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WEST VIRGINIA LEGISLATURE  
REGULAR SESSION, 1985

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ENROLLED

*Committee Substitute for*

SENATE BILL NO. 329

(By Mr. Fucker)

—•—

PASSED April 10 1985

In Effect ninety days from Passage



**ENROLLED**  
**COMMITTEE SUBSTITUTE**  
**FOR**

**Senate Bill No. 329**

(MR. TUCKER, *original sponsor*)

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(Originating in the Committee on the Judiciary.)

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[Passed April 10, 1985; in effect ninety days from passage.]

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AN ACT to repeal section sixteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended; to amend and reenact sections one hundred four and one hundred six, article two, chapter forty-six-a of said code; and to amend and reenact sections one hundred eleven, one hundred twelve and one hundred thirteen, article three of said chapter, all relating to credit transactions generally; priority of a security interest in a motor vehicle by delivery of certificate of origin and actual and continued possession of such certificate; notice of liability to a surety, cosigner, comaker, endorser, or guarantor of a consumer credit sale or consumer loan obligation; notice of a consumer's right to cure default; curing of such default and acceleration of the maturity of a consumer credit sale or consumer loan; application of payments on account; rebate upon prepayment, refinancing or consolidation of a consumer loan or consumer credit sale; judgments and interest on judgments arising from a consumer credit sale or consumer loan; delinquency charges on precomputed consumer credit sales or consumer loans; and delinquency charges on non-precomputed consumer credit sales or consumer loans.

*Be it enacted by the Legislature of West Virginia:*

That section sixteen, article four-a, chapter seventeen-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be repealed; that sections one hundred four and one hundred six, article two, chapter forty-six-a of said code be amended and reenacted; and that sections one hundred eleven, one hundred twelve and one hundred thirteen, article three of said chapter, be amended and reenacted, all to read as follows:

**ARTICLE 2. CONSUMER CREDIT PROTECTION.**

**§46A-2-104. Notice to cosigners.**

1 No person shall be held liable as surety, cosigner, co-  
2 maker, endorser or guarantor or be charged with personal  
3 liability for payment in a consumer credit sale or con-  
4 sumer loan unless that person, in addition to and before  
5 signing any instrument evidencing the transaction, signs  
6 and receives a separate notice which clearly explains his  
7 liability in the event of default by the consumer and also  
8 receives a copy of the disclosure required by the "Federal  
9 Consumer Credit Protection Act." Such notice shall be  
10 sufficient if it appears under the conspicuous caption  
11 "NOTICE TO COSIGNER" and contains substantially the  
12 following language:

13 "You are being asked to guarantee this debt. Think  
14 carefully before you do. If the borrower doesn't pay the  
15 debt, you will have to. Be sure you can afford to pay it  
16 if you have to, and that you want to accept this responsi-  
17 bility."

18 "You may have to pay up to the full amount of the debt  
19 if the borrower does not pay. You may also have to pay  
20 late fees or collection costs, which increase this amount."

21 "The creditor can collect this debt from you without  
22 first trying to collect from the borrower. The creditor can  
23 use the same collection methods against you that can be  
24 used against the borrower, such as suing you, garnishing  
25 your wages, etc. If this debt is ever in default, that fact  
26 may become a part of your credit record."

27 "This notice is not the contract that makes you liable  
28 for the debt."

29 The caption shall be typewritten or printed in at least  
30 twelve point bold Helvetica upper case type. The body of  
31 the notice shall be typewritten or printed in at least eight  
32 point regular Helvetica type, in upper or lower case,  
33 where appropriate.

