

WEST VIRGINIA LEGISLATURE

2019 REGULAR SESSION

Introduced

Senate Bill 495

BY SENATOR AZINGER

[Introduced January 31, 2019; 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 conforming the state Consumer Credit and Protection Act to the federal Fair
 3 Debt Collection and Practices Act.

Be it enacted by the Legislature of West Virginia:

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~~ damages from the person violating this chapter
 10 a penalty of \$1,000 per violation civil action: ~~Provided, That the aggregate amount of the penalty~~
 11 ~~awarded shall not exceed the greater of \$175,000 or the total alleged outstanding indebtedness~~
 12 ~~Provided, however,~~ That in a class action the aggregate limits on the amount of the ~~penalty~~
 13 damages set forth above shall be applied severally to each named plaintiff. ~~and each class~~
 14 ~~member such that no named plaintiff nor any class member may recover in excess of the greater~~
 15 ~~of \$175,000 or the total alleged outstanding indebtedness~~ But the recovery attributed to the
 16 members of the class may not be in excess of the lesser of \$500,000 or one percent of the net
 17 worth of the debt collector or creditor. With respect to violations arising from consumer credit
 18 sales, consumer leases or consumer loans, or from sales as defined in article six of this chapter,
 19 no action pursuant to this subsection may be brought more than four years after the violations
 20 occurred: ~~Provided further,~~ however, That no action pursuant to this subsection to set aside a

21 foreclosure sale of any real estate securing a consumer loan may be brought more than one year
22 after the foreclosure sale is final.

23 (2) If a creditor has violated the provisions of this chapter respecting authority to make
24 regulated consumer loans, the loan is void and the consumer is not obligated to pay either the
25 principal or the loan finance charge. If he or she has paid any part of the principal or of the finance
26 charge, he or she has a right to recover in an action the payment from the person violating this
27 chapter or from an assignee of that person's rights who undertakes direct collection of payments
28 or enforcement of rights arising from the debt. With respect to violations arising from regulated
29 consumer loans made pursuant to revolving loan accounts, no action pursuant to this subsection
30 may be brought more than four years after the violation occurred. With respect to violations of the
31 provisions of this chapter respecting the authority to make arising from other regulated consumer
32 loans, no action pursuant to this subsection may be brought more than four years after the
33 violation occurred: *Provided*, That no action pursuant to this subsection to set aside a foreclosure
34 sale of any real estate securing a consumer loan may be brought more than one year after the
35 foreclosure sale is final.

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

43 (4) If a creditor or debt collector has contracted for or received a charge in excess of that
44 allowed by this chapter, the consumer may, in addition to recovering such excess charge, also
45 recover from the creditor or the person liable in an action a penalty of \$1,000 per ~~violation~~ civil
46 action: *Provided*, That the aggregate amount of the penalty awarded shall not exceed the greater

47 ~~of \$175,000 or the total alleged outstanding indebtedness~~ *Provided, however* That in a class
48 action the aggregate limits on the amount of the penalty damages set forth above shall be applied
49 severally to each named plaintiff, ~~and each class member such that no named plaintiff nor any~~
50 ~~class member may recover in excess of the greater of \$175,000 or the total alleged outstanding~~
51 ~~indebtedness~~ but the recovery attributable to the members of the class may not be in excess of
52 the lesser of \$500,000 or one percent of the net worth of the debt collector or creditor: *Provided*
53 ~~,further~~ *however*, That no action pursuant to this subsection to set aside a foreclosure sale of any
54 real estate securing a consumer loan may be brought more than one year after said foreclosure
55 sale is final.

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

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

62 (7) A creditor or debt collector has no liability for a penalty under subsection (1) or (4) of
63 this section if, after discovering an error and prior to the institution of an action under this section
64 or the receipt of written notice of the error, the creditor notifies the person concerned of the error
65 and corrects the error: (a) Within 15 days if the error affects no more than two persons; or (b)
66 within 60 days if the error affects more than two persons. If the violation consists of a prohibited
67 agreement, giving the consumer a corrected copy of the writing containing the error is sufficient
68 notification and correction. If the violation consists of an excess charge, correction shall be made
69 by an adjustment or refund.

70 (8) If the creditor or debt collector establishes by a preponderance of evidence that a
71 violation is unintentional or the result of a bona fide error of fact notwithstanding the maintenance
72 of procedures reasonably adapted to avoid any such violation or error, no liability is imposed

73 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 clarify inadvertent omissions from recent changes to the West Virginia Consumer Credit and Protection Act that will bring the Act into conformity with the federal Fair Debt Collection Practices Act.

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