

WEST VIRGINIA LEGISLATURE

2017 REGULAR SESSION

Introduced

House Bill 2768

BY DELEGATES EVANS, A.

[Introduced March 1, 2017; Referred
to the Committee on the Judiciary.]

1 A BILL to amend and reenact §46A-5-101 of the Code of West Virginia, 1931, as amended,
 2 relating to modifying the penalties imposed on debt collectors who violate the provisions
 3 of the West Virginia Consumer Credit and Protection Act; limiting the amount consumers
 4 may be awarded; and reducing the period in which an action may be brought from four
 5 years to two years.

Be it enacted by the Legislature of West Virginia:

1 That §46A-5-101 of the Code of West Virginia, 1931, as amended, be amended and
 2 reenacted to read as follows:

ARTICLE 5. CIVIL LIABILITY AND CRIMINAL PENALTIES.

§46A-5-101. Effect of violations on rights of parties; limitation of actions.

1 (1) If a creditor or debt collector has violated the provisions of this chapter applying to
 2 collection of excess charges, security in sales and leases, disclosure with respect to consumer
 3 leases, receipts, statements of account and evidences of payment, limitations on default charges,
 4 assignment of earnings, authorizations to confess judgment, illegal, fraudulent or unconscionable
 5 conduct, any prohibited debt collection practice, or restrictions on interest in land as security,
 6 assignment of earnings to regulated consumer lender, security agreement on household goods
 7 for benefit of regulated consumer lender, and renegotiation by regulated consumer lender of a
 8 loan discharged in bankruptcy, the consumer has a cause of action to recover: (a) Actual
 9 damages; and (b) a right in an action to recover from the person violating this chapter a penalty
 10 of up to \$1,000 per violation: ~~Provided, That the aggregate amount of the penalty awarded shall~~
 11 ~~not exceed the greater of \$175,000 or the total alleged outstanding indebtedness~~ civil action:
 12 ~~Provided, however~~ That in a class action the aggregate limits on the amount of the penalty set
 13 forth above shall be applied severally to each named plaintiff and each class member such that
 14 ~~no named plaintiff nor any~~ the class member may not recover in excess of the ~~greater of \$175,000~~
 15 ~~or the total alleged outstanding indebtedness~~ lesser of \$500,000 or one percent of the net worth
 16 of the debt collector. With respect to violations arising from consumer credit sales, consumer

17 leases, or consumer loans, or from sales as defined in article six of this chapter, no action
18 pursuant to this subsection may be brought more than ~~four years~~ two years after the violations
19 occurred. This limitations period shall apply to all actions filed on or after September 1, 2015,
20 except that for actions accruing under this subsection after August 31, 2017, the limitations period
21 is two years after the violations occurred.

22 (2) If a creditor has violated the provisions of this chapter respecting authority to make
23 regulated consumer loans, the loan is void and the consumer is not obligated to pay either the
24 principal or the loan finance charge. If he or she has paid any part of the principal or of the finance
25 charge, he or she has a right to recover in an action the payment from the person violating this
26 chapter or from an assignee of that person's rights who undertakes direct collection of payments
27 or enforcement of rights arising from the debt. With respect to violations arising from regulated
28 consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection
29 may be brought more than four years after the violation occurred. With respect to violations arising
30 from other regulated consumer loans, no action pursuant to this subsection may be brought more
31 than four years after the violation occurred. This limitations period shall apply to all actions filed
32 on or after September 1, 2015.

33 (3) A consumer is not obligated to pay a charge in excess of that allowed by this chapter
34 and if he or she has paid an excess charge, he or she has a right to a refund. A refund may be
35 made by reducing the consumer's obligation by the amount of the excess charge. If the consumer
36 has paid an amount in excess of the lawful obligation under the agreement, the consumer may
37 recover in an action the excess amount from the person who made the excess charge or from an
38 assignee of that person's rights who undertakes direct collection of payments from or enforcement
39 of rights against the consumer arising from the debt.

40 (4) If a creditor or debt collector has contracted for or received a charge in excess of that
41 allowed by this chapter, the consumer may, in addition to recovering such excess charge, also
42 recover from the creditor or the person liable in an action a penalty of up to \$1,000 per ~~violation~~:

43 ~~Provided, That the aggregate amount of the penalty awarded shall not exceed the greater of~~
44 ~~\$175,000 or the total alleged outstanding indebtedness~~ civil action: Provided, however, That in a
45 class action the aggregate limits on the amount of the penalty set forth above shall be applied
46 severally to each named plaintiff and each class member such that no named plaintiff nor any
47 class member may recover in excess of the ~~greater of \$175,000 or the total alleged outstanding~~
48 ~~indebtedness~~ \$500,000 or one percent of the net worth of the debt collector. With respect to
49 excess charges arising from consumer credit sales, consumer leases, or consumer loans, no
50 action pursuant to this subsection may be brought more than ~~four~~ two years after the time the
51 excess charge was made. This limitations period shall apply to all actions filed on or after
52 September 1, 2015, except that for actions accruing under this subsection after August 31, 2017,
53 the limitations period is two years after the time the excess charge was made.

54 (5) Except as otherwise provided, a violation of this chapter does not impair rights on a
55 debt.

56 (6) If an employer discharges an employee in violation of the provisions prohibiting
57 discharge, the employee may within ninety days bring a civil action for recovery of wages lost as
58 a result of the violation and for an order requiring the reinstatement of the employee. Damages
59 recoverable shall not exceed lost wages for six weeks.

60 (7) A creditor or debt collector has no liability for a penalty under subsection (1) or (4) of
61 this section if, after discovering an error and prior to the institution of an action under this section
62 or the receipt of written notice of the error, the creditor notifies the person concerned of the error
63 and corrects the error: (a) Within fifteen days if the error affects no more than two persons; or (b)
64 within sixty days if the error affects more than two persons. If the violation consists of a prohibited
65 agreement, giving the consumer a corrected copy of the writing containing the error is sufficient
66 notification and correction. If the violation consists of an excess charge, correction shall be made
67 by an adjustment or refund.

68 (8) If the creditor or debt collector establishes by a preponderance of evidence that a

69 violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance
70 of procedures reasonably adapted to avoid any such violation or error, no liability is imposed
71 under subsections (1), (2) and (4) of this section and the validity of the transaction is not affected.

NOTE: The purpose of this bill is to make the West Virginia Consumer Credit and Protection Act more consistent with the federal Fair Debt Collection Practices Act. The bill modifies the penalties imposed on debt collectors who violate the provisions of the WVCCPA. It limits the amount an individual consumer may be awarded to actual damages plus \$1000 per action, and in class actions for the entire class to the lesser of \$500,000 or 1 percent of the debt collector's net worth. The bill also reduces the time period that an action may be brought from four years to two years.

Strike-throughs indicate language that would be stricken from a heading or the present law and underscoring indicates new language that would be added.