WEST VIRGINIA CODE: §46a-3-109A

§46A-3-109a. Collateral protection insurance.

(a) As used in this section:

(1) "Collateral" means any or all property pledged to secure payment, repayment or performance under a credit agreement, whether personal property, real property, fixtures, inventory, receivables, rights, privileges or otherwise.

(2) (A) "Collateral protection insurance" means insurance coverage that: (i) Is purchased unilaterally by a creditor subsequent to the date of a consumer credit agreement; (ii) provides monetary protection against loss of or damage to the collateral or against liability arising out of the ownership or use of the collateral; and (iii) is purchased according to the terms of a credit agreement as a result of a consumer's failure to provide evidence of insurance or failure to maintain adequate insurance covering the collateral, with the costs of the collateral protection insurance, including interest and any other charges imposed by the creditor in connection with the placement of the collateral protection insurance, payable by the consumer. Collateral protection insurance includes insurance coverage that is purchased to protect only the interest of the creditor and insurance coverage that is purchased to protect both the interest of the creditor and some or all of the interest of the consumer. The term of a collateral protection insurance policy may, but need not, extend to the full term of the credit transaction.

(B) Collateral protection insurance does not include insurance coverage that is: (i) Purchased by the creditor for which the consumer is not charged; (ii) purchased at the inception of a credit transaction to which the consumer is a party or agrees, whether or not the costs are included in any payment plan under the credit transaction; (iii) purchased by the creditor following foreclosure, repossession, or a similar event wherein the creditor gains possession or control over the collateral; (iv) maintained by the creditor for the protection of any or all collateral which may come into the possession or control of the creditor through foreclosure, repossession or a similar event; (v) credit insurance, mortgage protection insurance, insurance issued to cover the life or health of the consumer or any other insurance maintained to cover the inability or failure of the consumer to make payment under the credit agreement; (vi) title insurance; or (vii) flood insurance required to be placed by creditors by 42 U.S.C. §4012(a), as amended, pursuant to the National Flood Insurance Reform Act of 1994.

(3) "Credit agreement" means the written document or documents that set forth the terms of the credit transaction.

(4) "Credit transaction" means any consumer credit transaction, the terms of which require the payment or repayment of money, goods, services, property, rights or privileges, which is to be made on one or more future dates, where the obligation is secured by collateral.

WV LegisLure

(5) "Creditor" shall mean, for purposes of this section only, an institution, the deposits of which are insured by the federal deposit insurance agency, the national credit union share insurance fund, or a subsidiary of such an institution, or a subsidiary of a holding company owning such an institution, and this section applies and is available only to such creditors.

(b) A creditor may place collateral protection insurance if the following conditions are met:

(1) The consumer has entered into a credit transaction with the creditor;

(2) The credit transaction has been reduced to a credit agreement and the credit agreement requires the consumer to maintain insurance on the collateral; and

(3) A notice substantially similar to the following has been included in the credit agreement or on a separate document provided to the consumer and to any cosigner, guarantor or other person liable with the consumer for the obligation, at the time the credit agreement is entered:

"Unless you provide us with evidence of the insurance coverage required by your agreement with us, we may purchase insurance at your expense to protect our interests in your collateral. This insurance may, but need not, protect your interests. The coverage that we purchase may not pay any claim that you make or any claim that is made against you in connection with the collateral. You may later cancel any insurance purchased by us, but only after providing us with evidence that you have obtained insurance as required by our agreement. If we purchase insurance for the collateral, you will be responsible for the costs of that insurance, including interest and any other charges we may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance may be added to your total outstanding balance or obligation. The costs of the insurance may be more than the cost of insurance you may be able to obtain on your own."

(c) (1) Within thirty calendar days following the placement of collateral protection insurance, the creditor shall mail to the consumer and to any cosigner, guarantor or other person liable with the consumer for the obligation, at the last known address of the person, a notice entitled "Notice of Placement of Insurance" in a form substantially similar to the following:

"NOTICE OF PLACEMENT OF INSURANCE

Your credit agreement with us requires you to maintain adequate insurance on your collateral until you pay off your loan. You have not given us proof that you have adequate insurance on your collateral. Under the terms of your credit agreement, we have purchased insurance at your expense to protect our interests in your collateral.

The insurance we purchased will pay claims made by us as the creditor. The insurance we purchased may not pay any claims made by you or against you in connection with your collateral.

