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OFFICE OF WEST VIRGINIA  
SECRETARY OF STATE

# WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1991

— ● —

## ENROLLED

*Com. Sub. for*  
HOUSE BILL No. *2873*

(By ~~Mr.~~ *Delegate Rollens*)

— ● —

Passed *March 9,* 1991

In Effect *90 Days From* Passage

**ENROLLED**  
COMMITTEE SUBSTITUTE  
FOR  
**H. B. 2873**  
(By DELEGATE ROLLINS)

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[Passed March 9, 1991; in effect ninety days from passage.]

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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 West Virginia consumer credit and protection act.

*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; rules relating to insurance.**

- 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  
9 with respect to insurance shall be construed as in any  
10 way 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;

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

36 (f) Documentary charge or any other similar charge  
37 for documentary services in relation to securing a title,  
38 so long as said charge is applied equally to cash  
39 customers and credit customers alike and so long as  
40 such documentary charge does not exceed fifty dollars.

41 (2) A creditor may take, obtain or provide reasonable  
42 insurance on the life and earning capacity of any  
43 consumer obligated on the consumer credit sale or  
44 consumer loan, reasonable insurance on any real or  
45 personal property offered as security subject to the  
46 provisions of this subsection, and vendor's or creditor's  
47 single interest insurance with respect to which the

48 insurer has no right of subrogation. Only one policy of  
49 life insurance and/or one policy of health and accident  
50 insurance and/or one policy of accident insurance and/or  
51 one policy of loss of income insurance on any one  
52 consumer may be in force with respect to any one  
53 contract or agreement at any one time, but one policy  
54 may cover both a consumer and his/her spouse:

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

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

89 unpaid amount of such indebtedness; periodic benefits  
90 payable in connection with a consumer credit sale  
91 pursuant to a revolving charge account or of a consumer  
92 loan pursuant to a revolving loan account may be based  
93 upon the authorized credit limit;

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

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

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

124 (f) With respect to consumer credit insurance provid-  
125 ing life, accident, health or loss of income coverage, and  
126 when a consumer credit sale or consumer loan, refinanc-  
127 ing or consolidation is paid in full, the creditor receiving  
128 such payment shall inform the debtor of his/her right

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

156 (3) The insurance commissioner of this state shall  
157 promulgate legislative rules in accordance with the  
158 provisions of chapter twenty-nine-a of this code to  
159 implement the provisions of this article relating to  
160 insurance, and the authority of the insurance commis-  
161 sioner to promulgate the same shall be exclusive  
162 notwithstanding any other provisions of this code to the  
163 contrary.

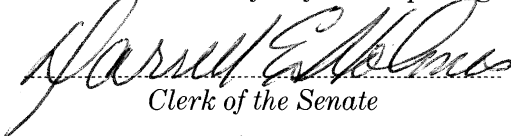
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

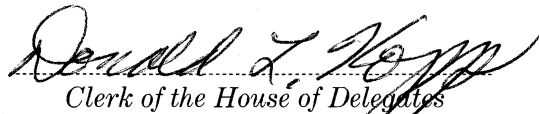
  
Chairman Senate Committee

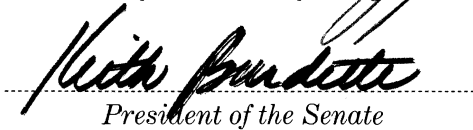
  
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

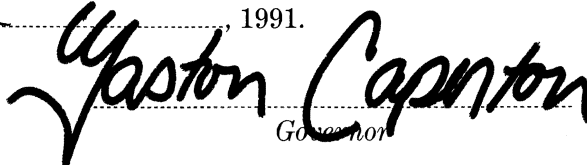
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within is approved \_\_\_\_\_ this the 27<sup>th</sup> day of March, 1991.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/20/91

4:45 pm