

FIRST REGULAR SESSION

# HOUSE BILL NO. 1041

## 102ND GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVE BLAND MANLOVE.

2136H.011

DANA RADEMAN MILLER, Chief Clerk

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### AN ACT

To amend chapter 425, RSMo, by adding thereto one new section relating to debt collection, with penalty provisions.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 425, RSMo, is amended by adding thereto one new section, to be known as section 425.100, to read as follows:

**425.100. 1. As used in this section, the following terms mean:**

**(1) "Debt collection", any act or practice in connection with the collection of consumer debts;**

**(2) "Debt collector", any person who, in the ordinary course of business, regularly, on behalf of himself, herself, or others, engages in debt collection. "Debt collector" includes any person who composes or sells or offers to compose or sell forms, letters, and other collection media used or intended to be used for debt collection but shall not include an attorney or counselor at law;**

**(3) "Debtor", a natural person from whom a debt collector seeks to collect a consumer debt that is due and owing or alleged to be due and owing.**

**2. No debt collector shall collect or attempt to collect a consumer debt by means of judicial proceedings if the debt collector knows or should know that service of process, if essential to jurisdiction over the debtor or the debtor's property, has not been legally effected.**

**3. With respect to an attempted collection of a consumer debt, it is unlawful for a debt collector, creditor, or attorney to send a communication that simulates legal or judicial process or that gives the appearance of being authorized, issued, or approved by**

EXPLANATION — Matter enclosed in bold-faced brackets ~~thus~~ in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

18 a governmental agency or attorney if it is not so authorized, issued, or approved. Any  
19 violation of the provisions of this subsection is a class B misdemeanor.

20 4. A debt collector who violates this section with respect to a debtor shall be  
21 liable to that debtor only in an individual action, and the liability shall be limited to any  
22 actual damages sustained by the debtor as a result of the violation. However, if a debt  
23 collector violates this section willfully and knowingly, the debt collector shall  
24 additionally be liable to the debtor in an individual action for a penalty in such  
25 amount as the court may allow, which shall be no less than one hundred dollars and no  
26 greater than one thousand dollars.

27 5. In a case to enforce any liability under this section, the prevailing party may  
28 be entitled to costs of the action. Reasonable attorney's fees, which shall be based on  
29 time necessarily expended to enforce the liability, shall be awarded to a prevailing  
30 debtor. Reasonable attorney's fees shall be awarded to a prevailing debt collector upon  
31 a finding by the court that the debtor's prosecution or defense of the action was not in  
32 good faith.

33 6. Any action under this section may be brought only in an appropriate court of  
34 competent jurisdiction in an individual capacity within one year from the date of the  
35 occurrence of the violation.

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