WV Legislature

You are responsible for the costs of this insurance, including interest and any other charges we may impose in connection with the purchase of this insurance. The costs of this insurance may be more than insurance you can buy on your own.

You still may obtain insurance on your own choosing on the collateral. If you provide us with proof that you have obtained adequate insurance on your collateral, we will cancel the insurance that we purchased and refund or credit any unearned premiums to you.

If, within thirty days after the date this notice was sent to you, you provide us with proof that you had adequate insurance on your collateral as of the date we also purchased insurance and that you continue to have the insurance that you purchased yourself, we will cancel the insurance that we purchased without charging you any costs, interest or other charges in connection with the insurance that we purchased."

(2) The terms for repayment of the costs of the collateral protection insurance, which include interest and any other charges imposed by the creditor in connection with the placement of the collateral protection insurance, shall include one or more of the following:

(A) Full payment within thirty days after the date of the notice of placement of insurance;

(B) A final balloon payment within thirty days after the last scheduled payment required by the credit agreement; or

(C) Full amortization over the term of the credit transaction, the term of the collateral protection insurance policy, or the term for which amortization is used by the creditor.

(d) If any form of amortization is used by the creditor for the costs of collateral protection insurance and a coupon book was sent to the consumer at the inception of the credit transaction, the creditor shall send to the consumer either:

(1) Reprinted coupon book with revised calculations of the consumer's payments that includes the amortized costs of the collateral protection insurance; or

(2) Supplemental coupon book with calculations of the consumer's additional payments based upon the amortized costs of the collateral protection insurance, for use by the consumer in addition to the original coupon book.

(e) A consumer may at any time cancel the collateral protection insurance by providing proper evidence to the creditor that the consumer has obtained insurance as required by the credit agreement. If, within thirty days after notice is sent pursuant to subdivision (1), subsection (c) of this section, a consumer provides the creditor with proper evidence that the consumer had insurance on the collateral as required by the credit agreement on the date the creditor purchased insurance and that the consumer continues to have insurance on the collateral as required by the credit agreement, the creditor shall cancel the insurance that it purchased and may not charge the consumer any costs, interest or other charges in connection with the insurance.

WV Legislature

(f) Upon cancellation or expiration of collateral protection insurance, the amount of unearned premiums, if any, as calculated in accordance with the policy, shall be refunded to the consumer. A refund of unearned premiums may be credited to the consumer's obligation under the credit agreement or distributed directly to the consumer by check or other means.

(g) Collateral protection insurance may be placed with any insurance carrier selected by the creditor that is licensed to underwrite the insurance by the division of insurance. The insurance shall be evidenced by an individual policy or a certificate of insurance.

(h) A creditor that places collateral protection insurance in substantial compliance with the terms of this section is not directly or indirectly liable in any manner to a consumer, cosignor, guarantor or any other person, in connection with the placement of the collateral protection insurance. Notices and coupon books required to be mailed to a consumer under this section are not required to be mailed to any person other than to the consumer and shall be mailed by United States mail, first class, postage prepaid, to the consumer's last known address on file with the creditor.

(i) This section does not impose a fiduciary relationship between the creditor and the consumer. Placement of collateral protection insurance is for the sole purpose of protecting the interest of the creditor when the consumer fails to insure collateral as required by the credit agreement.

(j) A creditor is not, by virtue of this section, required to purchase collateral protection insurance or to otherwise insure collateral. A creditor is not, by virtue of this section, liable to a consumer or to any other person for not purchasing collateral protection insurance, as a result of the amount or level of coverage of collateral protection insurance purchased by the creditor, or because the creditor purchased collateral protection insurance that protects only the interests of the creditor or less than all of the interests of the consumer. This section does not create a cause of action for damages on behalf of the consumer or any other person in connection with the placement of collateral protection insurance.

(k) The obligations and rights of the creditor and the consumer with respect to the collateral, as provided by the uniform commercial code, chapter forty-six of this code, are not affected by this section.

(l) Substantial compliance with the provisions of this section is mandatory for the placement of collateral protection insurance in this state by a creditor pursuant to a credit agreement entered into on or after July 1, 1999. No provision of this section may be held or applied against a creditor in connection with collateral protection insurance placed prior to July 1, 1998. A creditor that places collateral protection insurance pursuant to a credit agreement entered into prior to July 1, 1998, has available to it all of the rights provided by this section if the creditor is in substantial compliance with the provisions of this section, other than subdivision (3) of subsection (b).

www.legislature