

WEST VIRGINIA LEGISLATURE

REGULAR SESSION, 1990

— ● —

ENROLLED

HOUSE BILL No. 2537

(By Mr. Speaker, Mr. Chambers
and Del. Sattes)

— ● —

Passed March 7,..... 1990

In Effect twenty days from..... Passage

ENROLLED
H. B. 2537

(By MR. SPEAKER, MR. CHAMBERS, AND DELEGATE SATTES)

[Passed March 7, 1990; in effect ninety 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
2 means to collect or attempt to collect any claim. Without
3 limiting the general application of the foregoing, the
4 following conduct is deemed to violate this section:

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

10 (b) The seeking or obtaining of any written statement
11 or acknowledgment in any form containing an affirma-

12 tion of any obligation by a consumer who has been
13 declared bankrupt, without clearly disclosing the nature
14 and consequences of such affirmation and the fact that
15 the consumer is not legally obligated to make such
16 affirmation;

17 (c) The collection or the attempt to collect from the
18 consumer all or any part of the debt collector's fee or
19 charge for services rendered: *Provided*, That attorney's
20 fees, court costs and other reasonable collection costs
21 and charges necessary for the collection of any amount
22 due upon delinquent educational loans made by any
23 institution of higher education within this state may be
24 recovered when the terms of the obligation so provide.
25 Recovery of attorney's fees and collection costs may not
26 exceed thirty-three and one-third percent of the amount
27 due and owing to any such institution: *Provided*,
28 *however*, That nothing contained in this subsection shall
29 be construed to limit or prohibit any institution of
30 higher education from paying additional attorney fees
31 and collection costs as long as such additional attorney
32 fees and collection costs do not exceed an amount equal
33 to five percent of the amount of the debt actually
34 recovered and such additional attorney fees and collec-
35 tion costs are deducted or paid from the amount of the
36 debt recovered for the institution or paid from other
37 funds available to the institution;

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

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

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

Frederic L. Burke
Chairman Senate Committee

Bernard V. Kelly
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Harrell E. Adams
Clerk of the Senate

Donald L. Hogg
Clerk of the House of Delegates

Willard B. Smith
President of the Senate

Robert R. Curran
Speaker of the House of Delegates

The within *is approved* this the *14th*
day of *March*, 1990.
W. Boston Caperton
Governor

PRESENTED TO THE

GOVERNOR

Date 3/13/90

Time 4:40 pm

RECEIVED

1990 MAR 14 PM 4:28

OFFICE OF WEST VIRGINIA
SECRETARY OF STATE