WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1990

ENROLLED

HOUSE BILL No. 2537

(By Mr. Speaker, Mr. Chambers)
and Mr. Jette

Passed March 7, 1990

In Effect sixty days from Passage
AN ACT to amend and reenact 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 consumer credit protection; and increasing the recovery of attorney's fees and collection costs.

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:

5 (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 necessaries of life where the original obligation was not in fact incurred for such necessaries;

5 (b) The seeking or obtaining of any written statement or acknowledgment in any form containing an affirma-
tion 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 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 obligation unless such interest or incidental fee, charge or expense is expressly authorized by the agreement creating the obligation and by statute; and

(e) Any communication with a consumer whenever it appears 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.

Frederick R. Parks
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Fishburne
Clerk of the Senate

Donald L. Williams
Clerk of the House of Delegates

L. T. Benett
President of the Senate

Earl D. Ruben
Speaker of the House of Delegates

The within is approved this the 15th day of March, 1990.

Gaston Caperton
Governor