
WEST VIRGINIA CODE CHAPTER 46B
ARTICLE 8

WV Legislature

§46B-8-1. Enforcement.

For a violation of or a failure to comply with the provisions of this article by a dealer, a consumer is entitled to recover from the dealer the consumer's actual damages, reasonable attorney's fees and court costs and a civil penalty in an amount not less than \$100 nor more than \$1,000 for each violation.

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§46B-8-2. Injunctions against unconscionable agreements and fraudulent or unconscionable conduct.

(a) The Attorney General may bring a civil action to restrain a dealer or a person acting in his behalf from engaging in a course of:

- (1) Making or enforcing unconscionable terms or provisions of rent-to-own transactions;
- (2) Fraudulent or unconscionable conduct in inducing consumers to enter into rent-to-own transactions; or
- (3) Fraudulent or unconscionable conduct in the collection of payments arising from rent-to-own transactions.

(b) In an action brought pursuant to this section the court may grant relief only if it finds:

- (1) That the respondent has made unconscionable agreements or has engaged or is likely to engage in a course of fraudulent or unconscionable conduct;
- (2) That the agreements or conduct of the respondent have caused or are likely to cause injury to consumers; and
- (3) That the respondent has been able to cause or will be able to cause the injury primarily because the transactions involved are rent-to-own transactions.

(c) In applying this section, consideration shall be given to each of the following factors, among others:

- (1) Belief by the dealer at the time rent-to-own transactions are made that there was no reasonable probability of payment in full of the obligation by the consumer;
- (2) Knowledge by the dealer at the time of the sale of the inability of the consumer to receive substantial benefits from the transaction;
- (3) Gross disparity between the price of the property or services sold that are the subject of the transaction and the value of the property measured by the price at which similar property are readily obtainable in rent-to-own transactions by like consumers;
- (4) The fact that the dealer contracted for or received separate charges for insurance with respect to the goods with the effect of making the sales or loans, considered as a whole, unconscionable; and
- (5) The fact that the respondent has knowingly taken advantage of the inability of the consumer reasonably to protect his interests by reason of physical or mental infirmities, ignorance, illiteracy or inability to understand the language of the agreement or similar factors.

(d) In an action brought pursuant to this chapter, a charge or practice expressly permitted by this chapter is not unconscionable.

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§46B-8-3. Civil actions by Attorney General.

(a) After demand, the Attorney General may bring a civil action against a dealer for making or collecting charges in excess of those permitted by this chapter. If the court finds that an excess charge has been made, the court shall order the respondent to refund to the consumer the amount of the excess charge. If a dealer has made an excess charge in a deliberate violation of or in reckless disregard for this chapter or if a dealer has refused to refund an excess charge within a reasonable time after demand by the consumer or the Attorney General, the court may also order the respondent to pay to the consumer a civil penalty in an amount determined by the court not in excess of ten times the amount of the excess charge. Refunds and penalties to which the consumer is entitled pursuant to this subsection may be set off against the consumer's obligation. If a consumer brings an action against a dealer to recover an excess charge or civil penalty, an action by the Attorney General to recover for the same excess charge shall be stayed while the consumer's action is pending and shall be dismissed if the consumer's action is dismissed with prejudice or results in a final judgment granting or denying the consumer's claim. No action pursuant to this subsection may be brought more than one year after the time the excess charge was made. If the dealer establishes by a preponderance of evidence that a violation is unintentional or the result of a bona fide error, no liability to pay a penalty shall be imposed under this subsection.

(b) The Attorney General may bring a civil action against a dealer to recover a civil penalty for willfully violating this chapter and if the court finds that the defendant has engaged in a course of repeated and willful violations of this chapter, it may assess a civil penalty of no more than \$5,000. No civil penalty pursuant to this subsection may be imposed for violations of this chapter occurring more than four years before the action is brought.