

HB 2689

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SENATE

WEST VIRGINIA LEGISLATURE

FIRST REGULAR SESSION, 1999



ENROLLED

House Bill No. 2689

(By Delegates Amores, Doyle,
Manuel, Ashley and Rowe)



Passed March 12, 1999

In Effect Ninety Days from Passage

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WEST VIRGINIA
SECRETARY OF STATE

ENROLLED

H. B. 2689

(BY DELEGATES AMORES, DOYLE,
MANUEL, ASHLEY AND ROWE)

[Passed March 12, 1999; in effect ninety days from passage.]

AN ACT to amend and reenact section one hundred eleven, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, relating to providing for a civil penalty of not more than five thousand dollars for each violation of chapter forty-six-a involving consumer fraud.

Be it enacted by the Legislature of West Virginia:

That section one hundred eleven, article seven, chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended and reenacted to read as follows:

ARTICLE 7. ADMINISTRATION.

§46A-7-111. Civil actions by attorney general.

- 1 (1) After demand, the attorney general may bring a civil
- 2 action against a creditor for making or collecting charges in
- 3 excess of those permitted by this chapter. If it is found that an
- 4 excess charge has been made, the court shall order the respon-
- 5 dent to refund to the consumer the amount of the excess charge.
- 6 If a creditor has made an excess charge in a deliberate violation
- 7 of or in reckless disregard for this chapter, or if a creditor has
- 8 refused to refund an excess charge within a reasonable time

9 after demand by the consumer or the attorney general, the court
10 may also order the respondent to pay to the consumer a civil
11 penalty in an amount determined by the court not in excess of
12 the greater of either the amount of the sales finance charge or
13 loan finance charge or ten times the amount of the excess
14 charge. Refunds and penalties to which the consumer is entitled
15 pursuant to this subsection may be set off against the con-
16 sumer's obligation. If a consumer brings an action against a
17 creditor to recover an excess charge or civil penalty, an action
18 by the attorney general to recover for the same excess charge
19 shall be stayed while the consumer's action is pending and shall
20 be dismissed if the consumer's action is dismissed with
21 prejudice or results in a final judgment granting or denying the
22 consumer's claim. With respect to excess charges arising from
23 consumer credit sales made pursuant to revolving charge
24 accounts or from consumer loans made pursuant to revolving
25 loan accounts, no action pursuant to this subsection may be
26 brought more than four years after the time the excess charge
27 was made. With respect to excess charges arising from other
28 consumer credit sales or consumer loans, no action pursuant to
29 this subsection may be brought more than one year after the due
30 date of the last scheduled payment of the agreement pursuant to
31 which the charge was made. If the creditor establishes by a
32 preponderance of evidence that a violation is unintentional or
33 the result of a bona fide error, no liability to pay a penalty shall
34 be imposed under this subsection.

35 (2) The attorney general may bring a civil action against a
36 creditor or other person to recover a civil penalty for willfully
37 violating this chapter, and if the court finds that the defendant
38 has engaged in a course of repeated and willful violations of
39 this chapter, it may assess a civil penalty of no more than five
40 thousand dollars for each violation of this chapter. No civil
41 penalty pursuant to this subsection may be imposed for viola-
42 tions of this chapter occurring more than four years before the
43 action is brought.

That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Paul Adornova
Chairman Senate Committee

Jeff. Smith
Chairman House Committee

Originating in the House.

Takes effect ninety days from passage.

Barrett Blakely
Clerk of the Senate

Gregory D. King
Clerk of the House of Delegates

Earl Ray Tomblin
President of the Senate

[Signature]
Speaker of the House of Delegates

The within *approved* this the *2nd*
day of *April*, 1999.

[Signature]
Governor

PRESENTED TO THE

GOVERNOR

Date 3/30/99

Time 3:45 pm