

COMMITTEE SUBSTITUTE

FOR

H. B. 4276

(BY DELEGATES MOORE AND REYNOLDS)

(Originating in the Committee on the Judiciary)
[February 24, 2012]

A BILL to amend and reenact §46A-2-106 of the Code of West Virginia, 1931, as amended; relating generally to the notice of a default and consumer's right to cure a default; modifying the time period in which the default may be cured after the notice is sent; requiring certification of the amount needed to cure the default; certifying the date the notice of right to cure was mailed; and providing limitations of liability for violation of the notice of default and right to cure requirements.

Be it enacted by the Legislature of West Virginia:

That §46A-2-106 of the Code of West Virginia, 1931, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

1 After a consumer has been in default on any installment
2 obligation or any other secured obligation for five days for
3 failure to make a scheduled payment or otherwise perform
4 pursuant to such a consumer credit sale, consumer lease or
5 consumer loan other than with respect to a covenant to
6 provide insurance for or otherwise to protect and preserve the
7 property covered by a security interest, the creditor ~~may~~ shall
8 give him or her notice of ~~such~~ the fact, which notice shall be
9 made in the manner provided ~~for~~ herein. Actual delivery of
10 ~~such~~ the notice to a consumer or delivery or mailing of the
11 same to the last known address of the consumer is sufficient
12 for the purpose of this section. If given by mail, notice is
13 given when it is deposited in a mailbox properly addressed
14 and postage prepaid. Notice shall be in writing and shall
15 conspicuously state the name, address and telephone number
16 of the creditor to whom payment or other performance is

17 owed, a brief description of the transaction, the consumer's
18 right to cure ~~such~~ the default and the amount of payment and
19 other required performance and date by which it must be paid
20 or accomplished in order to cure the default. A copy of the
21 notice required by this section shall be: (i) Delivered or
22 mailed to the last known address of any cosigner of the
23 obligation in the manner set forth in this section unless the
24 cosigner has waived in writing his or her right to receive
25 copies of the notice: *Provided*, That a waiver of notice
26 contained in the consumer credit sales agreement or
27 consumer loan agreement does not constitute effective waiver
28 of notice of the cosigner's right to receive notice of the
29 consumer's default for purposes of this section; (ii) retained
30 by the creditor; (iii) certified in the manner prescribed by this
31 section by an officer or other authorized representative of
32 such creditor; and (iv) notarized by a person licensed as a
33 notary under the laws of the State of West Virginia or any
34 other state or territory of the United States. The certification

35 required by this section shall substantially conform to the
36 following language:

37 “ I, _____(name of person certifying), the
38 _____ (title of person certifying)
39 of _____(creditor’s name), hereby
40 certify that the ~~notice of the consumer’s right to cure default~~
41 amount reflected in the notice on which this certification
42 appears (~~or to which this certification is attached~~) is a true
43 and accurate balance of all unpaid sums legally due from the
44 borrower on the date of this notice. I hereby further certify
45 that the foregoing notice of the consumer’s right to cure
46 default was on this ____ day of _____,
47 ~~1920~~_____, mailed to the person(s) whose name(s) appears
48 herein (therein) at the address(es) set forth herein (therein).
49 _____

50 (Signature)”

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

54 the manner provided for herein is subject to the limitations of
55 liability in civil actions contained in article five, section one
56 hundred one of this chapter.

57 Except as hereinafter provided in this section, after a
58 default on any installment or any other secured obligation
59 other than with respect to a covenant to provide insurance for
60 or otherwise protect and preserve the property covered by a
61 security interest or lease, a creditor may not accelerate the
62 maturity of the unpaid balance of any such installment
63 obligation or any other such secured obligation, commence
64 any action or demand or take possession of collateral on
65 account of default until ~~ten~~ twenty days after notice has been
66 given to the consumer of his or her right to cure such default
67 or in accordance with the specific terms of the obligation if
68 such terms provide for a longer period. Until such period
69 expires, the consumer shall have the right to cure any default
70 by tendering the amount of all unpaid sums due at the time of
71 the tender, without acceleration, plus any unpaid delinquency
72 or deferral charges and by tendering any other performance

73 necessary to cure ~~such~~ the default. Any such cure shall
74 restore a consumer to all his or her rights under the agreement
75 the same as if there had been no default. A consumer who
76 has been in default three or more times on the same
77 obligation and who has been given notice of such fact three
78 or more times shall not have the right to cure a default under
79 this section even though previous defaults have been cured
80 and his or her creditor's right to proceed against him or her
81 and his or her collateral shall not be impaired or limited in
82 any way by this section. There shall be no acceleration of the
83 maturity of all or part of any amount owing in such a
84 consumer credit sale, consumer lease or consumer loan,
85 except where nonperformance specified in the agreement as
86 constituting default has occurred.