

WEST VIRGINIA LEGISLATURE

2023 REGULAR SESSION

Introduced

House Bill 3480

FISCAL
NOTE

By Delegates Hite, Horst, Miller, and Hornby

[Introduced February 14, 2023; Referred to the
Committee on the Judiciary]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §46A-9-101, §46A-9-102, and §46A-9-103, all relating to the enactment of the
 3 West Virginia Consumer Privacy Act of 2023.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. THE WEST VIRGINIA CONSUMER PRIVACY ACT OF 2023.

§46A-9-101. Purpose of the West Virginia Consumer Privacy Act of 2023.

1 (a) The purpose of "The West Virginia Consumer Financial Privacy Act of 2023", is to
 2 ensure West Virginia consumers are protected against the disclosure, sale, or both of their
 3 personal financial information, without their written authorization.

4 (b) As citizens of the United States of America, West Virginians are afforded certain
 5 protections from the release of information to federal authorities by the Federal Right to Financial
 6 Privacy Act of 1978. However, these protections only apply to the release of information to federal
 7 authorities. West Virginians do not currently have any reasonable expectation of financial privacy
 8 from a credit reporting agency or any private business.

§46A-9-102. Definitions and Applicability.

1 (a) "Consumer" means a natural person to whom a sale, lease, or offer of a line of credit is
 2 made in a consumer transaction; and

3 (b) "Consumer transaction" means a sale, lease, or offer of a line of credit to a natural
 4 person or persons for a personal, family, household, or agricultural purpose.

5 (c) A consumer applying for credit from any financial institution, creditor utilizing any credit
 6 reporting agency, or private business, shall have the right to "opt-in" to each disclosure or sale of
 7 their personal financial information. This includes information that a credit report was obtained by,
 8 but not limited to, the following:

9 (1) Financial institutions; or

10 (2) Creditors; or

11 (3) Mortgage lenders; or

12 (4) Mortgage brokers.

13 (d) The customer shall be given all information to determine what personal information is
14 being sold or shared. This will allow the consumer to take an active role in the security of their
15 personal information and maintain a reasonable expectation of privacy in their financial
16 information. Further, it will allow for a greater knowledge of how their records are handled, how
17 they have been disclosed, or how they have been sold.

18 (e) Providing this information and the means to control the spread of personal financial
19 information will allow consumers to protect themselves against greater threats of identity theft,
20 deceptive business practices, data mining, and overwhelming unsolicited inquiries.

21 (f) All consumer transactions involving the harvesting of personal financial information are
22 covered by the protections of this article.

§46A-9-103. Fines and Penalties.

1 (a) Violators of §46A-9-1 et seq. of this code shall be guilty of a misdemeanor and, upon
2 conviction, shall be fined not more than \$5,000, or imprisoned for more than one year, or both.

3 (b) Each violation shall be treated as a separate offense.

4 (c) As described in §46A-5-104 of this code, any violation of the provisions of this article will
5 result in the court considering the award of reasonable attorney's fees and expenses to the
6 consumer upon examination of the following factors:

7 (1) The time and labor required;

8 (2) The novelty and difficulty of the questions;

9 (3) The skill requisite to perform the legal service properly;

10 (4) Preclusion of other employment by the attorney due to acceptance of the case;

11 (5) The customary fee;

12 (6) Whether the fee is fixed or contingent;

13 (7) Time limitations imposed by the client or the circumstances;

14 (8) The amount involved and the amount of the judgment and any nonmonetary relief

15 obtained;

16 (9) The experience, reputation, and ability of the attorneys;

17 (10) The undesirability of the case;

18 (11) The nature and length of the professional relationship with the client; and

19 (12) Awards in similar cases.

20 (d) Upon a finding by the court that a claim brought under this chapter was brought in bad
21 faith and for the purposes of harassment, the court may award reasonable attorney's fees and
22 expenses to the defendant under an analysis of the factors set forth in subsection (a) of this
23 section.

24 (e) Any civil action or other proceeding brought by a consumer to recover actual damages
25 or a penalty, or both, from creditor or a debt collector, founded upon illegal, fraudulent or
26 unconscionable conduct, or prohibited debt collection practice, or both, shall be brought either in
27 the circuit court of the county in which the plaintiff has his or her legal residence at the time of the
28 civil action, the circuit court of the county in which the plaintiff last resided in the State of West
29 Virginia, or in the circuit court of the county in which the creditor or debt collector has its principal
30 place of business or, if the creditor or debt collector is an individual, in the circuit court of the county
31 of his or her legal residence. With respect to causes of action arising under this chapter, the venue
32 provisions of this section shall be exclusive of and shall supersede the venue provisions of any
33 other West Virginia statute or rule.

NOTE: The purpose of this bill is to enact the West Virginia Consumer Privacy Act of 2023.

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