

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

ENROLLED

Committee Substitute

for

Committee Substitute

for

Senate Bill 344

SENATORS TRUMP, GAUNCH,

AZINGER AND BLAIR, *original sponsors*

[Passed April 5, 2017; in effect 90 days from passage]

1 AN ACT to amend and reenact §46A-2-115 of the Code of West Virginia, 1931, as amended; and
2 to amend and reenact §46A-3-111, §46A-3-112 and §46A-3-113 of said code, all relating
3 to consumer credit sales and consumer loans; specifying application of payments and
4 partial payments on consumer credit sales and loans; modifying provisions related to
5 delinquency charges; permitting certain payments be held in a suspense or unapplied
6 funds account; providing requirements concerning funds held in a suspense or unapplied
7 funds account; and assessing delinquency charges on such loans.

Be it enacted by the Legislature of West Virginia:

1 That §46A-2-115 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted; that §46A-3-111, §46A-3-112 and §46A-3-113 of said code be amended and
3 reenacted, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-115. Limitation on default charges.

1 (a) Except for reasonable expenses, including costs and fees authorized by statute
2 incurred in realizing on a security interest, the agreements that evidence a consumer credit sale
3 or a consumer loan may not provide for charges as a result of default by the consumer other than
4 those authorized by this chapter.

5 (b) With respect to this subsection:

6 (1) The phrase “consumer loan” shall mean a consumer loan secured by real property:

7 (A) Originated by a bank or savings and loan association, or an affiliate, not solicited by an
8 unaffiliated broker; (B) held by a federal home loan bank, the federal National Mortgage
9 Association, the federal Home Loan Mortgage Corporation, the Government National Mortgage
10 Association, the West Virginia Housing Development Fund; or (C) insured or guaranteed by the
11 Farmers Home Administration, the Veterans Administration or the Department of Housing and
12 Urban Development.

13 (2) Except as provided in subdivision (3) of this subsection, the agreements that evidence
14 a consumer loan may permit the recovery of the following charges: (A) Costs of publication; (B)
15 an appraisal fee; (C) all costs incidental to a title examination including professional fees,
16 expenses incident to travel and copies of real estate and tax records; (D) expenses incidental to
17 notice made to lienholders and other parties and entities having an interest in the real property to
18 be sold; (E) certified mailing costs; and (F) all fees and expenses incurred by a trustee incident to
19 a pending trustee's sale of the real property securing the consumer loan.

20 (3) For purposes of the charges expressly authorized by this subsection, no charge may
21 be assessed and collected from a consumer unless: (A) Each charge is reasonable in its amount;
22 (B) each charge is actually incurred by or on behalf of the holder of the consumer loan; (C) each
23 charge is actually incurred after the last day allowed for cure of the consumer's default pursuant
24 to section one hundred six of this article and before the consumer reinstates the consumer loan
25 or otherwise cures the default; (D) the holder of the consumer loan and the consumer have agreed
26 to cancel any pending trustee's sale or other foreclosure on the real property securing the
27 consumer loan; and (E) in the case of an appraisal fee, no appraisal fee has been charged to the
28 consumer within the preceding six months.

29 (c) All payments made to a creditor in accordance with the terms of any consumer credit
30 sale or consumer loan shall be credited upon receipt against payments due: *Provided*, That
31 amounts received and applied during a cure period will not result in a duty to provide a new notice
32 of right to cure: *Provided, however*, That partial amounts received during the period set forth in
33 subdivision (3) subsection (b) of this section do not create an automatic duty to reinstate and may
34 be returned by the creditor. Default charges shall be accounted for separately. Those recoverable
35 charges set forth in said subsection arising during the period described therein may be added to
36 principal.

37 (d) At least once every twelve months, the holder or servicer of each consumer loan
38 secured by real property against which the creditor assesses any default charge, and: (1) Not

39 serviced by the originating lender or its affiliate or their successors by merger; (2) not held by a
40 federal home loan bank, the federal National Mortgage Association, the federal Home Loan
41 Mortgage Corporation, the Government National Mortgage Association, the West Virginia
42 Housing Development Fund; or (3) not insured or guaranteed by the Farmers Home
43 Administration, the Veterans Administration, Department of Housing and Urban Development,
44 shall transmit to the consumer an accounting of every default charge assessed within the previous
45 twelve months, including the date, amount and nature of the cost.

46 This subsection does not apply to delinquency charges permitted under sections one
47 hundred twelve and one hundred thirteen, article three of this chapter; credit line over-the-limit
48 fees; deferral charges permitted under section one hundred fourteen of said article; collateral
49 protection insurance permitted under section one hundred nine-a of said article; and advances to
50 pay taxes.

51 (e) A provision in violation of this section is unenforceable. The amendments to this section
52 by acts of the Legislature in the regular session of 2003 are a clarification of existing law and shall
53 be retroactively applied to all agreements in effect on the date of passage of the amendments,
54 except where controversies arising under those agreements are pending prior to the date of
55 passage of the amendments.

