

HB# 4169

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WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

Com. Sub. For
HOUSE BILL No. *4169*

(By Delegate *s. Phillips, S. Williams*
and Rutledge)



Passed *March 10,* 1994

In Effect *90 Day From* Passage

ENROLLED

COMMITTEE SUBSTITUTE

FOR

H. B. 4169

(By DELEGATES PHILLIPS, S. WILLIAMS AND RUTLEDGE)

[Passed March 10, 1994; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to the West Virginia Consumer Credit and Protection Act; finance charges and related provisions; charges for credit life and health insurance; requiring notice of cancellation to consumers and insurers; approved forms, and notice to consumers of certain obligations, procedures and possible refunds of unearned premiums.

Be it enacted by the Legislature of West Virginia:

That section one hundred nine, article three, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted, to read as follows:

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

§46A-3-109. Additional charges; credit life or health insurance; notice of cancellation; when refund required; obligations of creditor and insurer; civil penalty; rules relating to insurance.

1 (a) In addition to the sales finance charge or loan

2 finance charge permitted by this chapter, a creditor
3 may contract for and receive the following additional
4 charges in connection with a consumer credit sale or a
5 consumer loan:

6 (1) Official fees and taxes;

7 (2) Charges for insurance as described in subsection
8 (b): *Provided*, That nothing contained in this section
9 with respect to insurance shall be construed as in any
10 way limiting the power and jurisdiction of the insurance
11 commissioner of this state in the premises;

12 (3) Annual charges, payable in advance, for the
13 privilege of using a lender credit card or similar
14 arrangement which entitles the user to purchase goods
15 or services from at least one hundred persons not related
16 to the issuer of the lender credit card or similar
17 arrangement, under an arrangement pursuant to which
18 the debts resulting from the purchases are payable to
19 the issuer;

20 (4) Charges for other benefits, including insurance,
21 conferred on the consumer, if the benefits are of value
22 to him or her and if the charges are reasonable in
23 relation to the benefits, are of a type which is not for
24 credit, and are excluded as permissible additional
25 charges from the sales finance charge or loan finance
26 charge by rule adopted by the commissioner: *Provided*,
27 That as to insurance, the policy as distinguished from
28 a certificate of coverage thereunder must be issued by
29 an individual licensed under the laws of this state to sell
30 such insurance and the determination of whether the
31 charges therefor are reasonable in relation to the
32 benefits shall be determined by the insurance commis-
33 sioner of this state;

34 (5) Reasonable closing costs with respect to a debt
35 secured by an interest in land; and

36 (6) Documentary charge or any other similar charge
37 for documentary services in relation to securing a title,
38 so long as said charge is applied equally to cash
39 customers and credit customers alike and so long as
40 such documentary charge does not exceed fifty dollars.

41 (b) A creditor may take, obtain or provide reasonable
42 insurance on the life and earning capacity of any
43 consumer obligated on the consumer credit sale or
44 consumer loan, reasonable insurance on any real or
45 personal property offered as security subject to the
46 provisions of this subsection, and vendor's or creditor's
47 single interest insurance with respect to which the
48 insurer has no right of subrogation. Only one policy of
49 life insurance and/or one policy of health and accident
50 insurance and/or one policy of accident insurance and/or
51 one policy of loss of income insurance on any one
52 consumer may be in force with respect to any one
53 contract or agreement at any one time, but one policy
54 may cover both a consumer and his or her spouse:

55 (1) The amount, terms and conditions of property
56 insurance shall have a reasonable relation to the existing
57 hazards or risk of loss, damage or destruction and be
58 reasonable in relation to the character and value of the
59 property insured or to be insured; and the term of such
60 insurance shall be reasonable in relation to the terms of
61 credit: *Provided*, That nothing shall be deemed to
62 prohibit the consumer from obtaining, at his or her
63 option, greater coverages for longer periods of time if
64 he or she so desires;

65 (2) Life insurance shall be in an initial amount not to
66 exceed the total amount repayable under the consumer
67 credit agreement, and where a consumer credit sale or
68 consumer loan is repayable in installments, such
69 insurance shall at no time exceed the scheduled or
70 actual amount of unpaid indebtedness, whichever is
71 greater. Life insurance authorized by this subdivision
72 shall provide that the benefits shall be paid to the
73 creditor to reduce or extinguish the unpaid indebted-
74 ness: *Provided*, That if a separate charge is made for
75 such insurance and the amount of insurance exceeds the
76 unpaid indebtedness, where not prohibited, then such
77 excess shall be payable to the estate of the consumer.
78 The initial term of such life insurance in connection with
79 a consumer credit sale, other than a sale pursuant to a
80 revolving charge account, or in connection with a
81 consumer loan, other than a loan pursuant to a revolving

