

# **WEST VIRGINIA LEGISLATURE**

## **2017 REGULAR SESSION**

**Introduced**

### **House Bill 2794**

BY DELEGATES FRICH AND UPSON, WESTFALL, WHITE

AND MARCUM

[Introduced March 6, 2017; referred  
to the Committee on Banking and Insurance then the  
Judiciary.]

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 to the debt collector's registered agent, identified by  
31 the debt collector at the office of the West Virginia Secretary of State or, if not registered with the  
32 West Virginia Secretary of State, then to the debt collector's principal place of business, by  
33 certified mail, return receipt requested. 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.