

1 **Senate Bill No. 338**

2 (By Senator Minard)

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4 [Introduced January 18, 2012; referred to the Committee on

5 Banking and Insurance; and then to the Committee on the

6 Judiciary.]

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11 A BILL to amend and reenact §46A-2-106 of the Code of West

12 Virginia, 1931, as amended, relating to requiring that at

13 least twenty days prior to accelerating the maturity of the

14 unpaid balance of any installment obligation or any other

15 secured obligation, commencing any action or demand or taking

16 possession of collateral on account of default, the lender

17 must provide notice of consumer's right to cure default

18 including a certification of the exact amount due in order to

19 cure the default and a certification that the notice was in

20 fact mailed to the borrower.

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:

1 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

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

4 After a consumer has been in default on any installment
5 obligation or any other secured obligation for five days for
6 failure to make a scheduled payment or otherwise perform pursuant
7 to such a consumer credit sale, consumer lease or consumer loan
8 other than with respect to a covenant to provide insurance for or
9 otherwise to protect and preserve the property covered by a
10 security interest, the creditor ~~may~~ shall give him or her notice of
11 ~~such~~ the fact in the manner provided for herein. Actual delivery
12 of ~~such~~ the notice to a consumer or delivery or mailing of the same
13 to the last known address of the consumer is sufficient for the
14 purpose of this section. If given by mail, notice is given when it
15 is deposited in a mailbox properly addressed and postage prepaid.
16 Notice shall be in writing and shall conspicuously state the name,
17 address and telephone number of the creditor to whom payment or
18 other performance is owed, a brief description of the transaction,
19 the consumer's right to cure ~~such~~ the default and the amount of
20 payment and other required performance and date by which it must be
21 paid or accomplished in order to cure the default. A copy of the
22 notice required by this section shall be: (i) Delivered or mailed
23 to the last known address of any cosigner of the obligation in the

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

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

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(Signature)“

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

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Except as hereinafter provided in this section, after a default on any installment or any other secured obligation other than with respect to a covenant to provide insurance for or otherwise protect and preserve the property covered by a security interest or lease, a creditor may not accelerate the maturity of the unpaid balance of any such installment obligation or any other such secured obligation, commence any action or demand or take possession of collateral on account of default until ~~ten~~ twenty days after notice has been given to the consumer of his or her right to cure such default. Until such period expires, the consumer shall have the right to cure any default by tendering the amount of all unpaid sums due at the time of the tender, without acceleration, plus any unpaid delinquency or deferral charges and by tendering any other performance necessary to cure ~~such~~ the default. Any such cure shall restore a consumer to all his or her rights under the agreement the same as if there had been no default. A consumer who has been in default three or more times on the same obligation and who has been given notice of such fact three or more times shall not have the right to cure a default

1 under this section even though previous defaults have been cured
2 and his or her creditor's right to proceed against him or her and
3 his or her collateral shall not be impaired or limited in any way
4 by this section. There shall be no acceleration of the maturity of
5 all or part of any amount owing in such a consumer credit sale,
6 consumer lease or consumer loan, except where nonperformance
7 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.