

WEST VIRGINIA LEGISLATURE
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ENROLLED

COMMITTEE SUBSTITUTE

FOR

Senate Bill No. 542

(SENATORS D. HALL, CARMICHAEL, M. HALL,
GAUNCH, TRUMP, BLAIR AND NOHE, *ORIGINAL SPONSORS*)

[PASSED MARCH 14, 2015; IN EFFECT NINETY DAYS FROM PASSAGE.]

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AN ACT to amend and reenact §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, 1931, as amended; to amend and reenact §46A-3-112 and §46A-3-113 of said code; to amend and reenact §46A-5-101 and §46A-5-106 of said code; and to amend said code by adding thereto a new section, designated §46A-5-107, all relating to clarifying permitted and prohibited actions with regard to the prohibition on oppression and abuse in the course of debt collection; clarifying permitted and prohibited actions with regard to the prohibition of unreasonable publication; clarifying permitted and prohibited actions and communications with regard to the prohibition on the use of unfair or unconscionable means in the course of debt collection; increasing permitted delinquency charges; modifying damages and penalties for violations; modifying the limitation of actions brought under this chapter; adjusting time allowed after discovery to correct an error without liability in

certain circumstances; adjusting damages for inflation; and specifying venue of an action or proceeding brought by a consumer.

Be it enacted by the Legislature of West Virginia:

That §46A-2-125, §46A-2-126 and §46A-2-128 of the Code of West Virginia, as amended, be amended and reenacted; that §46A-3-112 and §46A-3-113 of said code be amended and reenacted; that §46A-5-101 and §46A-5-106 of said code be amended and reenacted; and that said code be amended by adding thereto a new section, designated §46A-5-107, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-125. Oppression and abuse.

1 No debt collector shall unreasonably oppress or abuse
2 any person in connection with the collection of or attempt to
3 collect any claim alleged to be due and owing by that person
4 or another. Without limiting the general application of the
5 foregoing, the following conduct is deemed to violate this
6 section:

7 (a) The use of profane or obscene language or language
8 that is intended to unreasonably abuse the hearer or reader;

9 (b) Engaging any person in telephone conversation
10 without disclosure of the caller's identity and with the intent
11 to annoy, harass or threaten any person at the called number;

12 (c) Causing expense to any person in the form of long
13 distance telephone tolls, telegram fees or other charges
14 incurred by a medium of communication, by concealment of
15 the true purpose of the communication; and

16 (d) Calling any person more than thirty times per week or
17 engaging any person in telephone conversation more than ten
18 times per week, or at unusual times or at times known to be
19 inconvenient, with intent to annoy, abuse, oppress or threaten
20 any person at the called number. In determining whether a
21 debt collector's conduct violates this section, the debt
22 collector's conduct will be evaluated from the standpoint of
23 a reasonable person. In the absence of knowledge of
24 circumstances to the contrary, a debt collector shall assume
25 that the convenient time for communicating with a consumer
26 is after eight o'clock antemeridian and before nine o'clock
27 postmeridian, local time at the consumer's location.

§46A-2-126. Unreasonable publication.

1 No debt collector shall unreasonably publicize
2 information relating to any alleged indebtedness or consumer.
3 For purposes of this section, a debt collector does not
4 unreasonably publicize information relating to any alleged
5 indebtedness by identifying themselves to the debtor by
6 name, identifying the debt collector's employer by name, if
7 expressly requested by the debtor, or by providing a
8 telephone number or other contact information to the debtor.
9 Without limiting the general application of the foregoing, the
10 following conduct is deemed to violate this section:

11 (a) The communication to any employer or his agent
12 before judgment has been rendered of any information
13 relating to an employee's indebtedness other than through
14 proper legal action, process or proceeding;

15 (b) The disclosure, publication or communication of
16 information relating to a consumer's indebtedness to any
17 relative or family member of the consumer if such person is
18 not residing with the consumer, except through proper legal
19 action or process or at the express and unsolicited request of
20 the relative or family member;

