

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

ENROLLED

Com. Sub. for

HOUSE BILL No. *4037*

(By ~~MR~~ *Del. Susman*)

— ● —

Passed *March 7,* 1990

In Effect *ninety days from* Passage

ENROLLED
COMMITTEE SUBSTITUTE
FOR
H. B. 4037
(By DELEGATE SUSMAN)

[Passed March 7, 1990; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to finance charges and related provisions—additional charges; insurance; requiring the refund to debtors of unused insurance premiums upon payment in full of debt; and providing civil penalty.

Be it enacted by the Legislature of West Virginia:

That section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; insurance; when refund required; civil penalty.

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

6 (a) Official fees and taxes;

7 (b) Charges for insurance as described in subsection
8 (2): *Provided*, That nothing contained in this section with
9 respect to insurance shall be construed as in any way
10 limiting the power and jurisdiction of the insurance
11 commissioner of this state in the premises;

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

20 (d) Charges for other benefits, including insurance,
21 conferred on the consumer, if the benefits are of value
22 to him/her and if the charges are reasonable in relation
23 to the benefits, are of a type which is not for credit, and
24 are excluded as permissible additional charges from the
25 sales finance charge or loan finance charge by rule
26 adopted by the commissioner: *Provided*, That as to
27 insurance, the policy as distinguished from a certificate
28 of coverage thereunder must be issued by an individual
29 licensed under the laws of this state to sell such
30 insurance and the determination of whether the charges
31 therefor are reasonable in relation to the benefits shall
32 be determined by the insurance commissioner of this
33 state; and

34 (e) Reasonable closing costs with respect to a debt
35 secured by an interest in land.

36 (2) A creditor may take, obtain or provide reasonable
37 insurance on the life and earning capacity of any
38 consumer obligated on the consumer credit sale or
39 consumer loan, reasonable insurance on any real or
40 personal property offered as security subject to the
41 provisions of this subsection, and vendor's or creditor's
42 single interest insurance with respect to which the
43 insurer has no right of subrogation. Only one policy of
44 life insurance and/or one policy of health and accident
45 insurance and/or one policy of accident insurance and/or
46 one policy of loss of income insurance on any one

47 consumer may be in force with respect to any one
48 contract or agreement at any one time, but one policy
49 may cover both a consumer and his/her spouse:

50 (a) The amount, terms and conditions of property
51 insurance shall have a reasonable relation to the existing
52 hazards or risk of loss, damage or destruction and be
53 reasonable in relation to the character and value of the
54 property insured or to be insured; and the term of such
55 insurance shall be reasonable in relation to the terms of
56 credit: *Provided*, That nothing shall be deemed to
57 prohibit the consumer from obtaining, at his/her option,
58 greater coverages for longer periods of time if he/she so
59 desires;

60 (b) Life insurance shall be in an initial amount not to
61 exceed the total amount repayable under the consumer
62 credit agreement, and where a consumer credit sale or
63 consumer loan is repayable in installments, such
64 insurance shall at no time exceed the scheduled or
65 actual amount of unpaid indebtedness, whichever is
66 greater. Life insurance authorized by this subdivision
67 shall provide that the benefits shall be paid to the
68 creditor to reduce or extinguish the unpaid indebted-
69 ness: *Provided*, That if a separate charge is made for
70 such insurance and the amount of insurance exceeds the
71 unpaid indebtedness, where not prohibited, then such
72 excess shall be payable to the estate of the consumer.
73 The initial term of such life insurance in connection with
74 a consumer credit sale, other than a sale pursuant to a
75 revolving charge account, or in connection with a
76 consumer loan, other than a loan pursuant to a revolving
77 loan account, shall not exceed the scheduled term of the
78 consumer credit agreement by more than fifteen days.
79 The aggregate amount of periodic benefits payable by
80 credit accident and health insurance in the event of
81 disability, as defined in the policy, and loss of income
82 insurance in the event of involuntary loss of employ-
83 ment, as defined in the policy, shall not exceed the
84 unpaid amount of such indebtedness; periodic benefits
85 payable in connection with a consumer credit sale
86 pursuant to a revolving charge account or of a consumer
87 loan pursuant to a revolving loan account may be based

