

1 ENROLLED

2 COMMITTEE SUBSTITUTE

3 for

4 **H. B. 4360**

5 (By Delegates Guthrie, L. Phillips, Poore,  
6 Sponaugle, Young, Skinner, Fragale, Skaff  
7 Caputo)

8 [Passed March 8, 2014; in effect ninety days from passage.]

9  
10 AN ACT to amend and reenact §46A-2-128 of the Code of West  
11 Virginia, 1931, as amended, relating to consumer credit  
12 protection generally; and including additional conduct that  
13 constitutes unfair or unconscionable conduct when collecting  
14 or attempting to collect a debt.

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

16 That §46A-2-128 of the Code of West Virginia, 1931, as  
17 amended, be amended and reenacted, all to read as follows:

18 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

19 **§46A-2-128. Unfair or unconscionable means.**

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

24 (a) The seeking or obtaining of any written statement or  
25 acknowledgment in any form that specifies that a consumer's

1 obligation is one incurred for necessities of life where the  
2 original obligation was not in fact incurred for such necessities;

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

9 (c) The collection or the attempt to collect from the consumer  
10 all or any part of the debt collector's fee or charge for services  
11 rendered: *Provided*, That attorney's fees, court costs and other  
12 reasonable collection costs and charges necessary for the  
13 collection of any amount due upon delinquent educational loans made  
14 by any institution of higher education within this state may be  
15 recovered when the terms of the obligation so provide. Recovery of  
16 attorney's fees and collection costs may not exceed thirty-three  
17 and one-third percent of the amount due and owing to any such  
18 institution: *Provided, however*, That nothing contained in this  
19 subsection shall be construed to limit or prohibit any institution  
20 of higher education from paying additional attorney fees and  
21 collection costs as long as such additional attorney fees and  
22 collection costs do not exceed an amount equal to five percent of  
23 the amount of the debt actually recovered and such additional  
24 attorney fees and collection costs are deducted or paid from the  
25 amount of the debt recovered for the institution or paid from other

1 funds available to the institution;

2 (d) The collection of or the attempt to collect any interest  
3 or other charge, fee or expense incidental to the principal  
4 obligation unless such interest or incidental fee, charge or  
5 expense is expressly authorized by the agreement creating the  
6 obligation and by statute;

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

13 (f) When the debt is beyond the statute of limitations for  
14 filing a legal action for collection, failing to provide the  
15 following disclosure informing the consumer in its initial written  
16 communication with such consumer that:

17 (1) When collecting on a debt that is not past the date for  
18 obsolescence provided for in Section 605(a) of the Fair Credit  
19 Reporting Act, 15 U. S. C. 1681c: "The law limits how long you can  
20 be sued on a debt. Because of the age of your debt, (INSERT OWNER  
21 NAME) cannot sue you for it. If you do not pay the debt, (INSERT  
22 OWNER NAME) may report or continue to report it to the credit  
23 reporting agencies as unpaid"; and

24 (2) When collecting on debt that is past the date for  
25 obsolescence provided for in Section 605(a) of the Fair Credit

1 Reporting Act, 15 U. S. C. 1681c: "The law limits how long you can  
2 be sued on a debt. Because of the age of your debt, (INSERT OWNER  
3 NAME) cannot sue you for it and (INSERT OWNER NAME) cannot report  
4 it to any credit reporting agencies.