21 (c) The disclosure, publication or communication of any
22 information relating to a consumer's indebtedness to any
23 other person other than a credit reporting agency, by
24 publishing or posting any list of consumers, commonly
25 known as "deadbeat lists", except lists to prevent the
26 fraudulent use of credit accounts or credit cards, by
27 advertising for sale any claim to enforce payment thereof, or
28 in any manner other than through proper legal action, process
29 or proceeding; and

30 (d) The use of any form of communication to the
31 consumer, which ordinarily may be seen by any other
32 persons, that displays or conveys any information about the
33 alleged claim other than the name, address and phone number
34 of the debt collector.

35 Nothing in this chapter shall prohibit a creditor or debt
36 collector from communicating with any person other than the
37 consumer for the purpose of acquiring or confirming the
38 consumer's location information provided they do so in a
39 manner consistent with the provisions of 15 U. S. C. § 1692b,
40 as the same may be amended from time to time. For purposes
41 of this section, "communication" or "communicating" or any
42 derivation of those terms shall not include the filing of a
43 complaint or other document, pleading or filing with any
44 court.

§46A-2-128. Unfair or unconscionable means.

1 No debt collector may use unfair or unconscionable
2 means to collect or attempt to collect any claim. Without
3 limiting the general application of the foregoing, the
4 following conduct is deemed to violate this section:

5 (a) The seeking or obtaining of any written statement or
6 acknowledgment in any form that specifies that a consumer's

7 obligation is one incurred for necessities of life where the
8 original obligation was not in fact incurred for such
9 necessities;

10 (b) The seeking or obtaining of any written statement or
11 acknowledgment in any form containing an affirmation of
12 any obligation by a consumer who has been declared
13 bankrupt except where such affirmation is obtained pursuant
14 to applicable bankruptcy law;

15 (c) The collection or the attempt to collect from the
16 consumer all or any part of the debt collector's fee or charge
17 for services rendered: *Provided*, That attorney's fees, court
18 costs and other reasonable collection costs and charges
19 necessary for the collection of any amount due upon
20 delinquent educational loans made by any institution of
21 higher education within this state may be recovered when the
22 terms of the obligation so provide. Recovery of attorney's
23 fees and collection costs may not exceed thirty-three and one-
24 third percent of the amount due and owing to any such
25 institution: *Provided, however*, That nothing contained in this
26 subsection shall be construed to limit or prohibit any
27 institution of higher education from paying additional
28 attorney fees and collection costs as long as such additional
29 attorney fees and collection costs do not exceed an amount
30 equal to five percent of the amount of the debt actually
31 recovered and such additional attorney fees and collection
32 costs are deducted or paid from the amount of the debt
33 recovered for the institution or paid from other funds
34 available to the institution;

35 (d) The collection of or the attempt to collect any interest
36 or other charge, fee or expense incidental to the principal
37 obligation unless such interest or incidental fee, charge or
38 expense is expressly authorized by the agreement creating or
39 modifying the obligation and by statute or regulation;

40 (e) Any communication with a consumer made more than
41 seventy-two hours after the debt collector receives written
42 notice, either on paper or electronically, from the consumer
43 or his or her attorney that the consumer is represented by an
44 attorney specifically with regard to the subject debt. To be
45 effective under this subsection, such notice must clearly state
46 the attorney's name, address and telephone number and be
47 sent to the debt collector's registered agent, identified by the
48 debt collector at the office of the West Virginia Secretary of
49 State or, if not registered with the West Virginia Secretary of
50 State, then to the debt collector's principal place of business.
51 Communication with a consumer is not prohibited under this
52 subsection if the attorney fails to answer correspondence,
53 return phone calls or discuss the obligation in question, or if
54 the attorney consents to direct communication with the
55 consumer. Regular account statements provided to the
56 consumer and notices required to be provided to the
57 consumer pursuant to applicable law shall not constitute
58 prohibited communications under this section; and

