WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1997

ENROLLED

Committee Substitute for
SENATE BILL NO. 111

(By Senators Dietmar + Snyder)

PASSED April 12, 1997

in Effect NINETY DAYS FROM Passage
AN ACT to amend article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section one hundred eight; and to amend and reenact section one hundred twenty-seven, article two of said chapter, all relating to revisions to the West Virginia consumer credit protection act; providing methods for electronic records retention for persons subject to the act other than banks and credit unions; providing for the admissibility in evidence of such reproduced or copied records; and eliminating certain disclosure requirements for debt collectors under the act.
Be it enacted by the Legislature of West Virginia:

That article one, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section one hundred eight; and that section one hundred twenty-seven, article two of said chapter be amended and reenacted, all to read as follows:

ARTICLE 1. SHORT TITLE, DEFINITIONS AND GENERAL PROVISIONS.


(a) All persons, other than banks and credit unions, who are subject to the provisions of this chapter and who are required to create or maintain records or other documents in the course of their business, may copy or reproduce those records or documents (other than notes, bonds, mortgages and other securities and investments) by any existing and generally accepted method of reproduction or retention technology which conforms to the requirements of section thirty-five, article four, chapter thirty-one-a of this code and may substitute copies or reproductions of the records or documents either in positive or negative form for the originals. A copy or reproduction in the form of a positive print is deemed to be an original counterpart of and has the same force as the original and is admissible in evidence in all courts and administrative agencies in this state for all purposes. The copies or reproductions authorized by this subsection shall be maintained pursuant to the records retention requirements applicable to the original records or documents. The original records or documents, once copied or reproduced, may be destroyed or otherwise eliminated.

(b) When copies of documents are offered in evidence, all circumstances surrounding the making or issuance of the documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions represented by the copies, may be shown to affect the weight of the documents as evidence, but not the admissibility.

(c) Any device used to copy or reproduce documents and
records shall be one which correctly and accurately reproduces the original document or record in all details and any disk or film used for this purpose shall be of durable material.

(d) Banks and credit unions may reproduce and maintain records and documents in conformity with this section as long as the reproduction and maintenance methods used do not conflict with any other provisions of this code applicable to banks or credit unions or with any rule of the commissioner of banking.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-127. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

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

(b) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(c) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(d) Any false representation or implication of the character, extent or amount of a claim against a consumer, or of its status in any legal proceeding;

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

(f) The use or 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;

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

(h) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.
That 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 House of Delegates

The within is approved this the day of , 1997.

Governor