

SB # 36

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SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1994



ENROLLED

SENATE BILL NO. 36

(By Senator Anderson, et al.)



PASSED March 10, 1994
In Effect 90 days from Passage

E N R O L L E D
Senate Bill No. 36

(BY SENATORS ANDERSON, CLAYPOLE, DITTMAR,
GRUBB, HOLLIDAY, MACNAUGHTAN, MILLER,
PLYMALE, ROSS, WAGNER, WIEDEBUSCH,
WOOTON AND YODER)

[Passed March 10, 1994; in effect ninety days from passage.]

AN ACT to amend article two, 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 twenty-nine-a; and to amend article five of said chapter by adding thereto three new sections, designated sections one hundred four, one hundred five and one hundred six, all relating to consumer credit protection; prohibiting use of deception in telephone

collection activities; awarding attorney fees, court costs and fees in certain claims; additional penalties for certain willful violations; and providing for the adjustment of damages according to the consumer price index.

Be it enacted by the Legislature of West Virginia:

That article two, 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 twenty-nine-a; and that article five of said chapter be amended by adding thereto three new sections, designated section one hundred four, one hundred five and one hundred six, all to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-129a. Deceptive or oppressive telephone calls.

1 No debt collector shall place a telephone call or
2 otherwise communicate by telephone with a consumer or
3 third party, at any place, including a place of employ-
4 ment, falsely stating that the call is "urgent" or an
5 "emergency".

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-104. Attorney fees.

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 award
4 all or a portion of the costs of litigation, including
5 reasonable attorney fees, court costs and fees, to the
6 consumer. On a finding by the court that a claim brought
7 under this chapter applying to illegal, fraudulent or
8 unconscionable conduct or any prohibited debt collec-
9 tion practice was brought in bad faith and for the
10 purposes of harassment, the court may award to the
11 defendant reasonable attorney fees.

§46A-5-105. Willful violations.

1 If a creditor has willfully violated the provisions of this
2 chapter applying to illegal, fraudulent or unconscionable

3 conduct or any prohibited debt collection practice, in
4 addition to the remedy provided in section one hundred
5 one of this article, the court may cancel the debt when
6 the debt is not secured by a security interest.

§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
4 the damages awarded pursuant to section one hundred
5 one to account for inflation from the time that the West
6 Virginia consumer credit and protection act became
7 operative, specifically 12:01 a.m. on the first day of
8 September, one thousand nine hundred seventy-four, to
9 the time of the award of damages in an amount equal to
10 the consumer price index. Consumer price index means
11 the last consumer price index for all consumers
12 published by the United States department of labor.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

[Handwritten Signature]
.....
Chairman Senate Committee

[Handwritten Signature: Ernest C Moore]
.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature: Carroll Adams]
.....
Clerk of the Senate

[Handwritten Signature: Donald L. Kopp]
.....
Clerk of the House of Delegates

[Handwritten Signature]
.....
President of the Senate

[Handwritten Signature]
.....
Speaker House of Delegates

The within *is approved* this the *30th*
day of *March* 1994.

[Handwritten Signature: Gaston Caperton]
.....
Governor

PRESENTED TO THE

GOVERNOR

Date 3/29/94

Time 11:35 am