**§46A-2-106. Notice of consumer's right to cure default; cure;  
acceleration.**

1 After a consumer has been in default on any install-  
2 ment obligation or any other secured obligation for five  
3 days for failure to make a scheduled payment or other-  
4 wise perform pursuant to such a consumer credit sale or  
5 consumer loan other than with respect to a covenant to  
6 provide insurance for or otherwise to protect and pre-  
7 serve the property covered by a security interest, the  
8 creditor may give him notice of such fact in the manner  
9 provided for herein. Actual delivery of such notice to a  
10 consumer or delivery or mailing of same to the last  
11 known address of the consumer is sufficient for the pur-  
12 pose of this section. If given by mail, notice is given when  
13 it is deposited in a mailbox properly addressed and post-  
14 age prepaid. Notice shall be in writing and shall con-  
15 spicuously state the name, address and telephone number  
16 of the creditor to whom payment or other performance  
17 is owed, a brief description of the transaction, the con-  
18 sumer's right to cure such default and the amount of  
19 payment and other required performance and date by  
20 which it must be paid or accomplished in order to cure  
21 the default. A copy of the notice required by this section  
22 shall be (i) retained by the creditor, (ii) certified in the  
23 manner prescribed by this section by an officer or other  
24 authorized representative of such creditor, and (iii) no-  
25 tarized by a person licensed as a notary under the laws  
26 of the state of West Virginia or any other state or terri-  
27 tory of the United States. The certification required by  
28 this section shall substantially conform to the following  
29 language:

30 "I, \_\_\_\_\_ (name of person certifying),

31 the \_\_\_\_\_ (title of person certifying)  
32 of \_\_\_\_\_ (creditor's name), hereby  
33 certify that the notice of the consumer's right to cure  
34 default on which this certification appears [or to which  
35 this certification is attached] was on this \_\_\_\_\_ day of  
36 \_\_\_\_\_, 19\_\_\_\_, mailed to the person(s) whose  
37 name(s) appear herein [therein] at the address(es) set  
38 forth herein [therein].  
39 \_\_\_\_\_"  
40 (Signature)

41 Except as hereinafter provided in this section, after a de-  
42 fault on any installment obligation or any other secured  
43 obligation other than with respect to a covenant to provide  
44 insurance for or otherwise to protect and preserve the  
45 property covered by a security interest, a creditor may  
46 not accelerate maturity of the unpaid balance of any  
47 such installment obligation or any other such secured  
48 obligation, commence any action or demand or take pos-  
49 session of collateral on account of default until ten days  
50 after notice has been given to the consumer of his right  
51 to cure such default. Until such period expires, the con-  
52 sumer shall have the right to cure any default by tender-  
53 ing the amount of all unpaid sums due at the time of the  
54 tender, without acceleration, plus any unpaid delinquen-  
55 cy or deferral charges and by tendering any other per-  
56 formance necessary to cure such default. Any such cure  
57 shall restore a consumer to all his rights under the agree-  
58 ment the same as if there had been no default. A con-  
59 sumer who has been in default three or more times on the  
60 same obligation and who has been given notice of such  
61 fact three or more times shall not have the right to cure  
62 a default under this section even though previous de-  
63 faults have been cured and his creditor's right to proceed  
64 against him and his collateral shall not be impaired or  
65 limited in any way by this section. There shall be no  
66 acceleration of the maturity of all or part of any amount  
67 owing in such a consumer credit sale or consumer loan,  
68 except where nonperformance specified in the agree-  
69 ment as constituting default has occurred.

**ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.**

**§46A-3-111. Application of payments on account; rebate upon prepayment, refinancing or consolidation; judgments and interest on judgments.**

1 (1) When a consumer credit sale or consumer loan is  
2 precomputed all payments on account shall be applied to  
3 installments in the order in which they fall due, except  
4 as provided in subsection (3), section one hundred twelve  
5 of this article. When the total amount is payable in sub-  
6 stantially equal consecutive monthly installments, the  
7 portion of the sales finance charge or loan finance charge  
8 attributable to any particular monthly installment period  
9 shall be that proportion of the sales finance charge or loan  
10 finance charge originally contracted for, as the balance  
11 scheduled to be outstanding on the last day of the month-  
12 ly installment period before deducting the payment, if  
13 any, scheduled to be made on that day bears to the sum  
14 of all the monthly installment balances under the original  
15 schedule of payments. (This method of allocation is the  
16 sum of the digits method, commonly referred to as the  
17 "Rule of 78.")

