

# WEST VIRGINIA CODE: §48-1-307

## **§48-1-307. Collection of child or spousal support by collection agencies.**

(a) Any person attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state is subject to the provisions of article sixteen, chapter forty-seven of this code and the provisions of this section and is otherwise subject to the jurisdiction of this state.

(b) The amount of delinquent child or spousal support or arrearage established by order of a court of competent jurisdiction in this state is not subject to waiver or compromise, either by agreement of the parties or by a collection agency acting on behalf of a party and may only be modified by an order of a court of competent jurisdiction.

(c) No child or spousal support or arrearage of child or spousal support collected by the state IV-D agency may be redirected to any collection agency.

(d) No collection agency attempting to collect a child or spousal support obligation or arrearage on behalf of a resident or from a resident of this state may include any funds collected by a IV-D agency in the amount from which their fee is determined or collected.

(e) No collection agency, other than an attorney licensed to practice law in this state, attempting to collect a child support or spousal support obligation or arrearage may engage in conduct which is considered the practice of law, including, but not limited to:

(1) The performance of legal services, the offering of legal advice or the making of a false representation, directly or by implication, that a person is an attorney;

(2) Any communication with persons in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

(3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

(f) No collection agency may collect or attempt to collect any money alleged to be due and owing by any threat, coercion or attempt to coerce, including, but not limited to:

(1) The use, or the express or implicit threat of use, of violence or other criminal means, to cause harm to the person, reputation or property of any person;

(2) The accusation or threat to accuse any person of fraud, of any crime, or of any conduct which, if true, would tend to disgrace the other person or in any way subject them to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a

person is willfully refusing to pay a just claim, or the threat to make such false accusations;

(4) The threat that nonpayment of an alleged claim will result in the arrest of any person, or of the taking of any other action requiring judicial sanction, without informing the person that there must be in effect a court order permitting the action before it can be taken; and

(5) The threat to take any action prohibited by this section or other law regulating the conduct of a collection agency.

(g) No collection agency may unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any child or spousal support obligation or arrearage, including, but not limited to:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the listener or reader;

(2) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

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

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

(h) No collection agency may unreasonably publicize information relating to any alleged child or spousal support obligation or arrearage, including, but not limited to:

(1) The communication to any employer or his or her agent of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(2) The disclosure, publication or communication of information relating to a child or spousal support obligation or arrearage to any relative or family member of the obligor, except through proper legal action or process or at the express and unsolicited request of the obligor;

(3) The disclosure, publication or communication of any information relating to an obligor's child or spousal support obligation or arrearage to any other person other than a credit reporting agency, by publishing or posting any list of persons, commonly known as "deadbeat lists", or in any manner other than through proper legal action, process or proceeding; and

(4) The use of any form of communication to the obligor, which ordinarily may be seen by any other person, that displays or conveys any information about the alleged claim other

than the name, address and telephone number of the collection agency.

(i) No collection agency may use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning support obligors, including, but not limited to:

(1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the collection agency's business, company or organization;

(2) Any false representation that the collection agency has in its possession information or something of value for the obligor with the underlying purpose of soliciting or discovering information about the person;

(3) The failure to clearly disclose the name of the person to whom the claim is owed, at the time of making any demand for money;

(4) Any false representation or implication of the character, extent or amount of a claim against an obligor or of the status of any legal proceeding;

(5) Any false representation or false implication that any collection agency is vouched for, bonded by, affiliated with an agency, instrumentality, agent or official of this state or of the federal or local government;

(6) The use, distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(7) Any representation that an existing obligation of the obligor may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact the fees or charges may not legally be added to the existing obligation; and

(8) Any false representation or false impression about the status or true nature of the services rendered by the collection agency.

(j) No collection agency may use unfair or unconscionable means to collect or attempt to collect any claim, including, but not limited to:

(1) The collection of or the attempt to collect any interest in excess of that interest authorized by the provisions of this chapter, or other charge, fee or expense incidental to the principal obligation that exceeds ten percent of the principal amount from an obligor or obligee; and

(2) Any communication with an obligor whenever it appears the obligor is represented by an attorney and the attorney's name and address are known, or could be easily ascertained,

unless the attorney fails to answer correspondence, return telephone calls or discuss the obligation in question, or unless the attorney and the obligor consent to direct communication.

(k) No collection agency may use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.

(l) No collection agency may place a telephone call or otherwise communicate by telephone with an obligor at any place, including a place of employment, falsely stating that the call is "urgent" or an "emergency".

(m) No collection agency may attempt to collect any portion of a fee from any money collected by any other entity or authority. The collection agency may only collect a fee from funds procured solely through its collection activities.

(n) A collection agency must provide the state IV-D agency with an accounting of any money collected and forwarded to the obligee as child support, spousal support or arrearages every sixty days until the collection agency ceases all collection activity.

(o) Any resident of this state who contracts for services with a collection agency to collect current or past-due child support or spousal support may, upon thirty days' written notice, cancel the contract for collection. The notice must be mailed to the collection agency by first-class mail. All contracts signed by residents of this state must include written notification of this right of cancellation.

(p) Any person who violates the provisions of this section is subject to the penalties set forth in section 47-16-5 and section 11-12-9 of this code.

(q) Any person who violates the provisions of this section is liable to the injured party in a civil action. Additionally, any person who violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$1,000 nor more than \$5,000 for each separate incident.

(r) For any action filed pursuant to this section alleging illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice, the court, in its discretion, may award all or a portion of the costs of litigation, including reasonable attorney fees, court costs and fees, to the injured party. Upon a finding by the court that an action filed pursuant to this section on the grounds of illegal, fraudulent or unconscionable conduct or any prohibited debt collection practice was brought in bad faith and for the purposes of harassment, the court may award the defendant reasonable attorney fees.