

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4360**

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

7 (Originating in the Committee on the Judiciary)

8 [February 21, 2014]

9
10 A BILL to amend and reenact §46A-2-128 of the Code of West
11 Virginia, 1931, as amended, all relating to consumer credit
12 protection; and including additional conduct that is an unfair
13 or unconscionable means to collect or attempt to collect a
14 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 ~~shall~~ may use unfair or unconscionable means
21 to 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; ~~and~~

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) The collection of or the attempt to collect from the
14 consumer, all or any part of a debt:

15 (1) That the statute of limitations has expired;

16 (2) That is no longer owned by the original obligee or
17 successor by merger or acquisition;

18 (3) That has been sold or otherwise transferred by the
19 original obligee to a debt collector; and

20 (4) That the debtor has made no payment for at least ten
21 years.