

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2918

2015 Carryover

(BY DELEGATE WALTERS)

[Introduced January 13, 2016; referred to the
Committee on Banking and Insurance then Finance.]

1 A BILL to amend and reenact §46A-3-112 and §46A-3-113 of the Code of West Virginia, 1931, as
 2 amended, all relating to delinquency charges on loans, and the order of credit of payments to
 3 determine whether a delinquency fee may be applied.

Be it enacted by the Legislature of West Virginia:

1 That §46A-3-112 and §46A-3-113 of the Code of West Virginia, 1931, as amended, be
 2 amended and reenacted, all to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.

1 (1) With respect to a precomputed consumer credit sale or consumer loan, refinancing or
 2 consolidation, the parties may contract for a delinquency charge on any installment not paid in full
 3 within ten days after its scheduled due date in an amount not exceeding the greater of:

- 4 (a) Five percent of the unpaid amount of the installment; ~~not to exceed \$15~~ or
- 5 (b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid
 6 amount of the installment for the period that it is delinquent.

7 (2) A delinquency charge under subdivision (a) of subsection (1) may be collected only once
 8 on an installment however long it remains in default. No delinquency charge may be collected with
 9 respect to a deferred installment unless the installment is not paid in full within ten days after its
 10 deferred due date. A delinquency charge may be collected at the time it accrues or at any time
 11 thereafter.

12 ~~(3) No delinquency charge may be collected on an installment which is paid in full within ten~~
 13 ~~days after its scheduled or deferred installment due date, even though an earlier maturing installment~~
 14 ~~or a delinquency or deferral charge on an earlier installment may not have been paid in full. For~~
 15 ~~purposes of this subsection, payments shall be applied first to current installments, then to delinquent~~

16 ~~installments and then to delinquency and other charges.~~

17 (4) (3) If two installments, or parts thereof, of a precomputed consumer credit sale or
18 consumer loan are in default for ten days or more, the creditor may elect to convert such sale or loan
19 from a precomputed sale or loan to one in which the sales finance charge or loan finance charge is
20 based on unpaid balances. In such event, the creditor shall make a rebate pursuant to the provisions
21 on rebate upon prepayment, refinancing or consolidation as of the maturity date of any installment
22 then delinquent and thereafter may make a sales finance charge or loan finance charge as authorized
23 by the appropriate provisions on sales finance charges or loan finance charges for consumer credit
24 sales or consumer loans.

25 The amount of the rebate may not be reduced by the amount of any permitted minimum
26 charge. If the creditor proceeds under this subsection, any delinquency or deferral charges made
27 with respect to installments due at or after the maturity date of the delinquent installments shall be
28 rebated and no further delinquency or deferral charges shall be made.

29 (5) (4) The commissioner shall prescribe by rule the method or procedure for the calculation
30 of delinquency charges consistent with the other provisions of this chapter where the precomputed
31 consumer credit sale or consumer loan is payable in unequal or irregular installments.

§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.

1 (1) In addition to the continuation of the sales finance charge or loan finance charge on a
2 delinquent installment with respect to a nonprecomputed consumer credit sale or consumer loan,
3 refinancing or consolidation, repayable in installments, the parties may contract for a delinquency
4 charge on any installment not paid in full within ten days after its scheduled due date of five percent
5 of the unpaid amount of the installment. ~~not to exceed \$15~~

6 (2) A delinquency charge under subsection (1) of this section may be collected only once on

7 an installment however long it remains in default. A delinquency charge may be collected at the
8 time it accrues or at any time thereafter.

9 ~~(3) No delinquency charge may be collected on an installment which is paid in full within ten~~
10 ~~days after its scheduled due date, even though an earlier maturing installment or a delinquency or~~
11 ~~deferral charge on an earlier installment may not have been paid in full. For purposes of this~~
12 ~~subsection, payments shall be applied first to current installments, then to delinquent installments and~~
13 ~~then to delinquency and other charges.~~

NOTE: The purpose of this bill is to remove the cap on loan delinquency fees, and to remove provisions that direct the application of payments made by a borrower, for purposes of determining whether a delinquency fee may be charged.

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