WEST VIRGINIA LEGISLATURE
Regular Session, 2001

ENROLLED
Committee Substitute for
SENATE BILL NO. 524

(By Senators Sharpe, Snyder, Facemyer)

PASSED April 14, 2001
In Effect 90 days from Passage
AN ACT to amend and reenact sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; and to amend and reenact section one hundred seven, article four of said chapter, all relating to the consumer credit and protection act and regulated consumer lenders; modifying the late payment fees on precomputed and nonprecomputed credit sales or consumer loans, and modifying the unsecured loan amounts on which an origination fee and thirty-one percent interest can be charged.

Be it enacted by the Legislature of West Virginia:

That sections one hundred twelve and one hundred thirteen, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended
and reenacted; and that section one hundred seven, article four of said chapter be 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 consolidation, the parties may contract for a delinquency charge on any installment not paid in full within ten days after its scheduled due date in an amount not exceeding the greater of:

6  (a) Five percent of the unpaid amount of the installment, not to exceed fifteen dollars; or

8  (b) An amount equivalent to the deferral charge that would be permitted to defer the unpaid amount of the installment for the period that it is delinquent.

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

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

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

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

(5) The commissioner shall prescribe by rule the method
or procedure for the calculation of delinquency charges
consistent with the other provisions of this chapter where
the precomputed 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) In addition to the continuation of the sales finance
charge or loan finance charge on a delinquent installment
with respect to a nonprecomputed consumer credit sale or
consumer loan, refinancing or consolidation, repayable in
installments, the parties may contract for a delinquency
charge on any installment not paid in full within ten days
after its scheduled due date of five percent of the unpaid
amount of the installment, not to exceed fifteen dollars.

(2) A delinquency charge under subsection (1) of this
section may be collected only once on an installment
however long it remains in default. A delinquency charge may be collected at the time it accrues or at any time thereafter.

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

ARTICLE 4. REGULATED CONSUMER LENDERS.

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

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

(2) On a loan of two thousand dollars or less which is unsecured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed thirty-one percent per year on the unpaid balance of the principal amount.

(3) On a loan of greater than two thousand dollars or which is secured by real property, the loan finance charge, calculated according to the actuarial method, may not exceed twenty-seven percent per year on the unpaid balance of the principal amount. Provided, That the loan finance charge on any loan greater than ten thousand dollars may not exceed eighteen percent per year on the unpaid balance of the principal amount. Loans made by regulated consumer lenders shall be subject to the restrictions and supervision set forth in this article irrespective of their rate of finance charges.
(4) Where the loan is nonrevolving and is greater than two thousand dollars, the permitted finance charge may include a charge of not more than a total of two percent of the amount financed for any origination fee, points or investigation fee: Provided, That where any loan, revolving or nonrevolving, is secured by real estate, the permitted finance charge may include a charge of not more than a total of five percent of the amount financed for any origination fee, points or investigation fee. In any loan secured by real estate, the charges may not be imposed again by the same or affiliated lender in any refinancing of that loan made within twenty-four months thereof, unless these earlier charges have been rebated by payment or credit to the consumer under the actuarial method or the total of the earlier and proposed charges does not exceed five percent of the amount financed. Charges permitted under this subsection shall be included in the calculation of the loan finance charge. The financing of the charges may be permissible and may not constitute charging interest on interest. In a revolving home equity loan, the amount of the credit line extended shall, for purposes of this subsection, constitute the amount financed. Other than herein provided, no points, origination fee, investigation fee or other similar prepaid finance charges attributable to the lender or its affiliates may be levied. Except as provided for by section one hundred nine, article three of this chapter, no additional charges may be made; nor may any charge permitted by this section be assessed unless the loan is made. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgages contained in Section 501 of the United States Depository Institutions Deregulation and Monetary Control Act of 1980, the state law limitations contained in this section shall apply. If the loan is precomputed:

(a) The loan finance charge may be calculated on the assumption that all scheduled payments will be made when due; and
(b) The effect of prepayment, refinancing or consolidation is governed by the provisions on rebate upon prepayment, refinancing or consolidation contained in section one hundred eleven, article three of this chapter.

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

(6) With respect to a revolving loan account:

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

(i) The average daily balance of the debt; or
(ii) The balance of the debt at the beginning of the first day of the billing cycle, less all payments on and credits to such debt during such billing cycle and excluding all additional borrowings during the billing cycle.

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

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

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

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

(8) Notwithstanding any contrary provision in this section, a licensed regulated consumer lender who is the assignee of a nonrevolving consumer loan unsecured by real property located in this state, which loan contract was applied for by the consumer when he or she was in another state, and which was executed and had its proceeds distributed in that other state, may collect, receive and enforce the loan finance charge and other charges, including late fees, provided in the contract under the laws of the state where executed: Provided, That the consumer was not induced by the assignee or its in-state affiliates to apply and obtain the loan from an out-of-state source affiliated with the assignee in an effort to evade the consumer protections afforded by this chapter. Such charges may not be considered to be usurious or in violation of the provisions of this chapter or any other provisions of this code.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker House of Delegates

The within.................. is approved this the 1st Day of May.................................., 2001.

Governor
PRESENTED TO THE
GOVERNOR
Date 4/30/01
Time 2:50 pm