

W. Va. Code § 46A-5-108

Current through all 2018 Regular Session Legislation

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§ 46A-5-108. Right to cure.

(a)No action may be brought pursuant to this article and articles two, three and four of this chapter until the consumer has informed the creditor or debt collector in writing and by certified mail, return receipt requested, to the creditor's or debt collector's registered agent identified by the creditor or debt collector 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 or debt collector's principal place of business, of the alleged violation and the factual basis for the violation and provide the creditor or debt collector forty-five days from receipt by the agent or at the principal place of business referenced above of the notice of violation but twenty 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the consumer shall have twenty days from receipt of the cure offer to accept the cure offer or it is deemed refused and withdrawn.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 section one hundred one 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 or debt collector has twenty 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 or debt collector for failing to timely effect the cure offer.

(e)Where an action is brought under this article or article two, three or four of this chapter, it is a complete defense that a cure offer was made, accepted and the agreed upon cure was performed. If the finder of fact determines that the cure offer was accepted and the agreed upon cure performed, the creditor or debt collector is entitled to reasonable attorney fees and costs attendant to defending the action.

(f)No cure offer is admissible in any proceeding initiated pursuant to the provisions of this article unless the cure offer is delivered by a creditor or debt collector to the person claiming loss or to any attorney representing such person prior to the filing of the creditor or debt collector's initial responsive pleading in such proceeding. If the cure offer is timely delivered by the creditor or debt collector, then the creditor or debt collector may introduce the cure offer into evidence at trial. The creditor or debt collector 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 articles two, three and four of this chapter are found to have been sustained and awarded, without consideration of attorney fees and court costs, to exceed the value of the cure offer.

History

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