59 (f) When the debt is beyond the statute of limitations for
60 filing a legal action for collection, failing to provide the
61 following disclosure informing the consumer in its initial
62 written communication with such consumer that:

63 (1) When collecting on a debt that is not past the date for
64 obsolescence provided for in section 605(a) of the Fair Credit
65 Reporting Act, 15 U. S. C. 1681c: "The law limits how long
66 you can be sued on a debt. Because of the age of your debt,
67 (INSERT OWNER NAME) cannot sue you for it. If you do
68 not pay the debt, (INSERT OWNER NAME) may report or
69 continue to report it to the credit reporting agencies as
70 unpaid"; and

71 (2) When collecting on debt that is past the date for
72 obsolescence provided for in section 605(a) of the Fair Credit

73 Reporting Act, 15 U. S. C. 1681c: “The law limits how long
74 you can be sued on a debt. Because of the age of your debt,
75 (INSERT OWNER NAME) cannot sue you for it and
76 (INSERT OWNER NAME) cannot report it to any credit
77 reporting agencies.”

ARTICLE 3. FINANCE CHARGES AND RELATED PROVISIONS.

**§46A-3-112. Delinquency charges on precomputed consumer credit sales
or consumer loans.**

1 (1) With respect to a precomputed consumer credit sale
2 or consumer loan, refinancing or consolidation, the parties
3 may contract for a delinquency charge on any installment not
4 paid in full within ten days after its scheduled due date in an
5 amount not exceeding the greater of:

6 (a) Five percent of the unpaid amount of the installment,
7 not to exceed \$30; or

8 (b) An amount equivalent to the deferral charge that
9 would be permitted to defer the unpaid amount of the
10 installment for the period that it is delinquent.

11 (2) A delinquency charge under subdivision (a),
12 subsection (1) of this section may be collected only once on
13 an installment however long it remains in default. No
14 delinquency charge may be collected with respect to a
15 deferred installment unless the installment is not paid in full
16 within ten days after its deferred due date. A delinquency
17 charge may be collected at the time it accrues or at any time
18 thereafter.

19 (3) No delinquency charge may be collected on an
20 installment which is paid in full within ten days after its
21 scheduled or deferred installment due date, even though an

22 earlier maturing installment or a delinquency or deferral
23 charge on an earlier installment may not have been paid in
24 full. For purposes of this subsection, payments shall be
25 applied first to current installments, then to delinquent
26 installments and then to delinquency and other charges.

27 (4) If two installments, or parts thereof, of a precomputed
28 consumer credit sale or consumer loan are in default for ten
29 days or more, the creditor may elect to convert such sale or
30 loan from a precomputed sale or loan to one in which the
31 sales finance charge or loan finance charge is based on
32 unpaid balances. In such event, the creditor shall make a
33 rebate pursuant to the provisions on rebate upon prepayment,
34 refinancing or consolidation as of the maturity date of any
35 installment then delinquent and thereafter may make a sales
36 finance charge or loan finance charge as authorized by the
37 appropriate provisions on sales finance charges or loan
38 finance charges for consumer credit sales or consumer loans.
39 The amount of the rebate may not be reduced by the amount
40 of any permitted minimum charge. If the creditor proceeds
41 under this subsection, any delinquency or deferral charges
42 made with respect to installments due at or after the maturity
43 date of the delinquent installments shall be rebated and no
44 further delinquency or deferral charges shall be made.

45 (5) The commissioner shall prescribe by rule the method
46 or procedure for the calculation of delinquency charges
47 consistent with the other provisions of this chapter where the
48 precomputed consumer credit sale or consumer loan is
49 payable in unequal or irregular installments.