18 (2) Upon prepayment in full of a precomputed consum-  
19 er credit sale or consumer loan by cash, a new loan,  
20 refinancing, consolidation or otherwise, the creditor shall  
21 rebate to the consumer that portion of the sales finance  
22 charge or loan finance charge in the manner specified in  
23 section five-d, article six, chapter forty-seven of this code:  
24 *Provided*, That no rebate of less than one dollar need be  
25 made.

26 (3) If the maturity of a precomputed consumer credit  
27 sale or consumer loan is accelerated for any reason and  
28 judgment is obtained, the debtor is entitled to the same  
29 rebate as if the payment had been made on the date  
30 judgment is entered and such judgment shall bear in-  
31 terest until paid at the rate of ten percent per annum.

**§46A-3-112. Delinquency charges on precomputed consumer credit sales or consumer loans.**

1 (1) With respect to a precomputed consumer credit sale  
2 or consumer loan, refinancing or consolidation, the parties

3 may contract for a delinquency charge on any install-  
4 ment not paid in full within ten days after its scheduled  
5 due date in an amount not exceeding the greater of:

6 (a) An amount, not exceeding ten dollars, which is  
7 five percent of the unpaid amount of the installment, but  
8 in any event not less than one dollar; or

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

12 (2) A delinquency charge under subdivision (a) of  
13 subsection (1) may be collected only once on an in-  
14 stallment however long it remains in default. No delin-  
15 quency charge may be collected with respect to a de-  
16 ferred installment unless the installment is not paid in  
17 full within ten days after its deferred due date. A  
18 delinquency charge may be collected at the time it ac-  
19 crues or at any time thereafter.

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

29 (4) If two installments or parts thereof of a precomputed  
30 consumer credit sale or consumer loan are in default  
31 for ten days or more, the creditor may elect to convert  
32 such sale or loan from a precomputed sale or loan to  
33 one in which the sales finance charge or loan finance  
34 charge is based on unpaid balances. In such event the  
35 creditor shall make a rebate pursuant to the provisions  
36 on rebate upon prepayment, refinancing or consolidation  
37 as of the maturity date of any installment then delin-  
38 quent, and thereafter may make a sales finance charge  
39 or loan finance charge as authorized by the appropriate  
40 provisions on sales finance charges or loan finance charges  
41 for consumer credit sales or consumer loans.

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

49 (5) The commissioner shall prescribe by rule the  
50 method or procedure for the calculation of delinquency  
51 charges consistent with the other provisions of this  
52 chapter where the precomputed consumer credit sale  
53 or consumer loan is payable in unequal or irregular  
54 installments.

**§46A-3-113. Delinquency charges on nonprecomputed consumer credit sales or consumer loans repayable in installments.**

1 (1) As an alternative to the continuation of the sales  
2 finance charge or loan finance charge on a delinquent  
3 installment of a nonprecomputed credit sale or consumer  
4 loan, refinancing or consolidation, repayable in install-  
5 ments, the parties may contract for a delinquency charge  
6 on any installment not paid in full within ten days after  
7 its scheduled due date in an amount, not exceeding ten  
8 dollars, which is five percent of the unpaid amount of the  
9 installment, but in any event not less than one dollar.

10 (2) A delinquency charge under subsection (1) may be  
11 collected only once on an installment however long it  
12 remains in default. A delinquency charge may be col-  
13 lected at the time it accrues or at any time thereafter.

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



The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Bruce D. Weir  
Chairman Senate Committee

Floyd Fuller  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Loed C. With  
Clerk of the Senate

Donald L. Kepp  
Clerk of the House of Delegates

Sam Tankership  
President of the Senate

Joseph P. Allright  
Speaker House of Delegates

The within appressed this the 2nd  
May, 1985.

James A. Moser Jr.  
Governor

PRESENTED TO THE

GOVERNOR

Date 4/17/85

Time 3:57 p.m.