

# **WEST VIRGINIA LEGISLATURE**

**2022 REGULAR SESSION**

**Introduced**

## **Senate Bill 695**

BY SENATOR TAKUBO

[Introduced February 21, 2022; referred  
to the Committee on the Judiciary]

1 A BILL to amend and reenact §46A-7-111 of the Code of West Virginia, 1931, as amended,  
2 relating to consumer credit and protection; and clarifying the period for which the Attorney  
3 General may seek a civil penalty for violations of the Consumer Credit and Protection Act.

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

## **ARTICLE 7. ADMINISTRATION.**

### **§46A-7-111. Civil actions by attorney general.**

1 (1) After demand, the attorney general may bring a civil action against a creditor for making  
2 or collecting charges in excess of those permitted by this chapter. If it is found that an excess  
3 charge has been made, the court shall order the respondent to refund to the consumer the amount  
4 of the excess charge. If a creditor has made an excess charge in a deliberate violation of or in  
5 reckless disregard for this chapter, or if a creditor has refused to refund an excess charge within  
6 a reasonable time after demand by the consumer or the attorney general, the court may also  
7 order the respondent to pay to the consumer a civil penalty in an amount determined by the court  
8 not in excess of the greater of either the amount of the sales finance charge or loan finance charge  
9 or ten times the amount of the excess charge. Refunds and penalties to which the consumer is  
10 entitled pursuant to this subsection may be set off against the consumer's obligation. If a  
11 consumer brings an action against a creditor to recover an excess charge or civil penalty, an  
12 action by the attorney general to recover for the same excess charge shall be stayed while the  
13 consumer's action is pending and shall be dismissed if the consumer's action is dismissed with  
14 prejudice or results in a final judgment granting or denying the consumer's claim. With respect to  
15 excess charges arising from consumer credit sales made pursuant to revolving charge accounts  
16 or from consumer loans made pursuant to revolving loan accounts, no action pursuant to this  
17 subsection may be brought more than four years after the time the excess charge was made.  
18 With respect to excess charges arising from other consumer credit sales or consumer loans, no  
19 action pursuant to this subsection may be brought more than one year after the due date of the  
20 last scheduled payment of the agreement pursuant to which the charge was made. If the creditor

21 establishes by a preponderance of evidence that a violation is unintentional or the result of a bona  
22 fide error, no liability to pay a penalty shall be imposed under this subsection.

23 (2) The attorney general may bring a civil action against a creditor or other person to  
24 recover a civil penalty for willfully violating this chapter, and if the court finds that the defendant  
25 has engaged in a course of repeated and willful violations of this chapter, it may assess a civil  
26 penalty of no more than \$5,000 for each violation of this chapter. No civil penalty pursuant to this  
27 subsection may be imposed for violations of this chapter occurring more than four years before  
28 the action is brought. This four-year period is not subject to tolling pursuant to any legal, equitable,  
29 or other doctrine.

NOTE: The purpose of this bill is to clarify existing law providing that the Attorney General may seek civil penalties for each violation of the Consumer Credit and Protection Act as far back as four years prior to bringing an action. This remedial legislation clarifies that courts may not extend this period through tolling, rejecting *State of West Virginia, ex rel. 3M Co. v. Hoke*, 852 S.E.2d 799 (W. Va. 2020), in which the Supreme Court of Appeals, for the first time, applied such principles to §46A-7-111(2). The bill does not affect substantive rights under the Consumer Credit and Protection Act and addresses only the procedure and remedies available under the Act.

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