

WEST VIRGINIA LEGISLATURE

SECOND REGULAR SESSION, 1998



ENROLLED

Com. Sub. for House Bill No. 4529

(By Delegates Rowe, Hutchins, Thompson,
Kominar, Trump, Spencer and Miller)



Passed March 14, 1998

In Effect Ninety Days from Passage



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98 APR -2 PM 3:39
OFFICE OF WEST VIRGINIA
SECRETARY OF STATE

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OFFICE OF THE CLERK
SENATE OF WEST VIRGINIA
STATE HOUSE OF DELEGATES

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4529

(By DELEGATES ROWE, HUTCHINS, THOMPSON,
KOMINAR, TRUMP, SPENCER AND MILLER)

[Passed March 14, 1998; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred six, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to notice of a consumer's right to cure default in a consumer credit sale; and requiring notice from creditors to cosigners of consumer's default.

Be it enacted by the Legislature of West Virginia:

That section one hundred six, article two, 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 2. CONSUMER CREDIT PROTECTION.

§46A-2-106. Notice of consumer's right to cure default; cure; acceleration.

1 After a consumer has been in default on any
2 installment obligation or any other secured obligation for
3 five days for failure to make a scheduled payment or

4 otherwise perform pursuant to such a consumer credit sale,
5 consumer lease or consumer loan other than with respect
6 to a covenant to provide insurance for or otherwise to
7 protect and preserve the property covered by a security
8 interest, the creditor may give him or her notice of such
9 fact in the manner provided for herein. Actual delivery of
10 such notice to a consumer or delivery or mailing of same
11 to the last known address of the consumer is sufficient for
12 the purpose of this section. If given by mail, notice is
13 given when it is deposited in a mailbox properly addressed
14 and postage prepaid. Notice shall be in writing and shall
15 conspicuously state the name, address and telephone
16 number of the creditor to whom payment or other
17 performance is owed, a brief description of the transaction,
18 the consumer's right to cure such default and the amount
19 of payment and other required performance and date by
20 which it must be paid or accomplished in order to cure the
21 default. A copy of the notice required by this section
22 shall be: (i) Delivered or mailed to the last known address
23 of any cosigner of the obligation in the manner set forth
24 in this section unless the cosigner has waived in writing his
25 or her right to receive copies of the notice: *Provided*, That
26 a waiver of notice contained in the consumer credit sales
27 agreement or consumer loan agreement does not
28 constitute effective waiver of notice of the cosigner's right
29 to receive notice of the consumer's default for purposes
30 of this section; (ii) retained by the creditor; (iii) certified
31 in the manner prescribed by this section by an officer or
32 other authorized representative of such creditor; and (iv)
33 notarized by a person licensed as a notary under the laws
34 of the state of West Virginia or any other state or territory
35 of the United States. The certification required by this
36 section shall substantially conform to the following
37 language:

38 "I, _____(name of person certifying),
39 the _____ (title of person certifying)
40 of _____ (creditor's name),
41 hereby certify that the notice of the consumer's right to
42 cure default on which this certification appears (or to
43 which this certification is attached) was on this _____

44 day of _____, 19_____, mailed to the
45 person(s) whose name(s) appear herein (therein) at the
46 address(es) set forth herein (therein).

47 _____"
48 (Signature)

49 Failure to send notice to a cosigner as required by this
50 section does not, in and of itself, give rise to a cause of
51 action against the creditor.

52 Except as hereinafter provided in this section, after a
53 default on any installment obligation or any other secured
54 obligation other than with respect to a covenant to provide
55 insurance for or otherwise to protect and preserve the
56 property covered by a security interest or lease, a creditor
57 may not accelerate maturity of the unpaid balance of any
58 such installment obligation or any other such secured
59 obligation, commence any action or demand or take
60 possession of collateral on account of default until ten
61 days after notice has been given to the consumer of his or
62 her right to cure such default. Until such period expires,
63 the consumer shall have the right to cure any default by
64 tendering the amount of all unpaid sums due at the time
65 of the tender, without acceleration, plus any unpaid
66 delinquency or deferral charges and by tendering any
67 other performance necessary to cure such default. Any
68 such cure shall restore a consumer to all his or her rights
69 under the agreement the same as if there had been no
70 default. A consumer who has been in default three or
71 more times on the same obligation and who has been
72 given notice of such fact three or more times shall not
73 have the right to cure a default under this section even
74 though previous defaults have been cured and his or her
75 creditor's right to proceed against him or her and his or
76 her collateral shall not be impaired or limited in any way
77 by this section. There shall be no acceleration of the
78 maturity of all or part of any amount owing in such a
79 consumer credit sale, consumer lease or consumer loan,
80 except where nonperformance specified in the agreement
81 as constituting default has occurred.

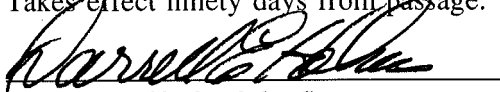
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.


Chairman Senate Committee

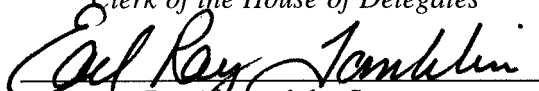

Chairman House Committee


Originating in the House.

Takes effect ninety days from passage.

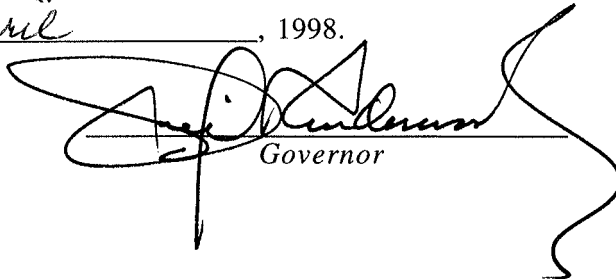

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within approved this the 1st
day of April, 1998.


Governor

PRESENTED TO THE
GOVERNOR

Date 3/31/98

Time 2:45 pm