

FILED

2015 MAR 31 A 11: 2

**WEST VIRGINIA LEGISLATURE** OFFICE WEST VIRGINIA  
**EIGHTY-SECOND LEGISLATURE** SECRETARY OF STATE

**REGULAR SESSION, 2015**



**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.]

SB542

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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 creditsales, 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.

*Paul Peterson*  
.....  
Chairman Senate Committee

*Alan B. Hill*  
.....  
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

*Clark S. Barnes*  
.....  
Clerk of the Senate

*Steph D. Morris*  
.....  
Clerk of the House of Delegates

*William J. Holte*  
.....  
President of the Senate

*John M. ...*  
.....  
Speaker of the House of Delegates

The within *is approved* this the *31st*  
Day of *March*, 2015.

*Earl Ray Jones*  
.....  
Governor

PRESENTED TO THE GOVERNOR

MAR 27 2015

Time 3:15 pm