WEST VIRGINIA CODE: §46a-5-108

§46A-5-108. Right to cure.

(a) An action may not be brought pursuant to this article and §46A-2-1 *et seq*., §46A-3-1 *et seq*., §46A-4-1 *et seq*., and §46A-6-1 *et seq*. of this code until 45 days after the consumer has informed the creditor, debt collector, seller, or lessor in writing and by certified mail, return receipt requested, to the creditor's, debt collector's, seller's, or lessor's registered agent identified by the creditor, debt collector, seller, or lessor at the Office of the West Virginia Secretary of State or, if not registered with the West Virginia Secretary of State, then to the creditor's, debt collector's, seller's, or lessor's principal place of business, of the alleged violation and the factual basis for the violation. Upon receiving the notice of alleged violation, the creditor, debt collector, seller, or lessor 45 days from receipt by the agent or at the principal place of business referenced in this subsection of the notice of violation but 20 days in the case a cause of action has already been filed to make a cure offer, which shall be provided to the consumer's counsel or, if unrepresented, to the consumer by certified mail, return receipt requested: *Provided*, That the consumer has 20 days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn. When a claim under the provisions set forth in §46A-1-101 of this code is presented as a counterclaim, cross-claim, or third-party claim, the notice of right to cure shall be served with the counterclaim, cross-claim, or third-party claim in any manner permitted by the Rules of Civil Procedure.

(b) If a cure offer is accepted, the creditor, debt collector, seller, or lessor has 20 days to begin effectuating the agreed upon cure and the cure must be completed within a reasonable time.

(c) Any applicable statute of limitations is tolled for the 45-day period set forth in subsection (a) of this section or for the period the effectuation of the cure offer is being performed, whichever is longer.

(d) Nothing in this section prevents a consumer that has accepted a cure offer from bringing a civil action against a creditor, debt collector, seller, or lessor for failing to timely effect the cure offer.

(e) Where an action is brought under this article or §46A-2-1 *et seq*., §46A-3-1 *et seq*., §46A-4-1 *et seq*., and §46A-6-1 *et seq*. of this code, it is a complete defense that a cure offer was made, accepted, and the agreed upon cure was performed. If the court determines that the cure offer was accepted and the agreed upon cure performed, the creditor, debt collector, seller, or lessor is entitled to reasonable attorney's fees and costs attendant to defending the action.

(f) A cure offer is not admissible in any proceeding initiated pursuant to the provisions of this article, except that if the cure offer is timely delivered by the creditor, debt collector, seller, or lessor, then the cure offer may be introduced in a proceeding before the court to

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determine an award of attorney's fees and expenses, if any, following entry of a judgment. The creditor, debt collector, seller, or lessor is not liable for the consumer's attorney's fees and court costs incurred following delivery of the cure offer unless the actual damages, civil penalties, and any other monetary or equitable relief provided for under this article and §46A-2-1 *et seq*., §46A-3-1 *et seq*., §46A-4-1 *et seq*., and §46A-6-1 *et seq*. of this code are found to have been sustained and awarded, without consideration of attorney's fees and court costs, exceed the value of the cure offer.

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