WEST VIRGINIA CODE: §46A-6F-303

§46A-6F-303. Failure to register or meet security requirement; remedies.

(a) Any person is subject to a civil administrative penalty, to be levied by the Department of Tax and Revenue, of not more than $5,000 if the person:

(1) Acts as a telemarketer without first registering pursuant to section three hundred one of this article;

(2) Acts as a telemarketer without first meeting the security requirements set forth in section three hundred two of this article;

(3) Acts as a telemarketer after failing to maintain a certificate of registration accompanied by a surety bond as required by sections three hundred one and three hundred two of this article;

(4) Includes any material information on a registration application that is false or misleading; or

(5) Misrepresents that a telemarketer is registered.

In assessing a civil administrative penalty, Department of Tax and Revenue shall take into account the seriousness of the violation, any good faith efforts to comply with applicable requirements, any benefit obtained by the act or omission, and any other appropriate factors as the Department of Tax and Revenue may establish by rules proposed for promulgation by the Legislature in accordance with the provisions of article three, chapter twenty-nine-a of this code.

(b) No assessment shall be levied pursuant to subsection (a) of this section until after the alleged violator has been notified by certified mail or personal service. The notice shall include:

(1) A reference to this section, sections three hundred one and three hundred two of this article, and any legislative rule that was allegedly violated;

(2) A concise statement of the facts alleged to constitute the violation;

(3) A statement of the amount of the administrative penalty to be imposed; and

(4) A statement of the alleged violator's right to an informal hearing.

(c) The alleged violator has twenty calendar days from receipt of the notice within which to deliver to the Department of Tax and Revenue a written request for a hearing. If no hearing is requested, the notice becomes a final order after the expiration of the twenty-day period.

WV Legislature

If a hearing is requested, the Department of Tax and Revenue shall inform the alleged violator of the time and place of the hearing. The Department of Tax and Revenue may appoint a hearing examiner to conduct the hearing and then make a written recommendation to the Department of Tax and Revenue concerning the assessment of a civil administrative penalty. Within thirty days following the hearing, the Department of Tax and Revenue shall issue and furnish to the alleged violator a written decision which explains the rationale for any assessment of an administrative penalty. The authority to levy an administrative penalty is in addition to all other enforcement provisions of this article and the payment of any assessment does not affect the availability of any other enforcement provision in connection with the violation for which the assessment is levied. No assessment levied pursuant to this section becomes due and payable until the procedures for review of such assessment as set out in this subsection have been completed.

(d) The Department of Tax and Revenue may seek an injunction, or may institute a civil action against any person allegedly in violation of the provisions of this section, sections three hundred one and three hundred two of this article. An application for injunctive relief or civil action under this section may be filed and relief granted notwithstanding the fact that all administrative remedies provided for in this article have not been exhausted or invoked against the person or persons against whom such relief is sought. Upon request of the Department of Tax and Revenue, the division or the prosecuting attorney of the county in which the violation occurs shall assist the Department of Tax and Revenue in any civil action under this section.

(e) Independently of the Department of Tax and Revenue, with respect to any action brought by the division or a private citizen regarding unfair or deceptive acts or practices, or abusive acts or practices under the provisions of this article or under other applicable consumer protection laws set forth in this code, the division or a private citizen may also apply to the court for appropriate relief under this section against a person violating the provisions of sections three hundred one and three hundred two of this article, pending final determination of the proceedings.

(f) Any funds recovered and all registration fees, as provided for in this article, shall be paid into the State Treasury to the credit of a special revenue fund to be known as the ?telemarketer registration fund" which is hereby created. The moneys so credited to the fund shall be used solely for the purposes of administering and enforcing the registration and security requirements of this article.

WV Legislature