

# **WEST VIRGINIA LEGISLATURE**

## **2016 REGULAR SESSION**

**Introduced**

### **Senate Bill 472**

BY SENATORS GAUNCH, ASHLEY, TRUMP AND PREZIOSO

[Introduced February 2, 2016;

Referred to the Committee on Banking and Insurance; and

then to the Committee on the Judiciary.]

1 A BILL to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended,  
 2 relating to providing that conduct allowed under West Virginia Consumer Credit and  
 3 Protection Act is likewise not a violation of West Virginia Computer Crime and Abuse Act.

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

1 That §61-3C-14a of the Code of West Virginia, 1931, as amended, be amended and  
 2 reenacted to read as follows:

**ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.**

**§61-3C-14a. Obscene, anonymous, harassing and threatening communications by  
 computer, cell phones and electronic communication devices; penalty.**

1 (a) It is unlawful for any person, with the intent to harass or abuse another person, to use  
 2 a computer, mobile phone, personal digital assistant or other electronic communication device to:

3 (1) Make contact with another without disclosing his or her identity with the intent to harass  
 4 or abuse;

5 (2) Make contact with a person after being requested by the person to desist from  
 6 contacting them: Provided, That a communication made by a lender or debt collector to a  
 7 consumer that does not violate section one hundred twenty-eight, article two, chapter forty-six-a  
 8 of this code does not violate this subsection;

9 (3) Threaten to commit a crime against any person or property; or

10 (4) Cause obscene material to be delivered or transmitted to a specific person after being  
 11 requested to desist from sending such material.

12 (b) For purposes of this section:

13 (1) "Electronic communication device" means and includes a telephone, wireless phone,  
 14 computer, pager or any other electronic or wireless device which is capable of transmitting a  
 15 document, image, voice, e-mail or text message using such device in an electronic, digital or  
 16 analog form from one person or location so it may be viewed or received by another person or  
 17 persons at other locations.

18           (2) "Use of a computer, mobile phone, personal digital assistant or other electronic  
19 communication device" includes, but is not limited to, the transmission of text messages,  
20 electronic mail, photographs, videos, images or other nonvoice data by means of an electronic  
21 communication system, and includes the transmission of such data, documents, messages and  
22 images to another's computer, e-mail account, mobile phone, personal digital assistant or other  
23 electronic communication device.

24           (3) "Obscene material" means material that:

25           (A) An average person, applying contemporary adult community standards, would find,  
26 taken as a whole, appeals to the prurient interest, is intended to appeal to the prurient interest, or  
27 is pandered to a prurient interest;

28           (B) An average person, applying contemporary adult community standards, would find,  
29 depicts or describes, in a patently offensive way, sexually explicit conduct consisting of an ultimate  
30 sexual act, normal or perverted, actual or simulated, an excretory function, masturbation, lewd  
31 exhibition of the genitals, or sadomasochistic sexual abuse; and

32           (C) A reasonable person would find, taken as a whole, lacks literary, artistic, political or  
33 scientific value.

34           (c) It is unlawful for any person to knowingly permit a computer, mobile phone or personal  
35 digital assistant or other electronic communication device under his or her control to be used for  
36 any purpose prohibited by this section.

37           (d) Any offense committed under this section may be determined to have occurred at the  
38 place at which the contact originated or the place at which the contact was received or intended  
39 to be received.

40           (e) Any person who violates a provision of this section is guilty of a misdemeanor and,  
41 upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than six  
42 months, or both fined and confined. For a second or subsequent offense, the person is guilty of a  
43 misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in jail

44 for not more than one year, or both fined and confined.

NOTE: The purpose of this bill is to provide that communication by a lender or debt collector which is allowed under the West Virginia Consumer Credit and Protection Act, likewise does not violate the provisions of the West Virginia Computer Crime and Abuse Act.

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