

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4276**

4
5 (By Delegates Moore and Reynolds)

6 (Originating in the Committee on the Judiciary)

7
8 [February 24, 2012]

9
10
11 A BILL to amend and reenact §46A-2-106 of the Code of West
12 Virginia, 1931, as amended; relating generally to the notice
13 of a default and consumer's right to cure a default; modifying
14 the time period in which the default may be cured after the
15 notice is sent; requiring certification of the amount needed
16 to cure the default; certifying the date the notice of right
17 to cure was mailed; and providing limitations of liability for
18 violation of the notice of default and right to cure
19 requirements."

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

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

23 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

24 **§46A-2-106. Notice of consumer's right to cure default; cure;**
25 **acceleration.**

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

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

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

20 _____
21 (Signature)"

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

1 hundred one of this chapter.

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

1 credit sale, consumer lease or consumer loan, except where
2 nonperformance specified in the agreement as constituting default
3 has occurred.