

1 **H. B. 4360**

2
3 (By Delegates Guthrie, L. Phillips, Poore,
4 Sponaugle, Young, Skinner, Fragale, Skaff
5 Caputo)
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7 [Introduced January 28, 2014; referred to the
8 Committee on Banking & Insurance then the Judiciary.]
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10 A BILL to amend and reenact §46A-2-122 and §46A-2-128 of the Code
11 of West Virginia, 1931, as amended, all relating to consumer
12 credit protection; defining "zombie debt"; prohibiting the
13 collection or attempt to collect a debt that has been written
14 off by the original owner of the debt and for which the statute
15 of limitations has passed; and liability and penalties.

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

17 That §46A-2-122 and §46A-2-128 of the Code of West Virginia,
18 1931, as amended, be amended and reenacted, all to read as follows:

19 **ARTICLE 2. CONSUMER CREDIT PROTECTION.**

20 **§46A-2-122. Definitions.**

21 For the purposes of this section and sections one hundred
22 twenty-three, one hundred twenty-four, one hundred twenty-five, one
23 hundred twenty-six, one hundred twenty-seven, one hundred
24 twenty-eight, one hundred twenty-nine, and one hundred
25 twenty-nine-a of this article, the following terms ~~shall~~ have the

1 following meanings:

2 (a) "Consumer" means any natural person obligated or allegedly
3 obligated to pay any debt.

4 (b) "Claim" means any obligation or alleged obligation of a
5 consumer to pay money arising out of a transaction in which the
6 money, property, insurance or service which is the subject of the
7 transaction is primarily for personal, family or household
8 purposes, whether or not such obligation has been reduced to
9 judgment.

10 (c) "Debt collection" means any action, conduct or practice of
11 soliciting claims for collection or in the collection of claims
12 owed or due or alleged to be owed or due by a consumer.

13 (d) "Debt collector" means any person or organization engaging
14 directly or indirectly in debt collection. The term includes any
15 person or organization who sells or offers to sell forms which are,
16 or are represented to be, a collection system, device or scheme,
17 and are intended or calculated to be used to collect claims.

18 (e) "Zombie debt" means a debt on which the statute of
19 limitations has passed with regard to any person or legal entity to
20 whom a consumer has been obligated or allegedly obligated to pay
21 any debt and the alleged debt has been assigned to a debt collector
22 for collection.

23 **§46A-2-128. Unfair or unconscionable means.**

24 No debt collector ~~shall~~ may use unfair or unconscionable means

1 to collect or attempt to collect any claim. Without limiting the
2 general application of the foregoing, the following conduct is
3 deemed to violate this section:

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

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

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

1 of higher education from paying additional attorney fees and
2 collection costs as long as such additional attorney fees and
3 collection costs do not exceed an amount equal to five percent of
4 the amount of the debt actually recovered and such additional
5 attorney fees and collection costs are deducted or paid from the
6 amount of the debt recovered for the institution or paid from other
7 funds available to the institution;

8 (d) The collection of or the attempt to collect any interest
9 or other charge, fee or expense incidental to the principal
10 obligation unless such interest or incidental fee, charge or
11 expense is expressly authorized by the agreement creating the
12 obligation and by statute; ~~and~~

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

19 (f) The attempt to collect from a consumer any "zombie debt"
20 as defined in section 122 of this article.

21 (g) A debt collector who violates this section is subject to
22 the penalty provisions of article five of this chapter.

NOTE: The purpose of this bill is to prohibit the collection

or attempt to collect a debt for which the statute of limitations has passed. The bill defines "zombie debt" and provides liability and penalties for violations.

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