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The West Virginia Consumer Credit & Protection Act

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The West Virginia Consumer Credit & Protection Act

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The logo for the West Virginia Consumer Credit & Protection Act (WVCLE). It features a stylized 'W' with a mountain range silhouette inside it, followed by the letters 'WVCLE' in a bold, sans-serif font.

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The West Virginia Consumer Credit & Protection Act

Overview of Debt Collection Provisions and Recommended Best Practices
W. Va. Code §§ 46A-2-122, et seq.

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Important Definitions

- **DEBT COLLECTOR** – “Any person or organization engaging directly or indirectly in debt collection.”
W. Va. Code § 46A-2-122(d).
- **DEBT COLLECTION** – “Any action, conduct or practice of soliciting claims for collection or in the collection of claims owed or due or alleged to be owed or due by a consumer.” **W. Va. Code § 46A-2-122(c).**

Important Definitions

- **CONSUMER** – “Any natural person obligated or allegedly obligated to pay any debt.” **W. Va. Code § 46A-2-122(a)**. Broad definition
- **CLAIM** – “Any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or service which is the subject of the transaction *is primarily for personal, family or household purposes.*” **W. Va. Code § 46A-2-122(b) (emphasis added)**. More limited



Threats or Coercion

Section 46A-2-124 of the Act generally prohibits engaging in debt collection “by means of any threat, coercion or attempt to coerce” a consumer.

- Cannot use violence or threat of violence
- No false accusations
- Cannot threaten arrest or garnishment of wages



Oppression and Abuse

Section 46A-2-125 of the Act generally prohibits collector from “unreasonably oppress[ing] or abus[ing] any person” in connection with collections.

- No profanity
- Must disclose accurate identity
- Cannot act with intent to annoy/ harass

NOTE: This section prohibits the unreasonable oppression or abuse of “any person,” and therefore is not limited to the consumer.



Oppression and Abuse

The Act specifically prohibits calling any person more than thirty (30) times per week or engaging any person in telephone conversation more than ten (10) times per week, or at unusual times or at times known to be inconvenient, with intent to annoy, abuse, oppress or threaten any person at the called number.

NOTE: If debt collector knows debtor works the night shift, do not call during the day.



Oppression and Abuse

In 2015, the West Virginia Legislature amended [§ 46A-2-125](#) to clarify that oppression and abuse allegations against a debt collector will be evaluated objectively, “from the standpoint of a reasonable person.” See [§ 46A-2-125\(d\)](#).

Under the amendment, debt collectors “shall assume that the convenient time for communicating with a consumer” is after 8:00 a.m. and before 9:00 p.m. *Id.*



Unreasonable Publication

[Section 46A-2-126](#) of the Act prohibits debt collector from “unreasonably publiciz[ing] information relating to the alleged indebtedness or consumer.”

- Do not call debtor’s employer
- Do not disclose indebtedness to debtor’s family members
- No “Deadbeat Lists”



Fraudulent, Deceptive or Misleading Representation

Section 46A-2-127 of the Act prohibits debt collector from using “fraudulent, deceptive or misleading representation[s] or means to collect or attempt to collect claims or to obtain information concerning consumers.”

- No false identities in collections
- No exaggerating the amount of the claim



Unfair or Unconscionable Means

Section 46A-2-128 is an important provision of the Act. It generally prohibits debt collector from using “unfair or unconscionable means to collect or attempt to collect any claim.”

Its subsections go on to list specific examples of prohibited conduct.



Unfair or Unconscionable Means

The subsection we have encountered repeatedly in litigation prohibits:

- Any communication with a consumer made more than three business days after the debt collector receives written notice from the consumer or his or her attorney that the consumer is represented by an attorney specifically with regard to the subject debt. [W. Va. Code § 46A-2-128\(e\)](#) (the “Representation Provision”)



Unfair or Unconscionable Means

The Representation Provision does contain a defense. Specifically, there is no liability under the Provision where the debtor’s attorney “fails to answer correspondence, return phone calls or discuss the obligation in question.” [W. Va. Code § 46A-2-128\(e\)](#).



Unfair or Unconscionable Means

In light of the Representation Provision, the debt collector *should stop collections activities if it receives written notice that a consumer is represented by an attorney.*



Deceptive or Oppressive Telephone Calls

Section 46A-2-129a of the Act is relatively straightforward. It prohibits debt collector from “plac[ing] a telephone call or otherwise communicat[ing] by telephone with a consumer or third party, at any place, including a place of employment, falsely stating that the call is ‘urgent’ or an ‘emergency.’”



Damages, Civil Penalties and Litigation Costs

Violations of the Act provide the consumer with “a cause of action to recover **actual damages**.” The consumer has also “a right in an action to recover...a **penalty** of \$1,000 per violation,” which “shall not exceed the greater of \$175,000 or the total alleged outstanding indebtedness.” [W. Va. Code § 46A-5-101\(1\)](#).



Damages, Civil Penalties and Litigation Costs

In addition, the Act also affords consumers:

- A debt cancellation remedy – Requires **willfulness**
[W. Va. Code § 46A-5-105](#)
- A litigation costs remedy – In court’s discretion
[W. Va. Code § 46A-5-104](#)



Affirmative Defenses

There are three affirmative defenses in the Act that a debt collector may invoke:

- The “bona fide error” defense (but requires procedures in place to avoid error)
- An attorney fees defense
- Creditor or debt collector remedy defense (i.e., recognizing error and fixing it on notice before debtor complains)



Right to Cure

In 2017, the West Virginia Legislature added an important provision to the Act providing debt collectors with the right to cure alleged violations. **W. Va. Code § 46A-5-108**

- Consumer must inform of alleged violations and give creditor opportunity to correct before escalating litigation



Best Practices

Follow these **recommendations** to help steer clear of liability.

- **Always disclose to the consumer the legally correct name of the entity attempting to collect the claim.**
- **State the amount of the debt accurately in communicating with the consumer.**



Best Practices

- **Communicate only with the consumer about their account. No bad language, threats, or accusations toward the consumer, their employer, or their friends and family.**
- **If the consumer reveals that they have a lawyer, ask the consumer to provide the lawyer's name, address and telephone number in writing. In the meantime, cease collections activities immediately.**



Best Practices

- If the consumer reveals they are filing for bankruptcy, cease collections activities immediately.
- Limit the number and frequency of collections telephone calls and letters to West Virginia consumers.
- Perform collections calls at reasonable hours, i.e., between 8 a.m. and 5 p.m. EST, even though the Act condones a larger calling window.



Best Practices

- Regarding collections calls, be aware and thoughtful of shift workers and others with non-traditional work schedules.
- Continually train and test employees regarding compliance with the West Virginia Act.
- Keep accurate records of collections activities, including collections call logs, notes, and recordings. Such records are extremely useful in defending unlawful debt collection actions.



Best Practices

- **Treat bankruptcy claims thoughtfully and ensure accounts are coded correctly. No collections activities may occur where a debtor has commenced bankruptcy proceedings.**
- **Add consent to forms allowing for calls to consumer cell phone numbers.**
- **Be thoughtful of out-of-state consumers as West Virginia laws may not be applicable.**



Best Practices

- **Identify consumers who actively serve in the military; different rules may apply.**
- **Likewise, where a consumer has died, special rules apply for making a claim of the consumer's estate.**
- **Be mindful of self-collection rules for magistrate court.**



Best Practices

- **Review and revise collections policies and procedures with counsel. Review and revise the policies and procedures annually to keep up with changing laws and to determine whether the policies and procedures have improved West Virginia operations and limited West Virginia lawsuits.**



Thank you!



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