

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23

Senate Bill No. 648

(By Senators Tucker, Barnes and Plymale)

[Introduced February 17, 2012; referred to the Committee on
Banking and Insurance.]

A BILL to amend and reenact §46A-3-109a of the Code of West Virginia, 1931, as amended, relating to collateral protection insurance.

Be it enacted by the Legislature of West Virginia:

That §46A-3-109a of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

46A-3-109a. Collateral protection insurance.

(a) As used in this section:

(1) "Collateral" means any or all property pledged to secure payment, repayment or performance under a credit agreement, whether personal property, real property, fixtures, inventory, receivables, rights, privileges or otherwise.

(2) (A) "Collateral protection insurance" means insurance

1 coverage that: (i) Is purchased unilaterally by a creditor
2 subsequent to the date of a consumer credit agreement; (ii)
3 provides monetary protection against loss of or damage to the
4 collateral or against liability arising out of the ownership or use
5 of the collateral; and (iii) is purchased according to the terms of
6 a credit agreement as a result of a consumer's failure to provide
7 evidence of insurance or failure to maintain adequate insurance
8 covering the collateral, with the costs of the collateral
9 protection insurance, including interest and any other charges
10 imposed by the creditor in connection with the placement of the
11 collateral protection insurance, payable by the consumer.
12 Collateral protection insurance includes insurance coverage that is
13 purchased to protect only the interest of the creditor and
14 insurance coverage that is purchased to protect both the interest
15 of the creditor and some or all of the interest of the consumer.
16 The term of a collateral protection insurance policy may, but need
17 not, extend to the full-term of the credit transaction.

18 (B) Collateral protection insurance does not include insurance
19 coverage that is: (i) Purchased by the creditor for which the
20 consumer is not charged; (ii) purchased at the inception of a
21 credit transaction to which the consumer is a party or agrees,
22 whether or not the costs are included in any payment plan under the
23 credit transaction; (iii) purchased by the creditor following
24 foreclosure, repossession, or a similar event wherein the creditor

1 gains possession or control over the collateral; (iv) maintained by
2 the creditor for the protection of any or all collateral which may
3 come into the possession or control of the creditor through
4 foreclosure, repossession or a similar event; (v) credit insurance,
5 mortgage protection insurance, insurance issued to cover the life
6 or health of the consumer or any other insurance maintained to
7 cover the inability or failure of the consumer to make payment
8 under the credit agreement; (vi) title insurance; or (vii) flood
9 insurance required to be placed by creditors by 42 U.S.C. §4012(a),
10 as amended, pursuant to the National Flood Insurance Reform Act of
11 1994.

12 (3) "Credit agreement" means the written document or documents
13 that set forth the terms of the credit transaction.

14 (4) "Credit transaction" means any consumer credit
15 transaction, the terms of which require the payment or repayment of
16 money, goods, services, property, rights or privileges, which is to
17 be made on one or more future dates, where the obligation is
18 secured by collateral.

19 (5) "Creditor" shall mean, for purposes of this section only,
20 an institution, the deposits of which are insured by the federal
21 deposit insurance agency, the national credit union share insurance
22 fund, or a subsidiary of such an institution, or a subsidiary of a
23 holding company owning such an institution, and this section
24 applies and is available only to such creditors.

1 (b) A creditor may place collateral protection insurance if
2 the following conditions are met:

3 (1) The consumer has entered into a credit transaction with
4 the creditor;

5 (2) The credit transaction has been reduced to a credit
6 agreement and the credit agreement requires the consumer to
7 maintain insurance on the collateral; and

8 (3) A notice substantially similar to the following has been
9 included in the credit agreement or on a separate document provided
10 to the consumer and to any cosigner, guarantor or other person
11 liable with the consumer for the obligation, at the time the credit
12 agreement is entered:

13 "Unless you provide us with evidence of the insurance coverage
14 required by your agreement with us, we may purchase insurance at
15 your expense to protect our interests in your collateral. This
16 insurance may, but need not, protect your interests. The coverage
17 that we purchase may not pay any claim that you make or any claim
18 that is made against you in connection with the collateral. You
19 may later cancel any insurance purchased by us, but only after
20 providing us with evidence that you have obtained insurance as
21 required by our agreement. If we purchase insurance for the
22 collateral, you will be responsible for the costs of that
23 insurance, including interest and any other charges we may impose
24 in connection with the placement of the insurance, until the

1 effective date of the cancellation or expiration of the insurance.
2 The costs of the insurance may be added to your total outstanding
3 balance or obligation. The costs of the insurance may be more than
4 the cost of insurance you may be able to obtain on your own."

5 (c) (1) Within thirty calendar days following the placement of
6 collateral protection insurance, the creditor shall mail to the
7 consumer and to any cosigner, guarantor or other person liable with
8 the consumer for the obligation, at the last known address of the
9 person, a notice entitled "Notice of Placement of Insurance" in a
10 form substantially similar to the following:

11 **"NOTICE OF PLACEMENT OF INSURANCE**

12 Your credit agreement with us requires you to maintain
13 adequate insurance on your collateral until you pay off your loan.
14 You have not given us proof that you have adequate insurance on
15 your collateral. Under the terms of your credit agreement, we have
16 purchased insurance at your expense to protect our interests in
17 your collateral.

18 The insurance we purchased will pay claims made by us as the
19 creditor. The insurance we purchased may not pay any claims made
20 by you or against you in connection with your collateral.

21 You are responsible for the costs of this insurance, including
22 interest and any other charges we may impose in connection with the
23 purchase of this insurance. The costs of this insurance may be
24 more than insurance you can buy on your own.

