

HB 4360

FILED

2014 MAR 28 P 5:48

OFFICE WEST VIRGINIA  
SECRETARY OF STATE

**WEST VIRGINIA LEGISLATURE**  
SECOND REGULAR SESSION, 2014



**ENROLLED**

COMMITTEE SUBSTITUTE  
FOR

**House Bill No. 4360**

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



Passed March 8, 2014

In effect ninety days from passage.

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**H. B. 4360**

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

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

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

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

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

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

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

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

32 the institution or paid from other funds available to the  
33 institution;

34 (d) The collection of or the attempt to collect any interest or  
35 other charge, fee or expense incidental to the principal obligation  
36 unless such interest or incidental fee, charge or expense is  
37 expressly authorized by the agreement creating the obligation  
38 and by statute;

39 (e) Any communication with a consumer whenever it  
40 appears that the consumer is represented by an attorney and the  
41 attorney's name and address are known, or could be easily  
42 ascertained, unless the attorney fails to answer correspondence,  
43 return phone calls or discuss the obligation in question or unless  
44 the attorney consents to direct communication; and

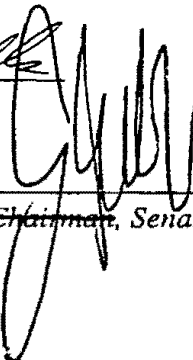
45 (f) When the debt is beyond the statute of limitations for  
46 filing a legal action for collection, failing to provide the  
47 following disclosure informing the consumer in its initial written  
48 communication with such consumer that:

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

56 (2) When collecting on debt that is past the date for  
57 obsolescence provided for in Section 605(a) of the Fair Credit  
58 Reporting Act, 15 U. S. C. 1681c: "The law limits how long you  
59 can be sued on a debt. Because of the age of your debt, (INSERT  
60 OWNER NAME) cannot sue you for it and (INSERT OWNER  
61 NAME) cannot report it to any credit reporting agencies."

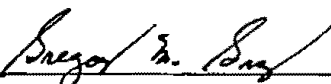
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

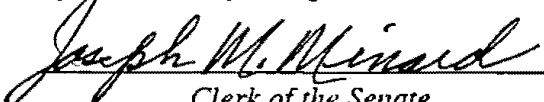
  
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Chairman, House Committee

  
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Member — Chairman, Senate Committee

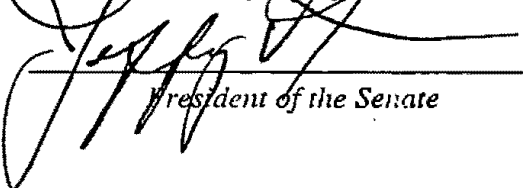
Originating in the House.

In effect ninety days from passage.

  
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Clerk of the House of Delegates

  
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Clerk of the Senate

  
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Speaker of the House of Delegates

  
\_\_\_\_\_  
President of the Senate

The within is approved this the 28<sup>th</sup>  
day of March, 2014.

  
\_\_\_\_\_  
Governor

PRESENTED TO THE GOVERNOR

10:45 AM

Time 10:45 am