

1 **Senate Bill No. 84**

2 (By Senator Tucker)

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4 [Introduced February 13, 2013; 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-3-109a of the Code of West  
12 Virginia, 1931, as amended, relating to collateral protection  
13 insurance.

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

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

17 **ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.**

18 **§46A-3-109a. Collateral protection insurance.**

19 (a) As used in this section:

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

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

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

1 credit transaction; (iii) purchased by the creditor following  
2 foreclosure, repossession, or a similar event wherein the creditor  
3 gains possession or control over the collateral; (iv) maintained by  
4 the creditor for the protection of any or all collateral which may  
5 come into the possession or control of the creditor through  
6 foreclosure, repossession or a similar event; (v) credit insurance,  
7 mortgage protection insurance, insurance issued to cover the life  
8 or health of the consumer or any other insurance maintained to  
9 cover the inability or failure of the consumer to make payment  
10 under the credit agreement; (vi) title insurance; or (vii) flood  
11 insurance required to be placed by creditors by 42 U.S.C. §4012(a),  
12 as amended, pursuant to the National Flood Insurance Reform Act of  
13 1994.

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

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

21 (5) "Creditor" shall mean, for purposes of this section only,  
22 an institution, the deposits of which are insured by the federal  
23 deposit insurance agency, the national credit union share insurance

1 fund, or a subsidiary of such an institution, or a subsidiary of a  
2 holding company owning such an institution, and this section  
3 applies and is available only to such creditors.

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

6 (1) The consumer has entered into a credit transaction with  
7 the creditor;

8 (2) The credit transaction has been reduced to a credit  
9 agreement and the credit agreement requires the consumer to  
10 maintain insurance on the collateral; and

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

16 "Unless you provide us with evidence of the insurance coverage  
17 required by your agreement with us, we may purchase insurance at  
18 your expense to protect our interests in your collateral. This  
19 insurance may, but need not, protect your interests. The coverage  
20 that we purchase may not pay any claim that you make or any claim  
21 that is made against you in connection with the collateral. You  
22 may later cancel any insurance purchased by us, but only after  
23 providing us with evidence that you have obtained insurance as

1 required by our agreement. If we purchase insurance for the  
2 collateral, you will be responsible for the costs of that  
3 insurance, including interest and any other charges we may impose  
4 in connection with the placement of the insurance, until the  
5 effective date of the cancellation or expiration of the insurance.  
6 The costs of the insurance may be added to your total outstanding  
7 balance or obligation. The costs of the insurance may be more than  
8 the cost of insurance you may be able to obtain on your own."

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

15 **"NOTICE OF PLACEMENT OF INSURANCE**

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

22 The insurance we purchased will pay claims made by us as the  
23 creditor. The insurance we purchased may not pay any claims made

1 by you or against you in connection with your collateral.

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

6       You still may obtain insurance on your own choosing on the  
7 collateral. If you provide us with proof that you have obtained  
8 adequate insurance on your collateral, we will cancel the insurance  
9 that we purchased and refund or credit any unearned premiums to  
10 you.

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

18       (2) The terms for repayment of the costs of the collateral  
19 protection insurance, which include interest and any other charges  
20 imposed by the creditor in connection with the placement of the  
21 collateral protection insurance, shall include one or more of the  
22 following:

23       (A) Full payment within thirty days after the date of the

1 notice of placement of insurance;

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

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

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

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

14 (2) Supplemental coupon book with calculations of the  
15 consumer's additional payments based upon the amortized costs of  
16 the collateral protection insurance, for use by the consumer in  
17 addition to the original coupon book.

18 (e) A consumer may at any time cancel the collateral  
19 protection insurance by providing proper evidence to the creditor  
20 that the consumer has obtained insurance as required by the credit  
21 agreement. If, within thirty days after notice is sent pursuant to  
22 subdivision (1), subsection (c) of this section, a consumer  
23 provides the creditor with proper evidence that the consumer had

1 insurance on the collateral as required by the credit agreement on  
2 the date the creditor purchased insurance and that the consumer  
3 continues to have insurance on the collateral as required by the  
4 credit agreement, the creditor shall cancel the insurance that it  
5 purchased and may not charge the consumer any costs, interest or  
6 other charges in connection with the insurance.

7       (f) Upon cancellation or expiration of collateral protection  
8 insurance, the amount of unearned premiums, if any, as calculated  
9 in accordance with the policy, shall be refunded to the consumer.  
10 A refund of unearned premiums may be credited to the consumer's  
11 obligation under the credit agreement or distributed directly to  
12 the consumer by check or other means.

13       (g) Collateral protection insurance may be placed with any  
14 insurance carrier selected by the creditor that is licensed to  
15 underwrite the insurance by the division of insurance. The  
16 insurance shall be evidenced by an individual policy or a  
17 certificate of insurance.

18       (h) A creditor that places collateral protection insurance in  
19 substantial compliance with the terms of this section is not  
20 directly or indirectly liable in any manner to a consumer,  
21 cosignor, guarantor or any other person, in connection with the  
22 placement of the collateral protection insurance. Notices and  
23 coupon books required to be mailed to a consumer under this section



1 are not required to be mailed to any person other than to the  
2 consumer and shall be mailed by United States mail, first class,  
3 postage prepaid, to the consumer's last known address on file with  
4 the creditor.

5 (i) This section does not impose a fiduciary relationship  
6 between the creditor and the consumer. Placement of collateral  
7 protection insurance is for the sole purpose of protecting the  
8 interest of the creditor when the consumer fails to insure  
9 collateral as required by the credit agreement.

10 (j) A creditor is not, by virtue of this section, required to  
11 purchase collateral protection insurance or to otherwise insure  
12 collateral. A creditor is not, by virtue of this section, liable  
13 to a consumer or to any other person for not purchasing collateral  
14 protection insurance, as a result of the amount or level of  
15 coverage of collateral protection insurance purchased by the  
16 creditor, or because the creditor purchased collateral protection  
17 insurance that protects only the interests of the creditor or less  
18 than all of the interests of the consumer. This section does not  
19 create a cause of action for damages on behalf of the consumer or  
20 any other person in connection with the placement of collateral  
21 protection insurance.

22 (k) The obligations and rights of the creditor and the  
23 consumer with respect to the collateral, as provided by the uniform

1 commercial code, chapter forty-six of this code, are not affected  
2 by this section.

3       (1) Substantial compliance with the provisions of this section  
4 is mandatory for the placement of collateral protection insurance  
5 in this state by a creditor pursuant to a credit agreement entered  
6 into on or after July 1, 1999. No provision of this section may be  
7 held or applied against a creditor in connection with collateral  
8 protection insurance placed prior to July 1, 1998. A creditor that  
9 places collateral protection insurance pursuant to a credit  
10 agreement entered into prior to July 1, 1998, has available to it  
11 all of the rights provided by this section if the creditor is in  
12 substantial compliance with the provisions of this section, other  
13 than subdivision (3) of subsection (b).

14       (m) Notwithstanding any provision in this section to the  
15 contrary, if a lack of insurance upon collateral in which a lender  
16 has a security interest and is a named additional insured on such  
17 insurance policy is or will result in a lapse of an existing policy  
18 for nonpayment of renewal premium, such lender shall not cause  
19 forced placed insurance to be added to protect the lender's  
20 security interest but in such event lender shall advance such sums  
21 as are necessary to prevent a lapse in such existing policy and all  
22 sums advanced shall be deemed as additional principal subject to  
23 the terms of the promissory note or other instrument creating the

1 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.