1 You still may obtain insurance on your own choosing on the
2 collateral. If you provide us with proof that you have obtained
3 adequate insurance on your collateral, we will cancel the insurance
4 that we purchased and refund or credit any unearned premiums to
5 you.

6 If, within thirty days after the date this notice was sent to
7 you, you provide us with proof that you had adequate insurance on
8 your collateral as of the date we also purchased insurance and that
9 you continue to have the insurance that you purchased yourself, we
10 will cancel the insurance that we purchased without charging you
11 any costs, interest or other charges in connection with the
12 insurance that we purchased.”

13 (2) The terms for repayment of the costs of the collateral
14 protection insurance, which include interest and any other charges
15 imposed by the creditor in connection with the placement of the
16 collateral protection insurance, shall include one or more of the
17 following:

18 (A) Full payment within thirty days after the date of the
19 notice of placement of insurance;

20 (B) A final balloon payment within thirty days after the last
21 scheduled payment required by the credit agreement; or

22 (C) Full amortization over the term of the credit transaction,
23 the term of the collateral protection insurance policy, or the term
24 for which amortization is used by the creditor.

1 (d) If any form of amortization is used by the creditor for
2 the costs of collateral protection insurance and a coupon book was
3 sent to the consumer at the inception of the credit transaction,
4 the creditor shall send to the consumer either:

5 (1) Reprinted coupon book with revised calculations of the
6 consumer's payments that includes the amortized costs of the
7 collateral protection insurance; or

8 (2) Supplemental coupon book with calculations of the
9 consumer's additional payments based upon the amortized costs of
10 the collateral protection insurance, for use by the consumer in
11 addition to the original coupon book.

12 (e) A consumer may at any time cancel the collateral
13 protection insurance by providing proper evidence to the creditor
14 that the consumer has obtained insurance as required by the credit
15 agreement. If, within thirty days after notice is sent pursuant to
16 subdivision (1), subsection (c) of this section, a consumer
17 provides the creditor with proper evidence that the consumer had
18 insurance on the collateral as required by the credit agreement on
19 the date the creditor purchased insurance and that the consumer
20 continues to have insurance on the collateral as required by the
21 credit agreement, the creditor shall cancel the insurance that it
22 purchased and may not charge the consumer any costs, interest or
23 other charges in connection with the insurance.

24 (f) Upon cancellation or expiration of collateral protection

1 insurance, the amount of unearned premiums, if any, as calculated
2 in accordance with the policy, shall be refunded to the consumer.
3 A refund of unearned premiums may be credited to the consumer's
4 obligation under the credit agreement or distributed directly to
5 the consumer by check or other means.

6 (g) Collateral protection insurance may be placed with any
7 insurance carrier selected by the creditor that is licensed to
8 underwrite the insurance by the division of insurance. The
9 insurance shall be evidenced by an individual policy or a
10 certificate of insurance.

11 (h) A creditor that places collateral protection insurance in
12 substantial compliance with the terms of this section is not
13 directly or indirectly liable in any manner to a consumer,
14 cosignor, guarantor or any other person, in connection with the
15 placement of the collateral protection insurance. Notices and
16 coupon books required to be mailed to a consumer under this section
17 are not required to be mailed to any person other than to the
18 consumer and shall be mailed by United States mail, first class,
19 postage prepaid, to the consumer's last known address on file with
20 the creditor.

21 (i) This section does not impose a fiduciary relationship
22 between the creditor and the consumer. Placement of collateral
23 protection insurance is for the sole purpose of protecting the
24 interest of the creditor when the consumer fails to insure

1 collateral as required by the credit agreement.

2 (j) A creditor is not, by virtue of this section, required to
3 purchase collateral protection insurance or to otherwise insure
4 collateral. A creditor is not, by virtue of this section, liable
5 to a consumer or to any other person for not purchasing collateral
6 protection insurance, as a result of the amount or level of
7 coverage of collateral protection insurance purchased by the
8 creditor, or because the creditor purchased collateral protection
9 insurance that protects only the interests of the creditor or less
10 than all of the interests of the consumer. This section does not
11 create a cause of action for damages on behalf of the consumer or
12 any other person in connection with the placement of collateral
13 protection insurance.

14 (k) The obligations and rights of the creditor and the
15 consumer with respect to the collateral, as provided by the uniform
16 commercial code, chapter forty-six of this code, are not affected
17 by this section.

18 (l) Substantial compliance with the provisions of this section
19 is mandatory for the placement of collateral protection insurance
20 in this state by a creditor pursuant to a credit agreement entered
21 into on or after July 1, 1999. No provision of this section may be
22 held or applied against a creditor in connection with collateral
23 protection insurance placed prior to July 1, 1998. A creditor that
24 places collateral protection insurance pursuant to a credit

1 agreement entered into prior to July 1, 1998, has available to it
2 all of the rights provided by this section if the creditor is in
3 substantial compliance with the provisions of this section, other
4 than subdivision (3) of subsection (b).

5 (m) Notwithstanding any provision in this section to the
6 contrary, if a lack of insurance upon collateral in which a lender
7 has a security interest and is a named additional insured on such
8 insurance policy is or will result in a lapse of an existing policy
9 for nonpayment of renewal premium, such lender shall not cause
10 forced placed insurance to be added to protect the lender's
11 security interest but in such event lender shall advance such sums
12 as are necessary to prevent a lapse in such existing policy and all
13 sums advanced shall be deemed as additional principal subject to
14 the terms of the promissory note or other instrument creating the
15 obligation and secured by lender's lien document.

NOTE: The purpose of this bill is to make provision under certain circumstances for a lender who has a security interest to prevent a lapse in a collateral insurance policy.

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