WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

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ENROLLED

Com. Sub. for

HOUSE BILL No. 4037

(By

Del. Susanman)

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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 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:

2 (a) Official fees and taxes;
(b) Charges for insurance as described in subsection (2): Provided, That nothing contained in this section with respect to insurance shall be construed as in any way limiting the power and jurisdiction of the insurance commissioner of this state in the premises;

(c) 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;

(d) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him/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 must be issued by an individual licensed under the laws of this state to sell such 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; and

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

(2) 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 vendor's or creditor's single interest insurance with respect to which the insurer has no right of 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/her spouse:

(a) 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 such insurance shall be reasonable in relation to the terms of credit: Provided, That nothing shall be deemed to prohibit the consumer from obtaining, at his/her option, greater coverages for longer periods of time if he/she so desires;

(b) 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 shall 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 shall be paid to the creditor to reduce or extinguish the unpaid indebtedness: Provided, That if a separate charge is made for such insurance and the amount of insurance exceeds the unpaid indebtedness, where not prohibited, then such excess shall be payable to the estate of the consumer. The initial term of such 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, shall 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, shall 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;

(c) 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 such insurance required or obtained by a creditor may equal, but shall 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, such premium shall be remitted by such 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 such collection was made;

(d) 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;

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

(f) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, and when a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving such payment shall inform the debtor of his/her right to cancel any such insurance and to receive a refund of unearned premiums: Provided, That notice shall be sent in a form as prescribed by the commissioner as provided in chapter twenty-nine-a of this code. Such notice shall
contain the name and address of the seller and the
insurer. On the request of the debtor-insured of the
seller of such insurance, the seller shall notify or shall
cause the insurer to be notified of the debtor-insured's
request for cancellation of such insurance. On receipt by
the insurer of notification of the debtor-insured's
requested cancellation of such insurance, the insurer
shall cancel such insurance effective no later than thirty
days from the date payment in full of such consumer
credit sale, consumer loan, refinancing or consolidation.
Within forty-five days following the date of notification
of cancellation of such insurance and if the debtor-
insured has not received repayment of or a credit for
the amount of any unearned premiums by the seller of
such insurance, the insurer shall pay any refund of
unearned premium to the debtor-insurer or such other
person as directed by the debtor-insurer. An insurer,
seller or creditor who fails to refund any unused
insurance premium or provide the proper notification of
payoff shall be liable for civil damages up to three times
the amount of the unused premium as well as other
remedies as provided for by section one hundred nine,
article seven of this chapter.
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
FILE: IN THE OFFICE OF
SECRETARY OF STATE OF
WEST VIRGINIA

THIS DATE 3/19/90