

H. B. 4274

(By Delegates Moore, Reynolds and Azinger)
[Introduced January 24, 2012; referred to the
Committee on Banking and Insurance then Finance.]

**FISCAL
NOTE**

A BILL to amend and reenact §46A-4-103 of the Code of West Virginia, 1931, as amended, relating to the authority of the Commissioner of Banking over consumer lender licensees; providing for a penalty of not more than \$2,000 for each day a violation exists; and providing for hearings.

Be it enacted by the Legislature of West Virginia:

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

ARTICLE 4. REGULATED CONSUMER LENDERS.

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

~~(1)~~ (a) The commissioner may issue to a person licensed to make regulated consumer loans an order to show cause why his or her license should not be revoked or should not be suspended for a period not in excess of six months. The order shall state the

1 place for a hearing and set a time for the hearing that is no less
2 than ten days from the date of the order. After the hearing the
3 commissioner shall revoke or suspend the license if he or she finds
4 that:

5 ~~(a)~~ (1) The licensee has repeatedly and willfully violated
6 this chapter or any rule or order lawfully made or issued pursuant
7 to this article;

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

14 ~~(c)~~ (3) The licensee has forfeited their license by failing to
15 remain open for regulated consumer lending business in conformity
16 with the rules or order of the commissioner; or

17 ~~(d)~~ (4) Facts or conditions exist which would clearly have
18 justified the commissioner in refusing to grant a license had these
19 facts or conditions been known to exist at the time the application
20 for the license was made.

21 ~~(2)~~ (b) No revocation or suspension of a license under this
22 article is lawful unless prior to institution of proceedings by the
23 commissioner notice is given to the licensee of the facts or
24 conduct which warrant the intended action, and the licensee is

1 given an opportunity to show compliance with all lawful
2 requirements for retention of the license.

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

9 ~~(4)~~ (d) Nothing in this section limits the authority of the
10 commissioner to take action against a regulated consumer lender
11 pursuant to chapter thirty-one-a of this code.

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

18 ~~(6)~~ (f) Any person holding a license to make regulated
19 consumer loans may relinquish the license by notifying the
20 commissioner in writing of its relinquishment, but this
21 relinquishment shall not affect his or her liability for acts
22 previously committed.

23 ~~(7)~~ (g) No revocation, suspension, forfeiture or
24 relinquishment of a license shall impair or affect the obligation

1 of any preexisting lawful contract between the licensee and any
2 consumer.

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

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

NOTE: The purpose of this bill is to expand the authority of the Commissioner of Banking over regulated consumer lender licensees. The bill provides for a penalty of not more than \$2,000 for each day a violation exists and for hearings.

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