82 loan account, shall not exceed the scheduled term of the
83 consumer credit agreement by more than fifteen days.
84 The aggregate amount of periodic benefits payable by
85 credit accident and health insurance in the event of
86 disability, as defined in the policy, and loss of income
87 insurance in the event of involuntary loss of employ-
88 ment, as defined in the policy, shall not exceed the
89 unpaid amount of such indebtedness; periodic benefits
90 payable in connection with a consumer credit sale
91 pursuant to a revolving charge account or of a consumer
92 loan pursuant to a revolving loan account may be based
93 upon the authorized credit limit;

94 (3) When the insurance is obtained or provided by or
95 through a creditor, the creditor may collect from the
96 consumer or include as part of the cash price of a
97 consumer credit sale or as part of the principal of a
98 consumer loan, or deduct from the proceeds of any
99 consumer loan the premium, or in the case of group
100 insurance, the identifiable charge. The premium or
101 identifiable charge for such insurance required or
102 obtained by a creditor may equal, but shall not exceed
103 the premium rate filed by the insurer with the insu-
104 rance commissioner. In any case, when the creditor
105 collects the entire premium for such insurance in
106 advance, such premium shall be remitted by such
107 creditor to the insurer or the insurance agent, as
108 specified by the insurer, within ten days from or after
109 the end of the month in which such collection was made;

110 (4) With respect to insurance against loss of or damage
111 to property, or against liability, the creditor shall
112 furnish a clear and specific statement in writing to the
113 debtor, setting forth the cost of the insurance if obtained
114 from or through the creditor, and stating that the debtor
115 may choose the person through whom the insurance is
116 to be obtained;

117 (5) With respect to consumer credit insurance provid-
118 ing life, accident, health or loss of income coverage, no
119 creditor shall require a consumer to purchase such
120 insurance or to purchase such insurance from such
121 creditor or any particular agent, broker or insurance
122 company as a condition precedent to extending credit to

123 or on behalf of such consumer;

124 (6) When a consumer credit sale or consumer loan,
125 refinancing or consolidation is paid in full, the creditor
126 receiving such payment shall inform the debtor of the
127 cancellation of any consumer credit insurance providing
128 life, accident, health or loss of income coverage and
129 advise the debtor of the application of any unearned
130 premiums to the loan balance. Notices required by this
131 subdivision shall be made in the following manner:

132 (A) If such insurance was not sold or provided by the
133 creditor, the creditor receiving the payment shall notify
134 the debtor that he or she may have the right to receive
135 a refund of unearned premiums from any other seller
136 or provider of such insurance, and advise the debtor of
137 his or her obligation to notify any other insurer of the
138 payment of the loan balance and the cancellation of the
139 consumer credit insurance, and request a refund or
140 credit of unearned premiums, if applicable. Such notice
141 shall be sent on a form as prescribed by the insurance
142 commissioner as provided in chapter twenty-nine-a of
143 this code and shall contain the name and address of the
144 seller and the insurer; or

145 (B) If the creditor was the seller or provider of the
146 consumer credit insurance, the creditor shall:

147 (i) Notify the insurer or shall cause the insurer to be
148 notified of the cancellation of such insurance; and

149 (ii) Notify the debtor of the cancellation of such
150 insurance and of the application of any unearned
151 premiums to the loan balance, which such notice may
152 be on a form consistent with the general course of
153 business of the creditor.

154 (7) Upon receipt by the insurer of notification of the
155 cancellation of consumer credit insurance, the insurer
156 shall cancel such insurance effective no later than thirty
157 days from the date of receipt of such notice. Within
158 forty-five days following the date of notification of
159 cancellation of such insurance, the insurer shall pay any
160 refund of unearned premiums to the debtor-insurer or
161 such other person as directed by the debtor-insurer; and

162 (8) An insurer, seller or creditor who fails to refund
163 any unused insurance premium or provide the proper
164 notification of payoff shall be liable for civil damages
165 up to three times the amount of the unused premium
166 as well as other remedies as provided for by section one
167 hundred nine, article seven of this chapter.

168 (c) The insurance commissioner of this state shall
169 promulgate legislative rules in accordance with the
170 provisions of chapter twenty-nine-a of this code to
171 implement the provisions of this article relating to
172 insurance, and the authority of the insurance commis-
173 sioner to promulgate the same shall be exclusive
174 notwithstanding any other provisions of this code to the
175 contrary.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]

Chairman Senate Committee

Ernest C. Moore

Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Russell Palmer

Clerk of the Senate

Donald S. Papp

Clerk of the House of Delegates

Paul Brewster

President of the Senate

[Handwritten Signature]

Speaker of the House of Delegates

The within is approved _____ this the 29th
day of March 1994.

Gaston Capner

Governor

PRESENTED TO THE

GOVERNOR

Date 3/25/94

Time 10:04 am