

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

Senate Bill 255

BY SENATOR TRUMP

[Introduced January 13, 2016;

Referred to the Committee on the Judiciary]

1 A BILL to amend and reenact §46A-2-128 of the Code of West Virginia, 1931, as amended,
 2 relating to permitting creditor to collect and recover from a consumer the creditor's
 3 reasonable attorney fees, court costs, fees, late charges and other incidental expenses
 4 which are provided in the agreement creating the obligation.

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 reasonable attorney's fees, court
 12 costs and other reasonable collection costs and charges necessary for the collection of any
 13 amount due ~~upon delinquent educational loans made by any institution of higher education within~~
 14 ~~this state~~ may be recovered when the terms of the obligation so provide. ~~Recovery of attorney's~~
 15 ~~fees and collection costs may not exceed thirty-three and one-third percent of the amount due~~
 16 ~~and owing to any such institution: *Provided, however*, That nothing contained in this subsection~~
 17 ~~shall be construed to limit or prohibit any institution of higher education from paying additional~~

18 ~~attorney fees and collection costs as long as such additional attorney fees and collection costs do~~
19 ~~not 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 (1) Expressly authorized by the agreement creating or modifying the obligation; ~~and~~ or (2)
25 authorized by statute or 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.
33 Communication with a consumer is not prohibited under this subsection if the attorney fails to
34 answer correspondence, return phone calls or discuss the obligation in question, or if the attorney
35 consents to direct communication with the consumer. Regular account statements provided to the
36 consumer and notices required to be provided to the consumer pursuant to applicable law shall
37 not constitute prohibited communications under this section; and

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

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

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

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

NOTE: The purpose of this bill is to permit a creditor to collect and recover from a consumer the creditor's reasonable attorney fees, court costs, fees, late charges, and other incidental expenses which are provided in the agreement creating the obligation. Present law limits the recovery of attorney's fees and court costs to delinquent educational loans and sets a maximum for attorney's fees.

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