

1 **ENGROSSED**

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4276**

5
6 (By Delegates Moore and Reynolds)

7 (Originating in the Committee on the Judiciary)

8
9 [February 24, 2012]

10
11
12 A BILL to amend and reenact §46A-2-106 of the Code of West
13 Virginia, 1931, as amended; relating generally to the notice
14 of a default and consumer's right to cure a default; modifying
15 the time period in which the default may be cured after the
16 notice is sent; requiring certification of the amount needed
17 to cure the default; certifying the date the notice of right
18 to cure was mailed; and providing limitations of liability for
19 violation of the notice of default and right to cure
20 requirements."

21 *Be it enacted by the Legislature of West Virginia:*

22 That §46A-2-106 of the Code of West Virginia, 1931, as
23 amended, be amended and reenacted to read as follows:

24 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

25 **§46A-2-106. Notice of consumer's right to cure default; cure;**

1 **acceleration.**

2 After a consumer has been in default on any installment
3 obligation or any other secured obligation for five days for
4 failure to make a scheduled payment or otherwise perform pursuant
5 to such a consumer credit sale, consumer lease or consumer loan
6 other than with respect to a covenant to provide insurance for or
7 otherwise to protect and preserve the property covered by a
8 security interest, the creditor ~~may~~ may give him or her notice of
9 ~~such~~ the fact, which notice shall be made in the manner provided
10 ~~for~~ herein. Actual delivery of ~~such~~ the notice to a consumer or
11 delivery or mailing of the same to the last known address of the
12 consumer is sufficient for the purpose of this section. If given
13 by mail, notice is given when it is deposited in a mailbox properly
14 addressed and postage prepaid. Notice shall be in writing and
15 shall conspicuously state the name, address and telephone number of
16 the creditor to whom payment or other performance is owed, a brief
17 description of the transaction, the consumer's right to cure ~~such~~
18 the default and the amount of payment and other required
19 performance and date by which it must be paid or accomplished in
20 order to cure the default. A copy of the notice required by this
21 section shall be: (i) Delivered or mailed to the last known address
22 of any cosigner of the obligation in the manner set forth in this
23 section unless the cosigner has waived in writing his or her right
24 to receive copies of the notice: *Provided*, That a waiver of notice
25 contained in the consumer credit sales agreement or consumer loan
26 agreement does not constitute effective waiver of notice of the

1 cosigner's right to receive notice of the consumer's default for
2 purposes of this section; (ii) retained by the creditor; (iii)
3 certified in the manner prescribed by this section by an officer or
4 other authorized representative of such creditor; and (iv)
5 notarized by a person licensed as a notary under the laws of the
6 State of West Virginia or any other state or territory of the
7 United States. The certification required by this section shall
8 substantially conform to the following language:

9 " I, _____ (name of person certifying), the
10 _____ (title of person certifying) of
11 _____ (creditor's name), hereby certify that the
12 ~~notice of the consumer's right to cure default~~ amount reflected in
13 the notice on which this certification appears ~~(or to which this~~
14 ~~certification is attached)~~ is a true and accurate balance of all
15 unpaid sums legally due from the borrower on the date of this
16 notice. I hereby further certify that the foregoing notice of the
17 consumer's right to cure default was on this ____ day of
18 _____, 1920, mailed to the person(s) whose
19 name(s) appear herein (therein) at the address(es) set forth herein
20 (therein).

21 _____

22 (Signature)"

23 Failure to send notice to a cosigner as required by this
24 section does not, in and of itself, give rise to a cause of action
25 against the creditor. Failure to send notice to the consumer in the
26 manner provided for herein is subject to the limitations of

1 liability in civil actions contained in article five, section one
2 hundred one of this chapter.

3 Except as hereinafter provided in this section, after a
4 default on any installment or any other secured obligation other
5 than with respect to a covenant to provide insurance for or
6 otherwise protect and preserve the property covered by a security
7 interest or lease, a creditor may not accelerate the maturity of
8 the unpaid balance of any such installment obligation or any other
9 such secured obligation, commence any action or demand or take
10 possession of collateral on account of default until ~~ten~~ ten days
11 after notice has been given to the consumer of his or her right to
12 cure such default or in accordance with the specific terms of the
13 obligation if such terms provide for a longer period. Until such
14 period expires, the consumer shall have the right to cure any
15 default by tendering the amount of all unpaid sums due at the time
16 of the tender, without acceleration, plus any unpaid delinquency or
17 deferral charges and by tendering any other performance necessary
18 to cure ~~such~~ the default. Any such cure shall restore a consumer
19 to all his or her rights under the agreement the same as if there
20 had been no default. A consumer who has been in default three or
21 more times on the same obligation and who has been given notice of
22 such fact three or more times shall not have the right to cure a
23 default under this section even though previous defaults have been
24 cured and his or her creditor's right to proceed against him or
25 her and his or her collateral shall not be impaired or limited in
26 any way by this section. There shall be no acceleration of the

1 maturity of all or part of any amount owing in such a consumer
2 credit sale, consumer lease or consumer loan, except where
3 nonperformance specified in the agreement as constituting default
4 has occurred.