88 upon the authorized credit limit;

89 (c) When the insurance is obtained or provided by or
90 through a creditor, the creditor may collect from the
91 consumer or include as part of the cash price of a
92 consumer credit sale or as part of the principal of a
93 consumer loan, or deduct from the proceeds of any
94 consumer loan the premium, or in the case of group
95 insurance, the identifiable charge. The premium or
96 identifiable charge for such insurance required or
97 obtained by a creditor may equal, but shall not exceed,
98 the premium rate filed by the insurer with the insu-
99 rance commissioner. In any case, when the creditor
100 collects the entire premium for such insurance in
101 advance, such premium shall be remitted by such
102 creditor to the insurer or the insurance agent, as
103 specified by the insurer, within ten days from or after
104 the end of the month in which such collection was made;

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

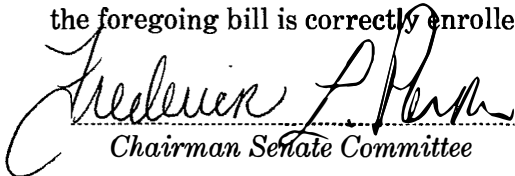
112 (e) With respect to consumer credit insurance provid-
113 ing life, accident, health or loss of income coverage, no
114 creditor shall require a consumer to purchase such
115 insurance or to purchase such insurance from such
116 creditor or any particular agent, broker or insurance
117 company as a condition precedent to extending credit to
118 or on behalf of such consumer; and

119 (f) With respect to consumer credit insurance provid-
120 ing life, accident, health or loss of income coverage, and
121 when a consumer credit sale or consumer loan, refinanc-
122 ing or consolidation is paid in full, the creditor receiving
123 such payment shall inform the debtor of his/her right
124 to cancel any such insurance and to receive a refund of
125 unearned premiums: *Provided*, That notice shall be sent
126 in a form as prescribed by the commissioner as provided
127 in chapter twenty-nine-a of this code. Such notice shall

128 contain the name and address of the seller and the
129 insurer. On the request of the debtor-insured of the
130 seller of such insurance, the seller shall notify or shall
131 cause the insurer to be notified of the debtor-insured's
132 request for cancellation of such insurance. On receipt by
133 the insurer of notification of the debtor-insured's
134 requested cancellation of such insurance, the insurer
135 shall cancel such insurance effective no later than thirty
136 days from the date payment in full of such consumer
137 credit sale, consumer loan, refinancing or consolidation.
138 Within forty-five days following the date of notification
139 of cancellation of such insurance and if the debtor-
140 insured has not received repayment of or a credit for
141 the amount of any unearned premiums by the seller of
142 such insurance, the insurer shall pay any refund of
143 unearned premium to the debtor-insurer or such other
144 person as directed by the debtor-insurer. An insurer,
145 seller or creditor who fails to refund any unused
146 insurance premium or provide the proper notification of
147 payoff shall be liable for civil damages up to three times
148 the amount of the unused premium as well as other
149 remedies as provided for by section one hundred nine,
150 article seven of this chapter.

Enr. Com. Sub. for H. B. 4037] 6


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


Chairman Senate Committee



Chairman House Committee

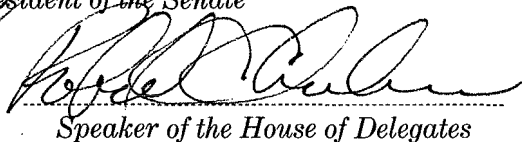
Originating in the House.

Takes effect ninety days from passage.

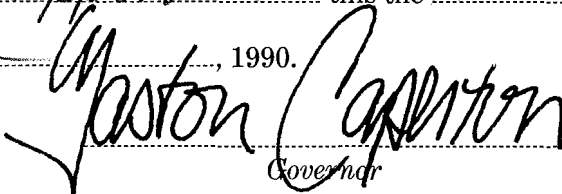

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is approved this the 19th
day of March, 1990.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/90

Time 4:41 pm

RECEIVED

1990 MAR 19 PM 4:49

OFFICE OF NEEL VANDANA
SECRETARY OF STATE

CLERK IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

3/19/90

THIS DATE