

# WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998

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**ENROLLED**

## House Bill No. 4285

(By Delegates Azinger, Thompson, H. White,  
L. White, Beane and Gillespie)

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Passed March 14, 1998

In Effect Ninety Days from Passage

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SENATE AND HOUSE

## ENROLLED

# H. B. 4285

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

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[Passed March 14, 1998; 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; 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.**

1 (a) In addition to the sales finance charge or loan

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

6 (1) Official fees and taxes;

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

12 (3) 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 or  
15 services from at least one hundred persons not related to  
16 the issuer of the lender credit card or similar arrangement,  
17 under an arrangement pursuant to which the debts  
18 resulting from the purchases are payable to the issuer;

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

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

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

39 (b) A creditor may take, obtain or provide reasonable

40 insurance on the life and earning capacity of any  
41 consumer obligated on the consumer credit sale or  
42 consumer loan, reasonable insurance on any real or  
43 personal property offered as security subject to the  
44 provisions of this subsection and section one hundred  
45 nine-a of this article, and vendor's or creditor's single  
46 interest insurance with respect to which the insurer has no  
47 right of subrogation. Only one policy of life insurance  
48 and/or one policy of health and accident insurance and/or  
49 one policy of accident insurance and/or one policy of loss  
50 of income insurance on any one consumer may be in  
51 force with respect to any one contract or agreement at any  
52 one time, but one policy may cover both a consumer and  
53 his or her spouse:

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

64       (2) Life insurance shall be in an initial amount not to  
65 exceed the total amount repayable under the consumer  
66 credit agreement, and where a consumer credit sale or  
67 consumer loan is repayable in installments, such insurance  
68 may at no time exceed the scheduled or actual amount of  
69 unpaid indebtedness, whichever is greater. Life insurance  
70 authorized by this subdivision shall provide that the  
71 benefits be paid to the creditor to reduce or extinguish the  
72 unpaid indebtedness: *Provided*, That if a separate charge  
73 is made for the insurance and the amount of insurance  
74 exceeds the unpaid indebtedness, where not prohibited,  
75 then the excess is payable to the estate of the consumer.  
76 The initial term of the life insurance in connection with a  
77 consumer credit sale, other than a sale pursuant to a  
78 revolving charge account, or in connection with a  
79 consumer loan, other than a loan pursuant to a revolving  
80 loan account, may not exceed the scheduled term of the

81 consumer credit agreement by more than fifteen days.  
82 The aggregate amount of periodic benefits payable by  
83 credit accident and health insurance in the event of  
84 disability, as defined in the policy, and loss of income  
85 insurance in the event of involuntary loss of employment,  
86 as defined in the policy, may not exceed the unpaid  
87 amount of such indebtedness; periodic benefits payable in  
88 connection with a consumer credit sale pursuant to a  
89 revolving charge account or of a consumer loan pursuant  
90 to a revolving loan account may be based upon the  
91 authorized credit limit;

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

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

114 (5) With respect to consumer credit insurance  
115 providing life, accident, health or loss of income coverage,  
116 no creditor may require a consumer to purchase the  
117 insurance or to purchase the insurance from the creditor  
118 or any particular agent, broker or insurance company as a  
119 condition precedent to extending credit to or on behalf of  
120 such consumer;

121       (6) When a consumer credit sale or consumer loan,  
122 refinancing or consolidation is paid in full, the creditor  
123 receiving the payment shall inform the debtor of the  
124 cancellation of any consumer credit insurance providing  
125 life, accident, health or loss of income coverage and advise  
126 the debtor of the application of any unearned premiums  
127 to the loan balance. Notices required by this subdivision  
128 shall be made in the following manner:

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

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

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

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

151       (7) Upon receipt by the insurer of notification of the  
152 cancellation of consumer credit insurance, the insurer shall  
153 cancel the insurance effective no later than thirty days  
154 from the date of receipt of the notice. Within forty-five  
155 days following the date of notification of cancellation of  
156 the insurance, the insurer shall pay any refund of  
157 unearned premiums to the debtor-insurer or such other  
158 person as directed by the debtor-insurer; and

159       (8) An insurer, seller or creditor who fails to refund  
160 any unused insurance premium or provide the proper  
161 notification of payoff is liable for civil damages up to  
162 three times the amount of the unused premium as well as  
163 other remedies as provided by section one hundred nine,  
164 article seven of this chapter.

