WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 1998

ENROLLED

House Bill No. 4285
(By Delegates Azinger, Thompson, H. White, L. White, Beane and Gillespie)

Passed March 14, 1998

In Effect Ninety Days from Passage
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H. B. 4285

(BY DELEGATES AZINGER, THOMPSON, H. WHITE, L. WHITE, BEANE AND GILLESPIE)

[Passed March 14, 1998; 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; and to further amend said article by adding thereto a new section, designated section one hundred nine-a, all relating to allowing a secured lender to procure insurance covering collateral, under the consumer protection act; and providing related conditions and procedures.

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; and that said article be further amended by adding thereto a new section, designated section one hundred nine-a, all to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

(a) 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:

(1) Official fees and taxes;

(2) Charges for insurance as described in subsection (b) of this section: Provided, That nothing contained in this section with respect to insurance in any way limits the power and jurisdiction of the insurance commissioner of this state in the premises;

(3) 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;

(4) Charges for other benefits, including insurance, conferred on the consumer, if the benefits are of value to him or 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 may only be issued by an individual licensed under the laws of this state to sell the 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;

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

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

(b) 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 section one hundred nine-a of this article, 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 or her spouse:

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

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

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

(4) 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;

(5) With respect to consumer credit insurance providing life, accident, health or loss of income coverage, no creditor may require a consumer to purchase the insurance or to purchase the insurance from the creditor or any particular agent, broker or insurance company as a condition precedent to extending credit to or on behalf of such consumer;
(6) When a consumer credit sale or consumer loan, refinancing or consolidation is paid in full, the creditor receiving the payment shall inform the debtor of the cancellation of any consumer credit insurance providing life, accident, health or loss of income coverage and advise the debtor of the application of any unearned premiums to the loan balance. Notices required by this subdivision shall be made in the following manner:

(A) If the insurance was not sold or provided by the creditor, the creditor receiving the payment shall notify the debtor that he or she may have the right to receive a refund of unearned premiums from any other seller or provider of the insurance, and advise the debtor of his or her obligation to notify any other insurer of the payment of the loan balance and the cancellation of the consumer credit insurance, and request a refund or credit of unearned premiums, if applicable. Such notice shall be sent on a form as prescribed by the insurance commissioner as provided in chapter twenty-nine-a of this code and shall contain the name and address of the seller and the insurer; or

(B) If the creditor was the seller or provider of the consumer credit insurance, the creditor shall:

(i) Notify the insurer or shall cause the insurer to be notified of the cancellation of such insurance; and

(ii) Notify the debtor of the cancellation of the insurance and of the application of any unearned premiums to the loan balance, which notice may be on a form consistent with the general course of business of the creditor;

(7) Upon receipt by the insurer of notification of the cancellation of consumer credit insurance, the insurer shall cancel the insurance effective no later than thirty days from the date of receipt of the notice. Within forty-five days following the date of notification of cancellation of the insurance, the insurer shall pay any refund of unearned premiums to the debtor-insurer or such other person as directed by the debtor-insurer; and
(8) An insurer, seller or creditor who fails to refund any unused insurance premium or provide the proper notification of payoff is liable for civil damages up to three times the amount of the unused premium as well as other remedies as provided by section one hundred nine, article seven of this chapter.

(c) The insurance commissioner of this state shall promulgate legislative rules in accordance with the provisions of chapter twenty-nine-a of this code to implement the provisions of this article relating to insurance, and the authority of the insurance commissioner to promulgate the rules is exclusive notwithstanding any other provisions of this code to the contrary.

§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.

(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.

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.

(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, co-signor, 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 the first day of July, one thousand nine hundred ninety-nine. No provision of this section may be held or applied against a creditor in connection with collateral protection insurance placed prior to the first day of July, one thousand nine hundred ninety-eight. A creditor that places collateral protection insurance pursuant to a credit agreement entered into prior to the first day of July, one thousand nine hundred ninety-eight, 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).
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 ______ approved this the ______ day of ______, 1998.

Governor
PRESENTED TO THE
GOVERNOR
Date 3/31/98
Time 11:15 AM