

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2012



**ENROLLED**

**House Bill No. 4274**

(By Delegates Moore, Reynolds and Azinger)



Passed March 9, 2012

To Take Effect Ninety Days From Passage

# ENROLLED

## H. B. 4274

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(BY DELEGATES MOORE, REYNOLDS AND AZINGER)

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

AN ACT 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 regulated consumer lender licensees; authorizing the commissioner to impose a fine or penalty upon a licensee for violation of chapter forty-six-a or chapter thirty-one-a of this Code or any other law or rule that the Division of Banking is authorized to enforce that is applicable to regulated consumer lenders; and providing for an administrative hearing to contest a fine or penalty.

*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
- 2       make regulated consumer loans an order to show cause why
- 3       his or her license should not be revoked or should not be
- 4       suspended for a period not in excess of six months. The

5 order shall state the place for a hearing and set a time for the  
6 hearing that is no less than ten days from the date of the  
7 order. After the hearing the commissioner shall revoke or  
8 suspend the license if he or she finds that:

9 (1) The licensee has repeatedly and willfully violated this  
10 chapter or any rule or order lawfully made or issued pursuant  
11 to 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,  
15 notwithstanding notification in writing by the commissioner  
16 sent by certified mail to the licensee's last known address  
17 providing for thirty days to rectify such failure;

18 (3) The licensee has forfeited their license by failing to  
19 remain open for regulated consumer lending business in  
20 conformity 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  
23 these facts or conditions been known to exist at the time the  
24 application for the license was made.

25 (b) No revocation or suspension of a license under this  
26 article is lawful unless prior to institution of proceedings by  
27 the commissioner notice is given to the licensee of the facts  
28 or conduct which warrant the intended action, and the  
29 licensee is given an opportunity to show compliance with all  
30 lawful requirements for retention of the license.

31 (c) If the commissioner finds that probable cause for  
32 revocation of a license exists and that enforcement of this  
33 article requires immediate suspension of the license pending  
34 investigation, he or she may, after a hearing upon five days'

35 written notice, enter an order suspending the license for not  
36 more than thirty days.

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

40 (e) Whenever the commissioner revokes or suspends a  
41 license, he or she shall enter an order to that effect and  
42 forthwith notify the licensee of the revocation or suspension.  
43 Within five days after the entry of the order he or she shall  
44 mail by registered or certified mail or deliver to the licensee  
45 a copy of the order and the findings supporting the order.

46 (f) Any person holding a license to make regulated  
47 consumer loans may relinquish the license by notifying the  
48 commissioner in writing of its relinquishment, but this  
49 relinquishment shall not affect his or her liability for acts  
50 previously committed.

51 (g) No revocation, suspension, forfeiture or  
52 relinquishment of a license shall impair or affect the  
53 obligation of any preexisting lawful contract between the  
54 licensee and any consumer.

55 (h) The commissioner may reinstate a license, terminate  
56 a suspension or grant a new license to a person whose license  
57 has been revoked or suspended if no fact or condition then  
58 exists which clearly would have justified the commissioner  
59 in refusing to grant a license.

60 (i) In addition to the authority authorized by this section,  
61 the commissioner may impose a fine or penalty not exceeding  
62 \$2,000 upon any regulated consumer lender required to be  
63 licensed under this article who violates this chapter, chapter  
64 thirty-one-a or any other law or rule that the Division of

65 Banking is authorized to enforce with respect to companies  
66 licensed under this article. For the purposes of this section,  
67 each day, excluding Sundays and holidays, that an unlicensed  
68 person engages in the business or holds himself or herself out  
69 to the general public as a licensed consumer lender is a  
70 separate violation and, as such, each day is subject to the  
71 maximum fine of \$2,000 per day. Any fine or penalty  
72 imposed under this subsection may be contested by the  
73 licensee pursuant to article five, chapter twenty-nine-a of this  
74 code.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

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*Chairman, House Committee*

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*Chairman, Senate Committee*

Originating in the House.

To take effect ninety days from passage.

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*Clerk of the House of Delegates*

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*Clerk of the Senate*

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*Speaker of the House of Delegates*

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*President of the Senate*

The within \_\_\_\_\_ this the \_\_\_\_\_  
day of \_\_\_\_\_, 2012.

\_\_\_\_\_  
*Governor*