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

**§46A-3-109a. Collateral protection insurance.**

1       (a) As used in this section:

2       (1) "Collateral" means any or all property pledged to  
3 secure payment, repayment or performance under a credit  
4 agreement, whether personal property, real property,  
5 fixtures, inventory, receivables, rights, privileges or  
6 otherwise.

7       (2) (A) "Collateral protection insurance" means  
8 insurance coverage that: (i) Is purchased unilaterally by a  
9 creditor subsequent to the date of a consumer credit  
10 agreement; (ii) provides monetary protection against loss  
11 of or damage to the collateral or against liability arising  
12 out of the ownership or use of the collateral; and (iii) is  
13 purchased according to the terms of a credit agreement as  
14 a result of a consumer's failure to provide evidence of  
15 insurance or failure to maintain adequate insurance  
16 covering the collateral, with the costs of the collateral  
17 protection insurance, including interest and any other  
18 charges imposed by the creditor in connection with the  
19 placement of the collateral protection insurance, payable  
20 by the consumer. Collateral protection insurance includes  
21 insurance coverage that is purchased to protect only the  
22 interest of the creditor and insurance coverage that is  
23 purchased to protect both the interest of the creditor and  
24 some or all of the interest of the consumer. The term of a

25 collateral protection insurance policy may, but need not,  
26 extend to the full term of the credit transaction.

27 (B) Collateral protection insurance does not include  
28 insurance coverage that is: (i) Purchased by the creditor  
29 for which the consumer is not charged; (ii) purchased at  
30 the inception of a credit transaction to which the consumer  
31 is a party or agrees, whether or not the costs are included  
32 in any payment plan under the credit transaction; (iii)  
33 purchased by the creditor following foreclosure,  
34 repossession, or a similar event wherein the creditor gains  
35 possession or control over the collateral; (iv) maintained  
36 by the creditor for the protection of any or all collateral  
37 which may come into the possession or control of the  
38 creditor through foreclosure, repossession or a similar  
39 event; (v) credit insurance, mortgage protection insurance,  
40 insurance issued to cover the life or health of the  
41 consumer or any other insurance maintained to cover the  
42 inability or failure of the consumer to make payment  
43 under the credit agreement; (vi) title insurance; or (vii)  
44 flood insurance required to be placed by creditors by 42  
45 U.S.C. §4012(a), as amended, pursuant to the National  
46 Flood Insurance Reform Act of 1994.

47 (3) "Credit agreement" means the written document or  
48 documents that set forth the terms of the credit  
49 transaction.

50 (4) "Credit transaction" means any consumer credit  
51 transaction, the terms of which require the payment or  
52 repayment of money, goods, services, property, rights or  
53 privileges, which is to be made on one or more future  
54 dates, where the obligation is secured by collateral.

55 (5) "Creditor" shall mean, for purposes of this  
56 section only, an institution, the deposits of which are  
57 insured by the federal deposit insurance agency, the  
58 national credit union share insurance fund, or a subsidiary  
59 of such an institution, or a subsidiary of a holding  
60 company owning such an institution, and this section  
61 applies and is available only to such creditors.

62 (b) A creditor may place collateral protection  
63 insurance if the following conditions are met:



64       (1) The consumer has entered into a credit transaction  
65       with the creditor;

66       (2) The credit transaction has been reduced to a credit  
67       agreement and the credit agreement requires the consumer  
68       to maintain insurance on the collateral; and

69       (3) A notice substantially similar to the following has  
70       been included in the credit agreement or on a separate  
71       document provided to the consumer and to any cosigner,  
72       guarantor or other person liable with the consumer for the  
73       obligation, at the time the credit agreement is entered:

74       "Unless you provide us with evidence of the insurance  
75       coverage required by your agreement with us, we may  
76       purchase insurance at your expense to protect our interests  
77       in your collateral. This insurance may, but need not,  
78       protect your interests. The coverage that we purchase may  
79       not pay any claim that you make or any claim that is  
80       made against you in connection with the collateral. You  
81       may later cancel any insurance purchased by us, but only  
82       after providing us with evidence that you have obtained  
83       insurance as required by our agreement. If we purchase  
84       insurance for the collateral, you will be responsible for the  
85       costs of that insurance, including interest and any other  
86       charges we may impose in connection with the placement  
87       of the insurance, until the effective date of the cancellation  
88       or expiration of the insurance. The costs of the insurance  
89       may be added to your total outstanding balance or  
90       obligation. The costs of the insurance may be more than  
91       the cost of insurance you may be able to obtain on your  
92       own."

