WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1983

ENROLLED
Com. Sub. for HOUSE BILL No. 1028

(By Mr. )

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.]

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 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 acknowledgement in any form that specifies that a consumer’s
obligation is one incurred for necessaries of life where the
original obligation was not in fact incurred for such neces-
saries;

(b) The seeking or obtaining of any written statement or
acknowledgement 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 ob-
ligated to make such affirmation;

(c) The collection or the attempt to collect from the con-
sumer 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 edu-
cational loans made by any institution of higher education
within this state may be recovered when the terms of the obli-
gation so provide. Recovery of attorney's fees and collection
costs may not exceed twenty percent of the amount due and
owing to any such institution: Provided, however, That no-	hing 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 ac-
tually recovered and such additional attorney fees and col-
lection costs are deducted or paid from the amount of the
debt recovered for the institution or paid from other funds
available to the institution;

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

(e) Any communication with a consumer whenever it ap-
ppears that the consumer is represented by an attorney and the
attorney's name and address are known, or could be easily
ascertained, unless the attorney fails to answer correspondence,
return phone calls or discuss the obligation in question or unless the attorney consents to direct communication.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Donald Arndt

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 approved this the 27th day of March, 1983.

Governor