

WEST VIRGINIA LEGISLATURE

2024 REGULAR SESSION

Committee Substitute

for

House Bill 5539

By Delegates C. Pritt, McGeehan, Longanacre,
Akers, Steele, Fluharty, Kimble, Shamblin, Kirby, and
Kump

[Originating in the Committee on the Judiciary;

Reported on February 20, 2024]

1 A BILL to amend and reenact §46A-2-122 and §55-7-8a of the Code of West Virginia, 1931, as
2 amended, all relating to consumer credit and protection actions; amending definitions; and
3 clarifying that any action for a violation of Chapter 46A of this code shall survive the death
4 of the person entitled to recover or the death of the person liable.

Be it enacted by the Legislature of West Virginia:

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 2. CONSUMER CREDIT PROTECTION.

§46A-2-122. Definitions.

1 For the purposes of this section and sections one hundred twenty-three, one hundred
2 twenty-four, one hundred twenty-five, one hundred twenty-six, one hundred twenty-seven, one
3 hundred twenty-eight, one hundred twenty-nine and one hundred twenty-nine-a of this article, the
4 following terms shall have the following meanings:

5 (a) "Consumer" means any natural person obligated or allegedly obligated to pay any debt.
6 The term "consumer" shall include any duly appointed administrator of the estate of a natural
7 person obligated or allegedly obligated to pay any debt. The term "consumer" further includes any
8 natural person obligated under a deed of trust or lien that secures property primarily used for
9 personal, family, or household purposes wherein the property is subject to foreclosure or forfeiture
10 for failure to pay money.

11 (b) "Claim" means any obligation or alleged obligation of a consumer to pay money arising
12 out of a transaction in which the money, property, insurance or service which is the subject of the
13 transaction is primarily for personal, family or household purposes, whether or not such obligation
14 has been reduced to judgment.

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

17 (d) "Debt collector" means any person or organization engaging directly or indirectly in debt
18 collection. The term includes any person or organization who sells or offers to sell forms which are,
19 or are represented to be, a collection system, device or scheme, and are intended or calculated to
20 be used to collect claims. The term excludes attorneys representing creditors provided the
21 attorneys are licensed in West Virginia or otherwise authorized to practice law in the State of West
22 Virginia and handling claims and collections in their own name as an employee, partner, member,
23 shareholder or owner of a law firm and not operating a collection agency under the management of
24 a person who is not a licensed attorney.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7. ACTIONS FOR INJURIES.

§55-7-8a. Actions which survive; limitations; law governing such actions.

1 (a) In addition to the causes of action which survive at common law, causes of action for
2 injuries to property, real or personal, or injuries to the person and not resulting in death, or for
3 deceit or fraud, or any violations of Chapter 46A of this Code, also shall survive; and such actions
4 may be brought notwithstanding the death of the person entitled to recover or the death of the
5 person liable.

6 (b) If any such action is begun during the lifetime of the injured party, and within the period
7 of time permissible under the applicable statute of limitations as provided by §55-2-1 *et seq.* and
8 §55-2A-1 *et seq.* of this code, (either against the wrongdoer or his or her personal representative),
9 and such injured party dies pending the action it may be revived in favor of the personal
10 representative of such injured party and prosecuted to judgment and execution against the
11 wrongdoer or his or her personal representative.

12 (c) If the injured party dies before having begun any such action and it is not at the time of
13 his or her death barred by the applicable statute of limitations under the provisions of §55-2-1 *et*
14 *seq.* and §55-2A-1 *et seq.* of this code such action may be begun by the personal representative of

15 the injured party against the wrongdoer or his or her personal representative and prosecuted to
16 judgment and execution against the wrongdoer or his or her personal representative. Any such
17 action shall be instituted within the same period of time that would have been applicable had the
18 injured party not died.

19 (d) If any such action mentioned in the preceding subsections (a), (b) and/or (c) shall have
20 been begun against the wrongdoer and he or she dies during the pendency thereof, it may be
21 revived against the personal representative of the wrongdoer and prosecuted to judgment and
22 execution.

23 (e) The applicable provisions of §56-8-1 *et seq.* of this code shall govern the actions
24 hereinabove mentioned, with reference to their abatement, revival, discontinuance, reinstatement
25 and substitution of parties.

26 (f) Nothing contained in this section shall be construed to extend the time within which an
27 action for any other tort shall be brought, nor to give the right to assign a claim for a tort not
28 otherwise assignable.