93       (c) (1) Within thirty calendar days following the  
94       placement of collateral protection insurance, the creditor  
95       shall mail to the consumer and to any cosigner, guarantor  
96       or other person liable with the consumer for the  
97       obligation, at the last known address of the person, a  
98       notice entitled "Notice of Placement of Insurance" in a  
99       form substantially similar to the following:

100       **"NOTICE OF PLACEMENT OF INSURANCE**

101       Your credit agreement with us requires you to

102 maintain adequate insurance on your collateral until you  
103 pay off your loan. You have not given us proof that you  
104 have adequate insurance on your collateral. Under the  
105 terms of your credit agreement, we have purchased  
106 insurance at your expense to protect our interests in your  
107 collateral.

108 The insurance we purchased will pay claims made by  
109 us as the creditor. The insurance we purchased may not  
110 pay any claims made by you or against you in connection  
111 with your collateral.

112 You are responsible for the costs of this insurance,  
113 including interest and any other charges we may impose  
114 in connection with the purchase of this insurance. The  
115 costs of this insurance may be more than insurance you  
116 can buy on your own.

117 You still may obtain insurance on your own choosing  
118 on the collateral. If you provide us with proof that you  
119 have obtained adequate insurance on your collateral, we  
120 will cancel the insurance that we purchased and refund or  
121 credit any unearned premiums to you.

122 If, within thirty days after the date this notice was sent  
123 to you, you provide us with proof that you had adequate  
124 insurance on your collateral as of the date we also  
125 purchased insurance and that you continue to have the  
126 insurance that you purchased yourself, we will cancel the  
127 insurance that we purchased without charging you any  
128 costs, interest or other charges in connection with the  
129 insurance that we purchased."

130 (2) The terms for repayment of the costs of the  
131 collateral protection insurance, which include interest and  
132 any other charges imposed by the creditor in connection  
133 with the placement of the collateral protection insurance,  
134 shall include one or more of the following:

135 (a) Full payment within thirty days after the date of  
136 the notice of placement of insurance;

137 (b) A final balloon payment within thirty days after  
138 the last scheduled payment required by the credit  
139 agreement; or

140 (c) Full amortization over the term of the credit  
141 transaction, the term of the collateral protection insurance  
142 policy, or the term for which amortization is used by the  
143 creditor.

144 (d) If any form of amortization is used by the creditor  
145 for the costs of collateral protection insurance and a  
146 coupon book was sent to the consumer at the inception of  
147 the credit transaction, the creditor shall send to the  
148 consumer either:

149 (1) Reprinted coupon book with revised calculations  
150 of the consumer's payments that includes the amortized  
151 costs of the collateral protection insurance; or

152 (2) Supplemental coupon book with calculations of  
153 the consumer's additional payments based upon the  
154 amortized costs of the collateral protection insurance, for  
155 use by the consumer in addition to the original coupon  
156 book.

157 (e) A consumer may at any time cancel the collateral  
158 protection insurance by providing proper evidence to the  
159 creditor that the consumer has obtained insurance as  
160 required by the credit agreement. If, within thirty days  
161 after notice is sent pursuant to subdivision (1), subsection  
162 (c) of this section, a consumer provides the creditor with  
163 proper evidence that the consumer had insurance on the  
164 collateral as required by the credit agreement on the date  
165 the creditor purchased insurance and that the consumer  
166 continues to have insurance on the collateral as required  
167 by the credit agreement, the creditor shall cancel the  
168 insurance that it purchased and may not charge the  
169 consumer any costs, interest or other charges in  
170 connection with the insurance.

