



May 11, 2017

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West Virginia Legislature Amends Consumer Credit and Protection Act

West Virginia Governor Jim Justice has signed two bills (SB 344 and SB 563) into law that make significant changes to the West Virginia Consumer Credit and Protection Act, ("WVCCPA"). Both bills will go into effect on July 4, 2017.

Sought by the banking industry, **SB 344** changes the requirements as to how a consumer's loan payments must be applied to their account. Currently, payments must be applied first to the current installment. As a result of SB 344's amendments, payments will now be applied first in the order they are due, and then to delinquency and other outstanding charges. SB 344 also changes the law to permit lenders to hold partial payments in suspense accounts until the full payment is received, at which time the bank must apply the entire payment to the loan.

SB 563 contains several major changes to the WVCCPA. Perhaps the most significant is the imposition of a new requirement (W.Va. Code § 46A-5-108) on putative plaintiffs that they give a lender or debt collector **notice of a right to cure** before filing a lawsuit. Specifically, consumers must give notice of the alleged violations forty-five (45) days before filing suit. If the lender or debt collector chooses not to make a cure offer during the 45-day period, the consumer may file his or her lawsuit. If a cure offer is made, but rejected by the consumer, the consumer may only be awarded attorney's fees in the subsequent litigation if he or she is awarded an amount at trial that exceeds the cure offer. Needless to say, lenders and debt collectors seeking to successfully resolve disputes pre-suit, will need to move quickly to fully assess the consumer's claims and convey a cure offer.

Other important revisions made by SB 563 include a new section (W.Va. Code § 46A-2-140) establishing that pleadings may not form the basis of a cause of action under the WVCCPA unless the pleading is a material violation of certain statutory provisions. Likewise, the bill clarifies that any counterclaim brought under the WVCCPA (e.g. a debt collection claim filed in response to a

foreclosure action) is subject to the applicable statute of limitations (W.Va. Code § 46A-5-102).

Changes in SB 563 specific to the provisions governing **debt collection practices** include a change in the period of time after which direct contact with a consumer (e.g., collection calls) must cease following receipt of notice of representation from “seventy-two hours” to “three business days” (W.Va. Code § 46A-2-128(d)). The bill also specifies that the notice to a debt collector of a consumer’s representation by legal counsel, which previously only needed to be in writing, must now be sent by certified mail, return receipt requested. The definition of “debt collector” in W.Va. Code § 46A-2-122 also is amended to exempt certain attorneys representing creditors in connection with claims or collections, provided they do so in their own name and are not operating a collection agency under the management of a person who is not a licensed attorney.

A revision of particular import to mortgage lenders is a change to the statute of limitations from four (4) years to one (1) year for any claims relating to the setting aside of a foreclosure sale. The bill also relaxes disclosures requirements for balloon payments, amending 46A-2-105(2) to no longer require that the language disclosing a balloon payment in a promissory note track verbatim the language prescribed by the statute, but rather simply be **substantially similar** in form and substance to the statutory language.

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