WEST VIRGINIA CODE: §46a-3-109

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) In addition to the sales finance charge or loan finance charge permitted by this chapter, a creditor may contract for and receive the following additional charges in connection with a consumer credit sale or a consumer loan:

(1) Official fees and taxes;

(2) Charges for insurance as described in subsection (b) of this section: Provided, That nothing contained in this section with respect to insurance in any way limits the power and jurisdiction of the Insurance Commissioner of this state in the premises;

(3) Annual charges, payable in advance, for the privilege of using a lender credit card or similar arrangement which entitles the user to purchase goods or services from at least one hundred persons not related to the issuer of the lender credit card or similar arrangement, under an arrangement pursuant to which the debts resulting from the purchases are payable to the issuer;

(4) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or her and if the charges are reasonable in relation to the benefits, are of a type which is not for credit and are excluded as permissible additional charges from the sales finance charge or loan finance charge by rule adopted by the commissioner: Provided, That as to insurance, the policy as distinguished from a certificate of coverage thereunder may only be issued by an individual licensed under the laws of this state to sell the insurance and the determination of whether the charges therefor are reasonable in relation to the benefits shall be determined by the Insurance Commissioner of this state;

(5) Reasonable closing costs with respect to a debt secured by an interest in land; and

(6) Documentary charge or any other similar charge for documentary services in relation to securing a title, so long as said charge is applied equally to cash customers and credit customers and there is a reasonable relationship between said charge and the benefit conferred on the customer.

(b) A creditor may take, obtain or provide reasonable insurance on the life and earning capacity of any consumer obligated on the consumer credit sale or consumer loan, reasonable insurance on any real or personal property offered as security subject to the provisions of this subsection and section one hundred nine-a of this article and vendor's or creditor's single interest insurance with respect to which the insurer has no right of

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subrogation. Only one policy of life insurance and/or one policy of health and accident insurance and/or one policy of accident insurance and/or one policy of loss of income insurance on any one consumer may be in force with respect to any one contract or agreement at any one time, but one policy may cover both a consumer and his or her spouse:

(1) The amount, terms and conditions of property insurance shall have a reasonable relation to the existing hazards or risk of loss, damage or destruction and be reasonable in relation to the character and value of the property insured or to be insured; and the term of the insurance shall be reasonable in relation to the terms of credit: Provided, That nothing may prohibit the consumer from obtaining, at his or her option, greater coverages for longer periods of time if he or she so desires;

(2) Life insurance shall be in an initial amount not to exceed the total amount repayable under the consumer credit agreement, and where a consumer credit sale or consumer loan is repayable in installments, such insurance may at no time exceed the scheduled or actual amount of unpaid indebtedness, whichever is greater. Life insurance authorized by this subdivision shall provide that the benefits be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for the insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then the excess is payable to the estate of the consumer. The initial term of the life insurance in connection with a consumer credit sale, other than a sale pursuant to a revolving charge account, or in connection with a consumer loan, other than a loan pursuant to a revolving loan account, may not exceed the scheduled term of the consumer credit agreement by more than fifteen days. The aggregate amount of periodic benefits payable by credit accident and health insurance in the event of disability, as defined in the policy, and loss of income insurance in the event of involuntary loss of employment, as defined in the policy, may not exceed the unpaid amount of such indebtedness; periodic benefits payable in connection with a consumer credit sale pursuant to a revolving charge account or of a consumer loan pursuant to a revolving loan account may be based upon the authorized credit limit;

(3) When the insurance is obtained or provided by or through a creditor, the creditor may collect from the consumer or include as part of the cash price of a consumer credit sale or as part of the principal of a consumer loan or deduct from the proceeds of any consumer loan the premium or, in the case of group insurance, the identifiable charge. The premium or identifiable charge for the insurance required or obtained by a creditor may equal, but may not exceed the premium rate filed by the insurer with the Insurance Commissioner. In any case when the creditor collects the entire premium for such insurance in advance, the premium shall be remitted by the creditor to the insurer or the insurance agent, as specified by the insurer, within ten days from or after the end of the month in which the collection was made;

(4) With respect to insurance against loss of or damage to property or against liability, the creditor shall furnish a clear and specific statement in writing to the debtor setting forth the cost of the insurance if obtained from or through the creditor and stating that the debtor may choose the person through whom the insurance is to be obtained;

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(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor may require a consumer to purchase the insurance or to purchase the insurance from the creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;

(6) When a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving the payment shall inform the debtor of the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage and advise the debtor of the application of any unearned premiums to the loan balance. Notices required by this subdivision shall be made in the following manner:

(A) If the insurance was not sold or provided by the creditor, the creditor receiving the payment shall notify the debtor that he or she may have the right to receive a refund of unearned premiums from any other seller or provider of the insurance and advise the debtor of his or her obligation to notify any other insurer of the payment of the loan balance and the cancellation of the consumer credit insurance and request a refund or credit of unearned premiums, if applicable. Such notice shall be sent on a form as prescribed by the Insurance Commissioner as provided in chapter twenty-nine-a of this code and shall contain the name and address of the seller and the insurer; or

(B) If the creditor was the seller or provider of the consumer credit insurance, the creditor shall:

(i) Notify the insurer or shall cause the insurer to be notified of the cancellation of such insurance; and

(ii) Notify the debtor of the cancellation of the insurance and of the application of any unearned premiums to the loan balance, which notice may be on a form consistent with the general course of business of the creditor;

(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel the insurance effective no later than thirty days from the date of receipt of the notice. Within forty-five days following the date of notification of cancellation of the insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and

(8) An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff is liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided by section one hundred nine, article seven of this chapter.

(c) The Insurance Commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance and the authority of the Insurance Commissioner to promulgate the rules is exclusive notwithstanding any other provisions of this code to the contrary.

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