171 (f) Upon cancellation or expiration of collateral  
172 protection insurance, the amount of unearned premiums,  
173 if any, as calculated in accordance with the policy, shall be  
174 refunded to the consumer. A refund of unearned  
175 premiums may be credited to the consumer's obligation  
176 under the credit agreement or distributed directly to the  
177 consumer by check or other means.

178 (g) Collateral protection insurance may be placed with  
179 any insurance carrier selected by the creditor that is  
180 licensed to underwrite the insurance by the division of  
181 insurance. The insurance shall be evidenced by an  
182 individual policy or a certificate of insurance.

183 (h) A creditor that places collateral protection  
184 insurance in substantial compliance with the terms of this  
185 section is not directly or indirectly liable in any manner to  
186 a consumer, co-signor, guarantor or any other person, in  
187 connection with the placement of the collateral protection  
188 insurance. Notices and coupon books required to be  
189 mailed to a consumer under this section are not required  
190 to be mailed to any person other than to the consumer and  
191 shall be mailed by United States mail, first class, postage  
192 prepaid, to the consumer's last known address on file with  
193 the creditor.


194 (i) This section does not impose a fiduciary  
195 relationship between the creditor and the consumer.  
196 Placement of collateral protection insurance is for the sole  
197 purpose of protecting the interest of the creditor when the  
198 consumer fails to insure collateral as required by the credit  
199 agreement.

200 (j) A creditor is not, by virtue of this section, required  
201 to purchase collateral protection insurance or to otherwise  
202 insure collateral. A creditor is not, by virtue of this  
203 section, liable to a consumer or to any other person for  
204 not purchasing collateral protection insurance, as a result  
205 of the amount or level of coverage of collateral protection  
206 insurance purchased by the creditor, or because the  
207 creditor purchased collateral protection insurance that  
208 protects only the interests of the creditor or less than all of  
209 the interests of the consumer. This section does not create  
210 a cause of action for damages on behalf of the consumer  
211 or any other person in connection with the placement of  
212 collateral protection insurance.

213 (k) The obligations and rights of the creditor and the  
214 consumer with respect to the collateral, as provided by the  
215 uniform commercial code, chapter forty-six of this code,  
216 are not affected by this section.

217       (1) Substantial compliance with the provisions of this  
218 section is mandatory for the placement of collateral  
219 protection insurance in this state by a creditor pursuant to  
220 a credit agreement entered into on or after the first day of  
221 July, one thousand nine hundred ninety-nine. No  
222 provision of this section may be held or applied against a  
223 creditor in connection with collateral protection insurance  
224 placed prior to the first day of July, one thousand nine  
225 hundred ninety-eight. A creditor that places collateral  
226 protection insurance pursuant to a credit agreement  
227 entered into prior to the first day of July, one thousand  
228 nine hundred ninety-eight, has available to it all of the  
229 rights provided by this section if the creditor is in  
230 substantial compliance with the provisions of this section,  
231 other than subdivision (3) of subsection (b).

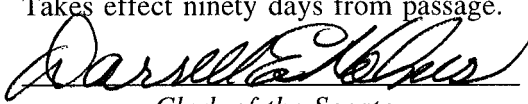
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

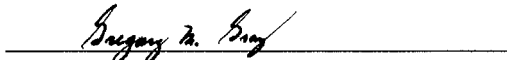
  
Chairman Senate Committee

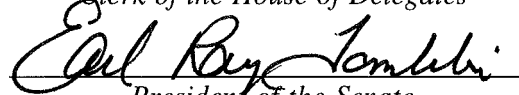
  
Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

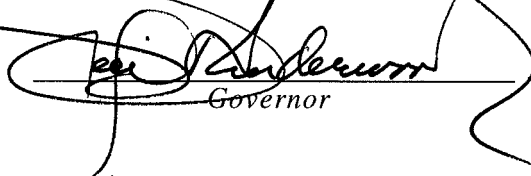
  
Clerk of the Senate

  
Clerk of the House of Delegates

  
President of the Senate

  
Speaker of the House of Delegates

The within approved this the 7th  
day of April, 1998.

  
Governor

PRESENTED TO THE

GOVERNOR

Date 3/31/98

Time 11:15 am