WEST VIRGINIA CODE CHAPTER 46B ARTICLE 4

WV Legislature

§46B-4-1. Extortionate conduct in rent-to-own transaction.

If the court finds as a matter of fact that it was the understanding of the dealer and the consumer at the time a rental agreement for a rent-to-own transaction was made that delay in making a payment could result in the use of violence or other criminal means to cause harm to the person, reputation or property of any person, the agreement of the extension of credit is unenforceable through civil judicial process against the dealer and the consumer, at his or her option, may rescind the agreement and retain the goods without any obligation to pay for them.

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§46B-4-2. Referral sales or leases.

With respect to a rent-to-own transaction, the dealer may not give or offer to give a rebate or discount or otherwise pay or offer to pay value to the consumer as an inducement for a sale or lease in consideration of his giving to the dealer the names of prospective purchasers or consumers, or otherwise aiding the dealer in making a lease to another person, if the earning of the rebate, discount or other value is contingent upon the occurrence of an event subsequent to the time the consumer agrees to lease. If a consumer is induced by a violation of this section to enter into a rent-to-own transaction, the agreement is unenforceable against the consumer, who at his or her option, may rescind the agreement and retain the goods without any obligation to pay for them.

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§46B-4-3. Practice of law by debt collectors.

Unless a licensed attorney in this state, no debt collector shall engage in conduct deemed the practice of law. Without limiting the general application of the foregoing, the following conduct is deemed the practice of law:

(1) The performance of legal services, furnishing of legal advice or false representation, direct or by implication, that any person is an attorney;

(2) Any communication with consumers in the name of an attorney or upon stationery or other written matter bearing an attorney's name; and

(3) Any demand for or payment of money constituting a share of compensation for services performed or to be performed by an attorney in collecting a claim.

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§46B-4-4. Threats or coercion.

No debt collector shall collect or attempt to collect any money alleged to be due and owing by means of any threat, coercion or attempt to coerce. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use, or express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation or property of any person;

(2) The accusation or threat to accuse any person of fraud, any crime or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or any conduct which, if true, would tend to disgrace such other person or in any way subject him to ridicule or contempt of society;

(3) False accusations made to another person, including any credit reporting agency, that a consumer is willfully refusing to pay a just debt or the threat to so make false accusations;

(4) The threat to sell or assign to another the obligation of the consumer with an attending representation or implication that the result of such sale or assignment would be that the consumer would lose any defense to the claim or would be subjected to harsh, vindictive or abusive collection attempts;

(5) The threat that nonpayment of an alleged claim will result in the:

(A) Arrest of any person; or

(B) Garnishment of any wages of any person or the taking of other action requiring judicial sanction, without informing the consumer that there must be in effect a judicial order permitting such garnishment or such other action before it can be taken; and

(6) The threat to take any action prohibited by this chapter or other law regulating the debt collector's conduct.

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§46B-4-5. Oppression and abuse.

No debt collector shall unreasonably oppress or abuse any person in connection with the collection of or attempt to collect any claim alleged to be due and owing by that person or another. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use of profane or obscene language or language that is intended to unreasonably abuse the hearer or reader;

(2) The placement of telephone calls without disclosure of the caller's identity and with the intent to annoy, harass or threaten any person at the called number;

(3) Causing expense to any person in the form of long distance telephone tolls, telegram fees or other charges incurred by a medium of communication, by concealment of the true purpose of the communication; and

(4) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously, 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.

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§46B-4-6. Unreasonable publication.

No debt collector shall unreasonably publicize information relating to any alleged indebtedness of consumer. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The communication to any employer or his agent before judgment has been rendered of any information relating to an employee's indebtedness other than through proper legal action, process or proceeding;

(2) The disclosure, publication or communication of information relating to a consumer's indebtedness to any relative or family member of the consumer if such person is not residing with the consumer, except through proper legal action or process or at the express and unsolicited request of the relative or family member;

(3) The disclosure, publication or communication of any information relating to a consumer's indebtedness to any other person other than a credit reporting agency, by publishing or posting any list of consumers, commonly known as "deadbeat lists"; and

(4) The use of any form of communication to the consumer, which ordinarily may be seen by any other persons, that displays or conveys any information about the alleged claim other than the name, address and phone number of the debt collector.

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§46B-4-7. Fraudulent, deceptive or misleading representations.

No debt collector shall use any fraudulent, deceptive or misleading representation or means to collect or attempt to collect claims or to obtain information concerning consumers. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The use of any business, company or organization name while engaged in the collection of claims, other than the true name of the debt collector's business, company or organization;

(2) The failure to clearly disclose in all communications made to collect or attempt to collect a claim or to obtain or attempt to obtain information about a consumer, that the debt collector is attempting to collect a claim and that any information obtained will be used for that purpose;

(3) Any false representation that the debt collector has in his possession information or something of value for the consumer that is made to solicit or discover information about the consumer;

(4) The failure to clearly disclose the name and full business address of the person to whom the claim has been assigned for collection, or to whom the claim is owed, at the time of making any demand for money;

(5) Any false representation or implication of the character, extent or amount of a claim against a consumer or of its status in any legal proceeding;

(6) Any false representation or false implication that any debt collector is vouched for, bonded by, affiliated with or an instrumentality, agent or official of this state or any agency of the federal, state or local government;

(7) The use or distribution or sale of any written communication which simulates or is falsely represented to be a document authorized, issued or approved by a court, an official or any other legally constituted or authorized authority, or which creates a false impression about its source, authorization or approval;

(8) Any representation that an existing obligation of the consumer may be increased by the addition of attorney's fees, investigation fees, service fees or any other fees or charges when in fact such fees or charges may not legally be added to the existing obligation; and

(9) Any false representation or false impression about the status or true nature of or the services rendered by the debt collector or his business.

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§46B-4-8. Unfair or unconscionable means.

No debt collector shall use unfair or unconscionable means to collect or attempt to collect any claim. Without limiting the general application of the foregoing, the following conduct is deemed to violate this section:

(1) The seeking or obtaining of any written statement or acknowledgment in any form that specifies that a consumer's obligation is one incurred for necessaries of life where the original obligation was not in fact incurred for such necessaries;

(2) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirmation of any obligation by a consumer who has been declared bankrupt without clearly disclosing the nature and consequences of such affirmation and the fact that the consumer is not legally obligated to make such affirmation;

(3) The collection or the attempt to collect from the consumer all or any part of the debt collector's fee or charge for services rendered;

(4) The collection of or the attempt to collect any interest or other charge, fee or expense incidental to the principal obligation unless such interest or incidental fee, charge or expense is expressly authorized by the written rental agreement and by statute; and

(5) Any communication with a consumer whenever it appears that the consumer is represented by an attorney and the attorney's name and address are known, or could be easily ascertained, unless the attorney fails to answer correspondence, return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.

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§46B-4-9. Postal violations.

No debt collector shall use, distribute, sell or prepare for use any written communication which violates or fails to conform to United States postal laws and regulations.

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