WEST VIRGINIA CODE: §46a-6F-502

§46A-6F-502. Causes of action arising out of unfair or deceptive acts or practices; limitation of actions.

(1) If a telemarketer violates the provisions of section five hundred one of this article, the consumer has a cause of action to recover actual damages and, in addition, a right to recover from the violator a penalty in an amount, to be determined by the court, of not less than $100 nor more than $3,000. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(2) If a telemarketer violates the provisions of section five hundred one of this article, any sale or lease of consumer goods or services is void and the consumer is not obligated to pay either the principal or any finance charge. If the consumer has paid any part of the principal or of the finance charge, he or she has a right to recover the payment from the violator or from any assignee of the violator's rights who undertakes direct collection of payments or enforcement of rights arising from the debt.

(3) A consumer is not obligated to pay a charge in excess of that allowed by the sales agreement, and if the consumer has paid an excess charge, he or she 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 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 telemarketer has contracted for or received a charge in excess of that allowed by the sales agreement, the consumer may, in addition to recovering such excess charge, also recover from the telemarketer or the person liable in an action a penalty in an amount determined by the court not less than $100 nor more than $3,000. No action brought pursuant to the provisions of this subsection may be brought more than two years after the date upon which the violation occurred or the due date of the last scheduled payment of the agreement, whichever is later.

(5) A telemarketer has no liability for a penalty under subsection (1) or subsection (4) of this section if, within fifteen days 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 telemarketer notifies the consumer of the error and corrects the error.

(6) If the telemarketer 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

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under subsections (1), (2) and (4) of this section, and the validity of the transaction is not affected.

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