

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 614**

BY SENATORS GAUNCH AND ASHLEY

[Introduced February 17, 2016;

Referred to the Committee on the Judiciary.]

1 A BILL to amend and reenact §46A-2-121 of the Code of West Virginia, 1931, as amended,  
2 relating to unconscionability and fraudulent conduct.

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

1 That §46A-2-121 of the Code of West Virginia, 1931, as amended, be amended and  
2 reenacted to read as follows:

**ARTICLE 2. CONSUMER CREDIT PROTECTION.**

**§46A-2-121. Unconscionability; inducement by ~~unconscionable~~ fraudulent conduct.**

1 ~~(1)~~(a) With respect to a transaction which is or gives rise to a consumer credit sale,  
2 consumer lease or consumer loan, if the court as a matter of law finds:

3 ~~(a)~~(1) The agreement or transaction to have been unconscionable at the time it was made,  
4 or to have been induced by ~~unconscionable~~ fraudulent conduct, the court may refuse to enforce  
5 the agreement, or

6 ~~(b)~~(2) Any term or part of the agreement or transaction to have been unconscionable at  
7 the time it was made, the court may refuse to enforce the agreement, or may enforce the  
8 remainder of the agreement without the unconscionable term or part, or may so limit the  
9 application of any unconscionable term or part as to avoid any unconscionable result.

10 ~~(2)~~(b) If it is claimed or appears to the court that the agreement or transaction or any term  
11 or part thereof may be unconscionable, the parties shall be afforded a reasonable opportunity to  
12 present evidence as to its setting, purpose and effect to aid the court in making the determination.

13 ~~(3)~~(c) For the purpose of this section, a charge or practice expressly permitted by this  
14 chapter is not unconscionable.

NOTE: The purpose of this bill is to conform the statute with the interpretation it has been given by the courts, including the Supreme Court of Appeals of West Virginia and the United States Court of Appeals for the Fourth Circuit, by replacing the word "unconscionable" with the word "fraudulent", referring to conduct.

Strike-throughs indicate language that would be stricken from a heading or the present law, and underscoring indicates new language that would be added.