

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Committee Substitute

for

House Bill 2794

BY DELEGATES FRICH, UPSON, WESTFALL, WHITE AND

MARCUM

[Originating in the Committee on the Judiciary;

March 22, 2017]

1 A BILL to amend and reenact §46A-2-128 of the Code of West Virginia, 1931, as amended,
2 relating to the means of giving notice to a debt collector of a consumer's representation
3 by legal counsel.

Be it enacted by the Legislature of West Virginia:

1 That §46A-2-128 of the Code of West Virginia, 1931, as amended, be amended and
2 reenacted to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-128. Unfair or unconscionable means.

1 No debt collector may use unfair or unconscionable means to collect or attempt to collect
2 any claim. Without limiting the general application of the foregoing, the following conduct is
3 deemed to violate this section:

4 (a) The seeking or obtaining of any written statement or acknowledgment in any form that
5 specifies that a consumer's obligation is one incurred for necessities of life where the original
6 obligation was not in fact incurred for such necessities;

7 (b) The seeking or obtaining of any written statement or acknowledgment in any form
8 containing an affirmation of any obligation by a consumer who has been declared bankrupt except
9 where such affirmation is obtained pursuant to applicable bankruptcy law;

10 (c) The collection or the attempt to collect from the consumer all or any part of the debt
11 collector's fee or charge for services rendered: *Provided*, That attorney's fees, court costs and
12 other reasonable collection costs and charges necessary for the collection of any amount due
13 upon delinquent educational loans made by any institution of higher education within this state
14 may be recovered when the terms of the obligation so provide. Recovery of attorney's fees and
15 collection costs may not exceed thirty-three and one-third percent of the amount due and owing
16 to any such institution: *Provided, however*, That nothing contained in this subsection shall be
17 construed to limit or prohibit any institution of higher education from paying additional attorney
18 fees and collection costs as long as such additional attorney fees and collection costs do not

19 exceed an amount equal to five percent of the amount of the debt actually recovered and such
20 additional attorney fees and collection costs are deducted or paid from the amount of the debt
21 recovered for the institution or paid from other funds available to the institution;

22 (d) The collection of or the attempt to collect any interest or other charge, fee or expense
23 incidental to the principal obligation unless such interest or incidental fee, charge or expense is
24 expressly authorized by the agreement creating or modifying the obligation and by statute or
25 regulation;

26 (e) Any communication with a consumer made more than seventy-two hours after the debt
27 collector receives written notice, ~~either on paper or electronically,~~ from the consumer or his or her
28 attorney that the consumer is represented by an attorney specifically with regard to the subject
29 debt. To be effective under this subsection, such notice must clearly state the attorney's name,
30 address and telephone number and be sent by certified mail, return receipt requested, to the debt
31 collector's registered agent, identified by the debt collector at the office of the West Virginia
32 Secretary of State or, if not registered with the West Virginia Secretary of State, then to the debt
33 collector's principal place of business. Communication with a consumer is not prohibited under
34 this subsection if the attorney fails to answer correspondence, return phone calls or discuss the
35 obligation in question, or if the attorney consents to direct communication with the consumer.
36 Regular account statements provided to the consumer and notices required to be provided to the
37 consumer pursuant to applicable law shall not constitute prohibited communications under this
38 section; and

39 (f) When the debt is beyond the statute of limitations for filing a legal action for collection,
40 failing to provide the following disclosure informing the consumer in its initial written
41 communication with such consumer that:

42 (1) When collecting on a debt that is not past the date for obsolescence provided for in
43 section 605(a) of the Fair Credit Reporting Act, 15 U. S. C. 1681c: "The law limits how long you
44 can be sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) cannot sue

45 you for it. If you do not pay the debt, (INSERT OWNER NAME) may report or continue to report
46 it to the credit reporting agencies as unpaid”; and

47 (2) When collecting on debt that is past the date for obsolescence provided for in section
48 605(a) of the Fair Credit Reporting Act, 15 U. S. C. 1681c: “The law limits how long you can be
49 sued on a debt. Because of the age of your debt, (INSERT OWNER NAME) cannot sue you for it
50 and (INSERT OWNER NAME) cannot report it to any credit reporting agencies.”

NOTE: The purpose of this bill is to require proof of mailing of notices to debtors that consumers are represented by legal counsel.

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