

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1973

ENROLLED

SENATE BILL NO. 439

(By Mr. BROTHERTON,  
MR. PRESIDENT)

PASSED April 11, 1973

In Effect 90 Days from Passage

FILED IN THE OFFICE  
EDGAR F. HEISKELL III  
SECRETARY OF STATE  
THIS DATE 5/3/73

439

## ENROLLED

# Senate Bill No. 439

(By Mr. Brotherton, Mr. President)

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[Passed April 11, 1973; in effect ninety days from passage.]

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AN ACT to amend chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article sixteen, relating to the licensing and regulation of collection agencies; providing a short title; defining terms; relating to scope of article; requiring a license and bond; relating to such license and bond generally; relating to actions on any such bond; relating to termination of surety; relating to records of collection agencies; setting forth certain prohibitions; providing criminal offenses and penalties; and relating to civil liability.

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

That chapter forty-seven of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new article, designated article sixteen to read as follows:

### ARTICLE 16. COLLECTION AGENCIES.

#### §47-16-1. Title.

1 This article may be cited as the "Collection Agency Act  
2 of 1973."

#### §47-16-2. Definitions.

1 The following words and terms as used in this article shall  
2 be construed as follows:

3 (a) "Claim" means any obligation for the payment of  
4 money due or asserted to be due to another person, firm,  
5 corporation or association.

6 (b) "Collection Agency" means and includes all persons,  
7 firms, corporations and associations (1) directly or indirectly  
8 engaged in the business of soliciting from or collecting for  
9 others any account, bill or indebtedness due or asserted to  
10 be owed or due another and all persons, firms, corporations  
11 and associations directly or indirectly engaged in asserting,  
12 enforcing or prosecuting those claims; (2) which, in at-  
13 tempting to collect or in collecting his or its own accounts  
14 or claims uses a fictitious name or names other than his  
15 or its own name; (3) which attempts to or does give away  
16 or sell to others any system or series of letters or forms  
17 for use in the collection of accounts or claims which assert  
18 or indicate directly or indirectly that the claims or accounts  
19 are being asserted or collected by any person, firm, corpora-  
20 tion or association other than the creditor or owner of the  
21 claim or account; or (4) directly or indirectly engaged in  
22 the business of soliciting, or who holds himself out as  
23 engaged in the business of soliciting, debts of any kind  
24 owed or due, or asserted to be owed or due, to any  
25 solicited person, firm, corporation or association for fee,  
26 commission or other compensation.

27 The term "collection agency" shall not mean or include  
28 (1) regular employees of a single creditor or of a collection  
29 agency licensed hereunder; (2) banks; (3) trust companies;  
30 (4) savings and loan associations; (5) building and loan  
31 associations; (6) industrial loan companies; (7) small  
32 loan companies; (8) abstract companies doing an escrow  
33 business; (9) duly licensed real estate brokers or agents  
34 when the claims or accounts being handled by such  
35 broker or agent are related to or in connection with such  
36 brokers' or agents' regular real estate business; (10) ex-  
37 press and telegraph companies subject to public regula-  
38 tion and supervision; (11) attorneys at law handling  
39 claims and collections in their own names and not opera-  
40 ting a collection agency under the management of a lay-  
41 man; or (12) any person, firm, corporation or association  
42 acting under the order of any court of competent jurisdic-  
43 tion.

44 (c) "Commissioner" means the state tax commissioner  
45 or his agent.

46 (d) "Customer" means any person, firm, corporation or  
47 association who has filed, assigned or sold any claim or

48 chose in action with or to a collection agency for collec-  
49 tion.

50 (e) "Licensee" means any person holding a business  
51 franchise registration certificate under section two, article  
52 twelve, chapter eleven of this code and under the pro-  
53 visions of this article.

54 (f) "Trust account" means a special account established  
55 by a collection agency with a banking institution in this  
56 state, wherein funds collected on behalf of a customer  
57 shall be deposited.

**§47-16-3. Scope.**

1 No person, firm, corporation or association shall establish  
2 or conduct within this state a collection agency except as  
3 authorized by this article.

**§47-16-4. Requirements.**

1 (a) *License*—No person, firm, corporation or association  
2 shall conduct within this state a collection agency without  
3 having first applied for and obtained a business franchise  
4 registration certificate pursuant to section two, article twelve,  
5 chapter eleven of this code, nor shall any person, firm,  
6 corporation or association establish or operate a collection  
7 agency or the business of a collection agency, unless such  
8 person, firm, corporation or association maintains an office  
9 within the state of West Virginia. The business franchise  
10 registration certificate shall be deemed the collection agency's  
11 license. A license is required for each collection agency,  
12 including each principal office and all branch offices  
13 thereof.