**§46A-3-113. Delinquency charges on nonprecomputed consumer credit
sales or consumer loans repayable in installments.**

1 (1) In addition to the continuation of the sales finance
2 charge or loan finance charge on a delinquent installment

3 with respect to a nonprecomputed consumer credit sale or
4 consumer loan, refinancing or consolidation, repayable in
5 installments, the parties may contract for a delinquency
6 charge on any installment not paid in full within ten days
7 after its scheduled due date of five percent of the unpaid
8 amount of the installment, not to exceed \$30.

9 (2) A delinquency charge under subsection (1) of this
10 section may be collected only once on an installment
11 however long it remains in default. A delinquency charge
12 may be collected at the time it accrues or at any time
13 thereafter.

14 (3) No delinquency charge may be collected on an
15 installment which is paid in full within ten days after its
16 scheduled or deferred installment due date, even though an
17 earlier maturing installment or a delinquency or deferral
18 charge on an earlier installment may not have been paid in
19 full. For purposes of this subsection, payments shall be
20 applied first to current installments, then to delinquent
21 installments and then to delinquency and other charges.

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

1 (1) If a creditor or debt collector has violated the
2 provisions of this chapter applying to collection of excess
3 charges, security in sales and leases, disclosure with respect
4 to consumer leases, receipts, statements of account and
5 evidences of payment, limitations on default charges,
6 assignment of earnings, authorizations to confess judgment,
7 illegal, fraudulent or unconscionable conduct, any prohibited
8 debt collection practice, or restrictions on interest in land as
9 security, assignment of earnings to regulated consumer
10 lender, security agreement on household goods for benefit of

11 regulated consumer lender, and renegotiation by regulated
12 consumer lender of a loan discharged in bankruptcy, the
13 consumer has a cause of action to recover: (a) Actual
14 damages; and (b) a right in an action to recover from the
15 person violating this chapter a penalty of \$1,000 per
16 violation: *Provided*, That the aggregate amount of the penalty
17 awarded shall not exceed the greater of \$175,000 or the total
18 alleged outstanding indebtedness: *Provided, however*, That
19 in a class action the aggregate limits on the amount of the
20 penalty set forth above shall be applied severally to each
21 named plaintiff and each class member such that no named
22 plaintiff nor any class member may recover in excess of the
23 greater of \$175,000 or the total alleged outstanding
24 indebtedness. With respect to violations arising from
25 consumer credit sales, consumer leases, or consumer loans,
26 or from sales as defined in article six of this chapter, no
27 action pursuant to this subsection may be brought more than
28 four years after the violations occurred. This limitations
29 period shall apply to all actions filed on or after September 1,
30 2015.

31 (2) If a creditor has violated the provisions of this chapter
32 respecting authority to make regulated consumer loans, the
33 loan is void and the consumer is not obligated to pay either
34 the principal or the loan finance charge. If he has paid any
35 part of the principal or of the finance charge, he has a right to
36 recover in an action the payment from the person violating
37 this chapter or from an assignee of that person's rights who
38 undertakes direct collection of payments or enforcement of
39 rights arising from the debt. With respect to violations arising
40 from regulated consumer loans made pursuant to revolving
41 loan accounts, no action pursuant to this subsection may be
42 brought more than four years after the violation occurred.
43 With respect to violations arising from other regulated
44 consumer loans, no action pursuant to this subsection may be
45 brought more than four years after the violation occurred.

46 This limitations period shall apply to all actions filed on or
47 after September 1, 2015.

48 (3) A consumer is not obligated to pay a charge in excess
49 of that allowed by this chapter and if he has paid an excess
50 charge, he has a right to a refund. A refund may be made by
51 reducing the consumer's obligation by the amount of the
52 excess charge. If the consumer has paid an amount in excess
53 of the lawful obligation under the agreement, the consumer
54 may recover in an action the excess amount from the person
55 who made the excess charge or from an assignee of that
56 person's rights who undertakes direct collection of payments
57 from or enforcement of rights against the consumer arising
58 from the debt.

