

1 **H. B. 4276**

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3 (By Delegates Moore and Reynolds)
4 [Introduced January 24, 2012; referred to the
5 Committee on Banking and Insurance then the Judiciary.]
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10 A BILL to amend and reenact §46A-2-106 of the Code of West
11 Virginia, 1931, as amended; relating to requiring that at
12 least twenty days prior to accelerating the maturity of the
13 unpaid balance of any installment obligation or any other
14 secured obligation, commencing any action or demand or taking
15 possession of collateral on account of default, the lender
16 must provide notice of consumer's right to cure default
17 including a certification of the exact amount due in order to
18 cure the default and a certification that the notice was in
19 fact mailed to the borrower.

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;**

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~~ shall give him or her notice of
9 ~~such~~ the fact in the manner provided ~~for~~ herein. Actual delivery
10 of ~~such~~ the notice to a consumer or delivery or mailing of the same
11 to the last known address of the consumer is sufficient for the
12 purpose of this section. If given by mail, notice is given when it
13 is deposited in a mailbox properly addressed and postage prepaid.
14 Notice shall be in writing and shall conspicuously state the name,
15 address and telephone number of the creditor to whom payment or
16 other performance is owed, a brief description of the transaction,
17 the consumer's right to cure ~~such~~ the default and the amount of
18 payment and other required performance and date by which it must be
19 paid or accomplished in order to cure the default. A copy of the
20 notice required by this section shall be: (i) Delivered or mailed
21 to the last known address of any cosigner of the obligation in the
22 manner set forth in this section unless the cosigner has waived in
23 writing his or her right to receive copies of the notice:
24 *Provided, That* a waiver of notice contained in the consumer credit

1 sales agreement or consumer loan agreement does not constitute
2 effective waiver of notice of the cosigner's right to receive
3 notice of the consumer's default for purposes of this section; (ii)
4 retained by the creditor; (iii) certified in the manner prescribed
5 by this section by an officer or other authorized representative of
6 such creditor; and (iv) notarized by a person licensed as a notary
7 under the laws of the State of West Virginia or any other state or
8 territory of the United States. The certification required by this
9 section shall substantially conform to the following language:

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

22 _____

23 (Signature)"

24 Failure to send notice to a cosigner as required by this

1 section does not, in and of itself, give rise to a cause of action
2 against the creditor.

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~~ twenty
11 days after notice has been given to the consumer of his or her
12 right to cure such default. Until such period expires, the
13 consumer shall have the right to cure any default by tendering the
14 amount of all unpaid sums due at the time of the tender, without
15 acceleration, plus any unpaid delinquency or deferral charges and
16 by tendering any other performance necessary to cure ~~such~~ the
17 default. Any such cure shall restore a consumer to all his or her
18 rights under the agreement the same as if there had been no
19 default. A consumer who has been in default three or more times on
20 the same obligation and who has been given notice of such fact
21 three or more times shall not have the right to cure a default
22 under this section even though previous defaults have been cured
23 and his or her creditor's right to proceed against him or her and
24 his or her collateral shall not be impaired or limited in any way

1 by this section. There shall be no acceleration of the maturity of
2 all or part of any amount owing in such a consumer credit sale,
3 consumer lease or consumer loan, except where nonperformance
4 specified in the agreement as constituting default has occurred.

NOTE: The purpose of this bill is to ensure that West Virginia borrowers are provided accurate notice of their right to cure a default on any installment or other secured obligation and to encourage more careful scrutiny on the part of creditors over the calculation of the amount due from the borrower in order to cure the default and, finally, to extend the time frame during which a cure can be effectuated.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.