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OFFICE OF THE GOVERNOR

APPROVED AND SIGNED BY THE GOVERNOR

Date 3-27-83

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1983

— ● —

ENROLLED

Com. Sub. for
HOUSE BILL No. 1028

(By Mr. Stephens + Mr. Doyle)

— ● —

Passed March 12, 1983

In Effect From Passage




ENROLLED
COMMITTEE SUBSTITUTE
FOR

H. B. 1028

(By MR. STEPTOE and MR. DOYLE)

[Passed March 12, 1983; in effect from passage.]

and reenact 

AN ACT to amend section one hundred twenty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to permitting the recovery of attorney's fees, court costs and collection costs and charges on delinquent student loan obligations; and providing limitations on any such recovery.

Be it enacted by the Legislature of West Virginia:

That section one hundred twenty-eight, article two, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 2. CONSUMER CREDIT PROTECTION.

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

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

5 (a) The seeking or obtaining of any written statement or
6 acknowledgement in any form that specifies that a consumer's

7 obligation is one incurred for necessities of life where the
8 original obligation was not in fact incurred for such neces-
9 saries;

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

16 (c) The collection or the attempt to collect from the con-
17 sumer all or any part of the debt collector's fee or charge for
18 services rendered: *Provided*, That attorney's fees, court costs
19 and other reasonable collection costs and charges necessary
20 for the collection of any amount due upon delinquent edu-
21 cational loans made by any institution of higher education
22 within this state may be recovered when the terms of the obli-
23 gation so provide. Recovery of attorney's fees and collection
24 costs may not exceed twenty percent of the amount due and
25 owing to any such institution: *Provided, however*, That no-
26 thing contained in this subsection shall be construed to limit
27 or prohibit any institution of higher education from paying
28 additional attorney fees and collection costs as long as such
29 additional attorney fees and collection costs do not exceed an
30 amount equal to five percent of the amount of the debt ac-
31 tually recovered and such additional attorney fees and col-
32 lection costs are deducted or paid from the amount of the
33 debt recovered for the institution or paid from other funds
34 available to the institution;

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

40 (e) Any communication with a consumer whenever it ap-
41 pears that the consumer is represented by an attorney and the
42 attorney's name and address are known, or could be easily
43 ascertained, unless the attorney fails to answer correspondence,

44 return phone calls or discuss the obligation in question or un-
45 less the attorney consents to direct communication.

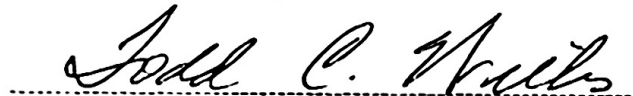
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

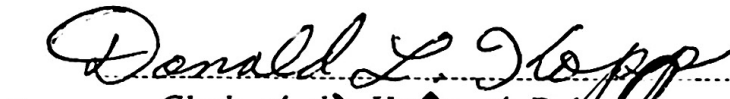

Chairman Senate Committee

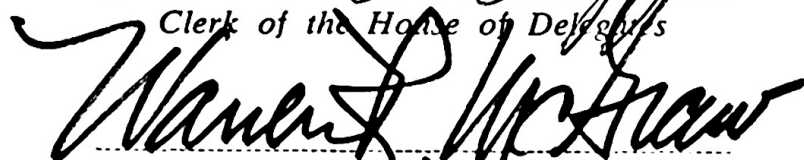

Chairman House Committee

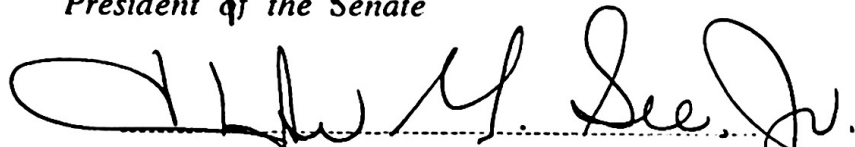
Originating in the House.

Takes effect from passage.


Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker House of Delegates

The within is approved this the 27
day of March, 1983.


Governor

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SECY. OF STATE