56 (f) Nothing in this section limits the expenses incidental to a trustee's sale of real property
57 that are recoverable pursuant to section seven, article one, chapter thirty-eight of this code.

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.

1 (a) All payments made to a creditor in accordance with the terms of a precomputed
2 consumer credit sale or consumer loan shall be applied to installments in the order in which they
3 fall due.

4 (b) All payments made to a creditor which do not comply with the terms of a precomputed
5 consumer credit sale or consumer loan may be held in a suspense or unapplied funds account.
6 The creditor must disclose to the consumer the total amount of funds held in a suspense or
7 unapplied funds account. On accumulation of funds sufficient to cover a full payment in
8 accordance with terms of the precomputed consumer credit sale or consumer loan agreement,
9 the creditor shall apply the payment in accordance with subsection (a) of this section.

10 (c) When the total amount is payable in substantially equal consecutive monthly
11 installments, the portion of the sales finance charge or loan finance charge attributable to any
12 particular monthly installment period shall be that proportion of the sales finance charge or loan
13 finance charge originally contracted for, as the balance scheduled to be outstanding on the last
14 day of the monthly installment period before deducting the payment, if any, scheduled to be made
15 on that day bears to the sum of all the monthly installment balances under the original schedule
16 of payments. This method of allocation is the sum of the digits method, commonly referred to as
17 the "Rule of 78".

18 (d) Upon prepayment in full of a precomputed consumer credit sale or consumer loan by
19 cash, a new loan, refinancing, consolidation or otherwise, the creditor shall rebate to the
20 consumer that portion of the sales finance charge or loan finance charge in the manner specified
21 in section five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than
22 \$1 need be made.

23 (e) Upon prepayment in full of a precomputed or nonprecomputed consumer credit sale
24 or consumer loan by cash, execution of a new loan, refinancing, consolidation or otherwise,
25 except where the loan is a purchase money loan secured by a first lien mortgage on residential
26 property, or is made by a federally insured depository institution, the creditor shall rebate to the
27 consumer that portion of the unearned prepaid finance charges attributable to loan or credit
28 investigations fees, origination fees or points in the manner specified in subsection (c), section
29 five-d, article six, chapter forty-seven of this code: *Provided*, That no rebate of less than \$1 need

30 be made: *Provided, however,* That if the loan was made in furtherance of aiding or abetting a
31 person to whom the loan is assigned to evade this rebate, then the rebate required herein shall
32 apply.

33 (f) If the maturity of a precomputed consumer credit sale or consumer loan is accelerated
34 for any reason and judgment is obtained, the debtor is entitled to the same rebate as if the
35 payment had been made on the date judgment is entered and such judgment shall bear interest
36 until paid at the rate of ten percent per annum.

§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 \$30; 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), subsection (1) of this section may be
8 collected only once on an installment however long it remains in default. No delinquency charge
9 may be collected with respect to a deferred installment unless the installment is not paid in full
10 within ten days after its deferred due date. A delinquency charge may be collected at the time it
11 accrues or at any time thereafter.

12 (3) No delinquency charge may be collected on an installment which is paid in full within
13 ten days after its scheduled or deferred installment due date, even though a delinquency or
14 deferral charge on an earlier installment may not have been paid in full.

15 (4) If two installments, or parts thereof, of a precomputed consumer credit sale or
16 consumer loan are in default for ten days or more, the creditor may elect to convert such sale or
17 loan from a precomputed sale or loan to one in which the sales finance charge or loan finance

18 charge is based on unpaid balances. In such event, the creditor shall make a rebate pursuant to
19 the provisions on rebate upon prepayment, refinancing or consolidation as of the maturity date of
20 any installment then delinquent and thereafter may make a sales finance charge or loan finance
21 charge as authorized by the appropriate provisions on sales finance charges or loan finance
22 charges for consumer credit sales or consumer loans. The amount of the rebate may not be
23 reduced by the amount of any permitted minimum charge. If the creditor proceeds under this
24 subsection, any delinquency or deferral charges made with respect to installments due at or after
25 the maturity date of the delinquent installments shall be rebated and no further delinquency or
26 deferral charges shall be made.

27 (5) The commissioner shall prescribe by rule the method or procedure for the calculation
28 of delinquency charges consistent with the other provisions of this chapter where the
29 precomputed consumer credit sale or consumer loan is payable in unequal or irregular
30 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
5 percent of the unpaid amount of the installment, not to exceed \$30.

6 (2) A delinquency charge under subsection (1) of this section may be collected only once
7 on an installment however long it remains in default. A delinquency charge may be collected at
8 the 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
10 ten days after its scheduled or deferred installment due date, even though a delinquency or
11 deferral charge on an earlier installment may not have been paid in full.

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

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Chairman, Senate Committee

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Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

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Clerk of the Senate

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Clerk of the House of Delegates

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President of the Senate

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Speaker of the House of Delegates

The within this the.....
Day of, 2017.

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Governor