14 (b) *Bond*—Each applicant shall file with the commissioner  
15 a continuing surety bond executed by a corporation which  
16 is licensed to transact the business of fidelity and surety  
17 insurance in the state of West Virginia to run concurrently  
18 with the registration tax period, which bond must be filed  
19 with, and approved by, said commissioner before the license  
20 herein provided may be issued. A separate bond shall be  
21 filed for each collection agency including each principal  
22 office and all branch offices thereof. Each bond shall be in the  
23 amount of five thousand dollars payable to the state of  
24 West Virginia, and conditioned that any such person will  
25 pay all damages to the state or a private person resulting  
26 from any unlawful act or action by such person or his or

27 its agent in connection with the conduct of the business  
28 of the collection agency. This continuing bond shall be filed  
29 with the tax commissioner.

30 An action may be brought in any court of competent  
31 jurisdiction upon the bond by any person to whom the  
32 licensee fails to account and pay as set forth in such bond.  
33 The aggregate liability of the surety for all breaches of the  
34 condition of the bond shall not exceed the sum of such  
35 bond.

36 Upon entering judgment for the prevailing party in any  
37 action on the bond required by this article, the court  
38 shall include in the judgment, reasonable compensation for  
39 the services of such party's attorney in the action.

40 The license of any licensee shall be void upon term-  
41 ination of the bond of the surety company, unless, prior  
42 to such termination, a new bond has been filed with the  
43 commissioner.

44 Should the license of any surety company to transact  
45 business in this state be terminated, all bonds given pur-  
46 suant to this article upon which such company is surety  
47 shall thereupon be suspended, and the commissioner shall  
48 immediately notify each affected licensee of such suspension  
49 and require that a new bond be filed. This notice shall be  
50 by registered or certified mail, return receipt requested,  
51 and shall be addressed to the licensee at his or its principal  
52 place of business as shown by the commissioner's records.  
53 The failure of any licensee to file a bond with new or  
54 additional surety within thirty days after being advised  
55 in writing by the commissioner of the necessity to do so  
56 shall be cause for the commissioner to revoke the license.

57 (c) *Record Keeping*—Each collection agency licensed to  
58 operate in this state shall keep a record of all sums col-  
59 lected by such agency and of all disbursements made by such  
60 agency, and shall maintain or make available all such  
61 records and all records as to customers' funds at such  
62 agency's principal place of business within this state. Each  
63 collection agency shall maintain records of collections for  
64 and payments to customers for a period of six years from  
65 the date of last entry therein.

66 No collection agency, nor any employee thereof, shall  
67 intentionally make a false entry in any such collection

68 agency record nor intentionally mutilate, destroy or other-  
69 wise dispose of any such record within the time limits pro-  
70 vided in this section. Such records shall at all times be  
71 open for inspection by the commissioner, or his duly  
72 appointed representative.

73 No licensee shall commingle the money of collection  
74 agency customers with other moneys, but shall maintain a  
75 separate trust account in a bank for customers' funds.

76 Each collection agency shall, within a period of thirty  
77 days after the close of each and every calendar month,  
78 pay to such agency's customers the net proceeds due on all  
79 collections made during the preceding calendar month. When  
80 the net proceeds due the customer are less than five  
81 dollars at the end of any calendar month, the collection  
82 agency may defer for a period not to exceed ninety days  
83 the payment of said proceeds, if monthly statements are  
84 mailed or delivered to the customer.

**§47-16-5. Penalty; civil liability.**

1 (a) Any person, firm, corporation or association violating  
2 any of the provisions of this article shall be guilty of a  
3 misdemeanor, and, upon conviction thereof, shall be fined  
4 not more than one thousand dollars.

5 (b) Any person, firm, corporation or association violating  
6 any of the provisions of this article shall, in addition to  
7 any civil liability arising by virtue of such violation, also  
8 be civilly liable as otherwise provided by law.

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

*W. Daniel Darby*  
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Chairman Senate Committee

*Edward C. Christman*  
-----  
Chairman House Committee

Originated in the Senate.

To take effect ninety days from passage.

*Howard W. Carson*  
-----  
Clerk of the Senate

*C. A. Blankenship*  
-----  
Clerk of the House of Delegates

*W. J. Bostwick*  
-----  
President of the Senate

*Lewis F. Thomas*  
-----  
Speaker House of Delegates

The within *approved* this the *24th*  
*April*, 1973.  
day of -----

*Archa Thomas Jr.*  
-----  
Governor

PRESENTED TO THE  
GOVERNOR

Date 4/24/73

Time 2:34 p.m.

RECEIVED

MAY 3 9 35 AM '73

OFFICE OF  
SECRETARY OF STATE  
STATE OF WEST VIRGINIA