

1 **H. B. 2412**

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3 (By Delegates Moore and Reynolds)

4 [Introduced February 13, 2013; referred to the  
5 Committee on Banking and Insurance then the Judiciary.]

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10 A BILL to amend and reenact §46A-2-106 of the Code of West  
11 Virginia, 1931, as amended, relating generally to the notice  
12 of a default and consumer's right to cure a default;  
13 lengthening the time period during which a default may be  
14 cured; requiring the creditor to accurately state the amount  
15 owed; requiring the creditor to state that the amount is also  
16 legally due; requiring the creditor to certify the date when  
17 the notice to the borrower's right to cure the default was  
18 sent; and establishing penalties.

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

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

22 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

23 **§46A-2-106. Notice of consumer's right to cure default; cure;**

1                   **acceleration; penalties.**

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

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

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

23 \_\_\_\_\_  
 24 (Signature)"

1 Failure to send notice to a cosigner as required by this  
2 section does not, in and of itself, give rise to a cause of action  
3 against the creditor. Failure to send notice to the consumer in the  
4 manner provided by this section subjects the creditor to the  
5 penalties set forth in section one hundred one, article five of  
6 this chapter.

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

1 more times on the same obligation and who has been given notice of  
2 such fact three or more times shall not have the right to cure a  
3 default under this section even though previous defaults have been  
4 cured and his or her creditor's right to proceed against him or  
5 her and his or her collateral shall not be impaired or limited in  
6 any way by this section. There shall be no acceleration of the  
7 maturity of all or part of any amount owing in such a consumer  
8 credit sale, consumer lease or consumer loan, except where  
9 nonperformance specified in the agreement as constituting default  
10 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. The bill lengthens the time from ten to twenty days when a default may be cured. The bill requires the creditor to accurately state the amount owed and that the amount is also legally due. The bill requires the creditor to certify the date when the notice to the borrower's right to cure the default was sent. The bill also establishes penalties.

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