ~~shall~~ is, for purposes of this subsection, ~~constitute~~ the amount financed.
27 Other than herein provided, no points, origination fee, investigation fee, or other similar prepaid
28 finance charges attributable to the lender or its affiliates may be levied. Except as provided for by
29 §46A-3-109 of this code, no additional charges may be made; nor may any charge permitted by
30 this section be assessed unless the loan is made. To the extent that this section overrides the
31 preemption on limiting points and other charges on first lien residential mortgages contained in
32 Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act
33 of 1980, the state law limitations contained in this section ~~shall~~ apply. If the loan is precomputed:

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

36 (b) The effect of prepayment, refinancing, or consolidation is governed by the provisions
37 on rebate upon prepayment, refinancing, or consolidation contained in §46A-3-111 of this code.

38 (5) For the purposes of this section, the term of a loan commences on the date the loan is
39 made. Differences in the lengths of months are disregarded and a day may be counted as one
40 thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably
41 establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15
42 days or less are disregarded and if that procedure is not consistently used to obtain a greater
43 yield than would otherwise be permitted.

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

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

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

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

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

54 (b) If the billing cycle is not monthly, the maximum loan finance charge which may be
55 made by a regulated consumer lender is that percentage which bears the same relation to an
56 applicable monthly percentage as the number of days in the billing cycle bears to 30.

57 (c) Notwithstanding §46A-4-107(6)(a) and §46A-4-107(6)(b) of this code, if there is an
58 unpaid balance on the date as of which the loan finance charge is applied, the licensee may
59 contract for and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer

60 or the pro rata part of 50 cents which bears the same relation to 50 cents as the number of days
61 in the billing cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be
62 made pursuant to this subdivision if the lender has made an annual charge for the same period
63 as permitted by the provisions on additional charges.

64 (7) As an alternative to the loan finance charges allowed by §46A-4-107(2) and §46A-4-
65 107(4) of this code, a regulated consumer lender may, on a loan not secured by real estate of
66 ~~\$2,000~~ \$3,500 or less, contract for and receive interest at a rate of up to 31 percent per year on
67 the unpaid balance of the principal amount, together with a nonrefundable loan processing fee of
68 not more than two percent of the amount financed: *Provided*, That no other finance charges are
69 imposed on the loan. The processing fee permitted under this subsection shall be included in the
70 calculation of the loan finance charge and the financing of the fee shall be permissible and may
71 not constitute charging interest on interest.

72 (8) Notwithstanding any contrary provision in this section, a licensed regulated consumer
73 lender who is the assignee of a nonrevolving consumer loan unsecured by real property located
74 in this state, which loan contract was applied for by the consumer when he or she was in another
75 state, and which was executed and had its proceeds distributed in that other state, may collect,
76 receive and enforce the loan finance charge and other charges, including late fees, provided in
77 the contract under the laws of the state where executed: *Provided*, That the consumer was not
78 induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state
79 source affiliated with the assignee in an effort to evade the consumer protections afforded by this
80 chapter. Such charges may not be considered to be usurious or in violation of the provisions of
81 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 and clarify that a person must first obtain a license from the Division of Financial Institutions before engaging in the business of consumer loans.

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