

H. B. 3233

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(By Delegates Ashley, Miley, Michael,
Boggs and Frazier)

[Introduced February 21, 2011; referred to the
Committee on the Judiciary.]

10 A BILL to amend and reenact §46A-2-122 of the Code of West
11 Virginia, 1931, as amended; and to amend said code by adding
12 thereto a new section, designated §46A-2-128a, all relating to
13 the protection of consumers against certain actions of debt
14 collectors.

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

16 That §46A-2-122 of the Code of West Virginia, 1931, as
17 amended, be amended and reenacted; and that said code be amended by
18 adding thereto a new section, designated §46A-2-128a, all to read
19 as follows:

20 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

21 **§46A-2-122. Definitions.**

22 For the purposes of this section and sections one hundred
23 twenty-three, one hundred twenty-four, one hundred twenty-five, one
24 hundred twenty-six, one hundred twenty-seven, one hundred twenty-
25 eight, one hundred twenty-eight-a, one hundred twenty-nine and one
26 hundred twenty-nine-a of this article, the following terms ~~shall~~
27 have the following meanings:

1 (a) "Consumer" means ~~any~~ a natural person obligated or
2 allegedly obligated to pay ~~any~~ a debt.

3 (b) "Claim" means ~~any~~ an obligation or alleged obligation of
4 a consumer to pay money arising out of a transaction in which the
5 money, property, insurance or service which is the subject of the
6 transaction is primarily for personal, family or household purposes
7 whether or not such obligation has been reduced to judgment.

8 (c) "Debt collection" means ~~any~~ an action, conduct or practice
9 of soliciting claims for collection or in the collection of claims
10 owed or due or alleged to be owed or due by a consumer.

11 (d) "Debt collector" means ~~any~~ a person or organization
12 engaging directly or indirectly in debt collection. The term
13 includes any person or organization who sells or offers to sell
14 forms which are, or are represented to be, a collection system,
15 device or scheme and are intended or calculated to be used to
16 collect claims.

17 **§46A-2-128a. Failures to respond by debt collectors; unlawful**
18 **actions, damages.**

19 (a) A debt collector who receives a written inquiry from a
20 consumer or a consumer's representative concerning an alleged
21 obligation of the consumer shall respond, in writing, to the
22 written inquiry within thirty days. The debt collector's
23 obligation to respond is limited to three written inquiries within
24 a calendar year.

25 (b) If a debt collector does not respond, in writing, to a
26 written inquiry from a consumer or the consumer's representative

1 within thirty days, the debt collector is prohibited from taking
2 any adverse collection action against the consumer including, but
3 not limited to, causing a complaint to be filed in any court of
4 competent jurisdiction seeking to enforce the debt allegedly owed
5 by the consumer, causing the issuance of any form of garnishment
6 or the reporting of adverse information regarding the consumer to
7 a credit reporting agency. This prohibition is removed following
8 the debt collector's delivery of a written response to the consumer
9 or the consumer's representative.

10 (c) A consumer who has been subject to a violation of
11 subsection (a) or (b) of this section may bring an action to
12 recover actual damages for any injury sustained by the action or
13 failure to act of the debt collector. In addition to actual
14 damages, a minimum additional damage assessment of \$300 may be
15 recovered for violations of this section. In a claim brought under
16 this section, the court may award all or a portion of the costs of
17 litigation, including reasonable attorney fees, court costs and
18 fees, to the consumer and, if the court finds that the debt
19 collector has willfully violated the provisions of this section,
20 may cancel the debt when the debt is not secured by a security
21 interest.

NOTE: The purpose of this bill is to add additional protection of consumers against certain actions of debt collectors.

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

§46A-2-128a is new; therefore, it has been completely underscored.