WEST VIRGINIA CODE: §46A-5-101

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

(1) If a creditor or debt collector has violated the provisions of this chapter applying to collection of excess charges, security in sales and leases, disclosure with respect to consumer leases, receipts, statements of account and evidences of payment, limitations on default charges, assignment of earnings, authorizations to confess judgment, illegal, fraudulent or unconscionable conduct, any prohibited debt collection practice, or restrictions on interest in land as security, assignment of earnings to regulated consumer lender, security agreement on household goods for benefit of regulated consumer lender, and renegotiation by regulated consumer lender of a loan discharged in bankruptcy, the consumer has a cause of action to recover: (a) Actual damages; and (b) a right in an action to recover from the person violating this chapter a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness. With respect to violations arising from consumer credit sales, consumer leases or consumer loans, or from sales as defined in article six of this chapter, no action pursuant to this subsection may be brought more than four years after the violations occurred: Provided further, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after the foreclosure sale is final.

(2) If a creditor has violated the provisions of this chapter respecting authority to make regulated consumer loans, the loan is void and the consumer is not obligated to pay either the principal or the loan finance charge. If he has paid any part of the principal or of the finance charge, he has a right to recover in an action the payment from the person violating this chapter or from an assignee of that person’s rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from regulated consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection may be brought more than four years after the violation occurred. With respect to violations of the provisions of this chapter respecting the authority to make arising from other regulated consumer loans, no action pursuant to this subsection may be brought more than four years after the violation occurred: Provided, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after the foreclosure sale is final.

(3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter and if he has paid an excess charge, he has a right to a refund. A refund may be made by reducing the consumer’s obligation by the amount of the excess charge. If the consumer has

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paid an amount in excess of the lawful obligation under the agreement, the consumer may recover in an action the excess amount from the person who made the excess charge or from an assignee of that person's rights who undertakes direct collection of payments from or enforcement of rights against the consumer arising from the debt.

(4) If a creditor or debt collector has contracted for or received a charge in excess of that allowed by this chapter, the consumer may, in addition to recovering such excess charge, also recover from the creditor or the person liable in an action a penalty of $1,000 per violation: Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of $175,000 or the total alleged outstanding indebtedness: Provided, however, That in a class action the aggregate limits on the amount of the penalty set forth above shall be applied severally to each named plaintiff and each class member such that no named plaintiff nor any class member may recover in excess of the greater of $175,000 or the total alleged outstanding indebtedness: Provided further, That no action pursuant to this subsection to set aside a foreclosure sale of any real estate securing a consumer loan may be brought more than one year after said foreclosure sale is final.

(5) Except as otherwise provided, a violation of this chapter does not impair rights on a debt.

(6) If an employer discharges an employee in violation of the provisions prohibiting discharge, the employee may within ninety days bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for six weeks.

(7) A creditor or debt collector has no liability for a penalty under subsection (1) or (4) of this section if, after discovering an error and prior to the institution of an action under this section or the receipt of written notice of the error, the creditor notifies the person concerned of the error and corrects the error: (a) Within fifteen days if the error affects no more than two persons; or (b) within sixty days if the error affects more than two persons. If the violation consists of a prohibited agreement, giving the consumer a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

(8) If the creditor or debt collector establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections (1), (2) and (4) of this section and the validity of the transaction is not affected.

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