59 (4) If a creditor or debt collector has contracted for or
60 received a charge in excess of that allowed by this chapter,
61 the consumer may, in addition to recovering such excess
62 charge, also recover from the creditor or the person liable in
63 an action a penalty of \$1,000 per violation: *Provided*, That
64 the aggregate amount of the penalty awarded shall not exceed
65 the greater of \$175,000 or the total alleged outstanding
66 indebtedness: *Provided, however*, That in a class action the
67 aggregate limits on the amount of the penalty set forth above
68 shall be applied severally to each named plaintiff and each
69 class member such that no named plaintiff nor any class
70 member may recover in excess of the greater of \$175,000 or
71 the total alleged outstanding indebtedness. With respect to
72 excess charges arising from consumer credit sales, consumer
73 leases, or consumer loans, no action pursuant to this
74 subsection may be brought more than four years after the
75 time the excess charge was made. This limitations period
76 shall apply to all actions filed on or after September 1, 2015.

77 (5) Except as otherwise provided, a violation of this
78 chapter does not impair rights on a debt.

79 (6) If an employer discharges an employee in violation of
80 the provisions prohibiting discharge, the employee may
81 within ninety days bring a civil action for recovery of wages
82 lost as a result of the violation and for an order requiring the
83 reinstatement of the employee. Damages recoverable shall
84 not exceed lost wages for six weeks.

85 (7) A creditor or debt collector has no liability for a
86 penalty under subsection (1) or (4) of this section if, after
87 discovering an error and prior to the institution of an action
88 under this section or the receipt of written notice of the error,
89 the creditor notifies the person concerned of the error and
90 corrects the error: (a) Within fifteen days if the error affects
91 no more than two persons; or (b) within sixty days if the error
92 affects more than two persons. If the violation consists of a
93 prohibited agreement, giving the consumer a corrected copy
94 of the writing containing the error is sufficient notification
95 and correction. If the violation consists of an excess charge,
96 correction shall be made by an adjustment or refund.

97 (8) If the creditor or debt collector establishes by a
98 preponderance of evidence that a violation is unintentional or
99 the result of a bona fide error of fact notwithstanding the
100 maintenance of procedures reasonably adapted to avoid any
101 such violation or error, no liability is imposed under
102 subsections (1), (2) and (4) of this section and the validity of
103 the transaction is not affected.

§46A-5-106. Adjustment of damages for inflation.

1 In any claim brought under this chapter applying to
2 illegal, fraudulent or unconscionable conduct or any
3 prohibited debt collection practice, the court may adjust the
4 damages awarded pursuant to section one hundred one of this
5 article to account for inflation from 12:01 a.m. on September
6 1, 2015, to the time of the award of damages in an amount

7 equal to the consumer price index. Consumer price index
8 means the last consumer price index for all consumers
9 published by the United States Department of Labor.

§46A-5-107. Venue.

1 Any civil action or other proceeding brought by a
2 consumer to recover actual damages or a penalty, or both,
3 from creditor or a debt collector, founded upon illegal,
4 fraudulent or unconscionable conduct, or prohibited debt
5 collection practice, or both, shall be brought either in the
6 circuit court of the county in which the plaintiff has his or her
7 legal residence at the time of the civil action, the circuit court
8 of the county in which the plaintiff last resided in the state of
9 West Virginia, or in the circuit court of the county in which
10 the creditor or debt collector has its principal place of
11 business or, if the creditor or debt collector is an individual,
12 in the circuit court of the county of his or her legal residence.
13 With respect to causes of action arising under this chapter,
14 the venue provisions of this section shall be exclusive of and
15 shall supersede the venue provisions of any other West
16 Virginia statute or rule.

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

.....
Chairman Senate Committee

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

.....
Clerk of the Senate

.....
Clerk of the House of Delegates

.....
President of the Senate

.....
Speaker of the House of Delegates

The within this the

Day of, 2015.

.....
Governor