

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

ENROLLED

House Bill 3143

BY DELEGATES SHOTT, CAPITO, NELSON, AND FOSTER

[Passed March 9, 2019; in effect ninety days from
passage.]

1 AN ACT to amend and reenact §46A-4-101 and §46A-4-107 of the Code of West Virginia, 1931,
2 as amended, all relating to requirements for making consumer loans in West Virginia;
3 modifying the authority to make regulated consumer loans; providing that a person must
4 first obtain a license from the Commissioner of Banking authorizing him or her to make
5 regulated consumer loans before engaging in the business of making regulated consumer
6 loans, taking assignments of or undertaking direct collection of payments from or
7 enforcement of rights against consumers arising from regulated consumer loans; providing
8 that the licensing provisions do not pertain to any collection agencies as defined and
9 licensed by the West Virginia Collection Agency Act of 1973; and, adjusting threshold
10 amounts of consumer loans for which certain finance charges can be imposed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REGULATED CONSUMER LENDERS.

§46A-4-101. Authority to make loans.

1 Unless a person has first obtained a license from the commissioner authorizing the person
2 to make regulated consumer loans, he or she may not engage in the business of:

- 3 (1) Making regulated consumer loans; or
- 4 (2) Taking assignments of or undertaking direct collection of payments from or
5 enforcement of rights against consumers arising from regulated consumer loans: *Provided*, That
6 the licensing provisions of this act do not pertain to any “collection agency” as defined in, and
7 licensed by, the “Collection Agency Act of 1973” at W. Va. Code §§47-16-1 *et seq.*

§46A-4-107. Loan finance charge for regulated consumer lenders.

8 (1) With respect to a regulated consumer loan, including a revolving loan account, a
9 regulated consumer lender may contract for and receive a loan finance charge not exceeding that
10 permitted by this section.

11 (2) On a loan of \$3,500 or less which is unsecured by real property, the loan finance
12 charge, calculated according to the actuarial method, may not exceed 31 percent per year on the
13 unpaid balance of the principal amount.

14 (3) On a loan greater than \$3,500 but less than or equal to \$15,000, or which is secured
15 by real property, the loan finance charge, calculated according to the actuarial method, may not
16 exceed 27 percent per year on the unpaid balance of the principal amount: *Provided*, That the
17 loan finance charge on any loan greater than \$15,000 may not exceed 18 percent per year on
18 the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be
19 subject to the restrictions and supervision set forth in this article irrespective of their rate of finance
20 charges.

21 (4) Where the loan is nonrevolving and is greater than \$3,500, the permitted finance
22 charge may include a charge of not more than a total of two percent of the amount financed for
23 any origination fee, points, or investigation fee: *Provided*, That where any loan, revolving or
24 nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not
25 more than a total of five percent of the amount financed for any origination fee, points, or
26 investigation fee. In any loan secured by real estate, the charges may not be imposed again by
27 the same or affiliated lender in any refinancing of that loan made within 24 months thereof, unless
28 these earlier charges have been rebated by payment or credit to the consumer under the actuarial
29 method or the total of the earlier and proposed charges does not exceed five percent of the
30 amount financed. Charges permitted under this subsection shall be included in the calculation of
31 the loan finance charge. The financing of the charges is permissible and does not constitute
32 charging interest on interest. In a revolving home equity loan, the amount of the credit line
33 extended is, for purposes of this subsection, the amount financed. Other than herein provided, no
34 points, origination fee, investigation fee, or other similar prepaid finance charges attributable to
35 the lender or its affiliates may be levied. Except as provided for by §46A-3-109 of this code, no
36 additional charges may be made; nor may any charge permitted by this section be assessed
37 unless the loan is made. To the extent that this section overrides the preemption on limiting points
38 and other charges on first lien residential mortgages contained in Section 501 of the United States

39 Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations
40 contained in this section shall apply. If the loan is precomputed:

41 (a) The loan finance charge may be calculated on the assumption that all scheduled
42 payments will be made when due; and

43 (b) The effect of prepayment, refinancing, or consolidation is governed by the provisions
44 on rebate upon prepayment, refinancing, or consolidation contained in §46A-3-111 of this code.

45 (5) For the purposes of this section, the term of a loan commences on the date the loan is
46 made. Differences in the lengths of months are disregarded and a day may be counted as one
47 thirtieth of a month. Subject to classifications and differentiations the licensee may reasonably
48 establish, a part of a month in excess of 15 days may be treated as a full month if periods of 15
49 days or less are disregarded and if that procedure is not consistently used to obtain a greater
50 yield than would otherwise be permitted.

51 (6) With respect to a revolving loan account:

52 (a) A charge may be made by a regulated consumer lender in each monthly billing cycle
53 which is one-twelfth of the maximum annual rates permitted by this section computed on an
54 amount not exceeding the greatest of:

55 (i) The average daily balance of the debt; or

56 (ii) The balance of the debt at the beginning of the first day of the billing cycle, less all
57 payments on and credits to such debt during such billing cycle and excluding all additional
58 borrowings during the billing cycle.

59 For the purpose of this subdivision, a billing cycle is monthly if the billing statement dates
60 are on the same day each month or do not vary by more than four days therefrom.

61 (b) If the billing cycle is not monthly, the maximum loan finance charge which may be
62 made by a regulated consumer lender is that percentage which bears the same relation to an
63 applicable monthly percentage as the number of days in the billing cycle bears to 30.

64 (c) Notwithstanding subdivisions (a) and (b) of this subsection, if there is an unpaid
65 balance on the date as of which the loan finance charge is applied, the licensee may contract for
66 and receive a charge not exceeding 50 cents if the billing cycle is monthly or longer or the pro
67 rata part of 50 cents which bears the same relation to 50 cents as the number of days in the billing
68 cycle bears to 30 if the billing cycle is shorter than monthly, but no charge may be made pursuant
69 to this subdivision if the lender has made an annual charge for the same period as permitted by
70 the provisions on additional charges.

71 (7) As an alternative to the loan finance charges allowed by subsections (2) and (4) of this
72 section, a regulated consumer lender may on a loan not secured by real estate of \$3,500 or less
73 contract for and receive interest at a rate of up to 31 percent per year on the unpaid balance of
74 the principal amount, together with a nonrefundable loan processing fee of not more than two
75 percent of the amount financed: *Provided*, That no other finance charges are imposed on the
76 loan. The processing fee permitted under this subsection shall be included in the calculation of
77 the loan finance charge and the financing of the fee shall be permissible and may not constitute
78 charging interest on interest.

79 (8) Notwithstanding any contrary provision in this section, a licensed regulated consumer
80 lender who is the assignee of a nonrevolving consumer loan unsecured by real property located
81 in this state, which loan contract was applied for by the consumer when he or she was in another
82 state, and which was executed and had its proceeds distributed in that other state, may collect,
83 receive, and enforce the loan finance charge and other charges, including late fees, provided in
84 the contract under the laws of the state where executed: *Provided*, That the consumer was not
85 induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state
86 source affiliated with the assignee in an effort to evade the consumer protections afforded by this
87 chapter. Such charges may not be considered to be usurious or in violation of the provisions of
88 this chapter or any other provisions of this 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.

In 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, 2019.

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Governor