

§5-201. Effect of violations on rights of parties

1. If a creditor has violated the provisions of this Act applying to collection of excess charges or enforcement of rights, section 1-201, subsection 5, waiver clauses, section 1-107, use of multiple agreements, section 3-304, certain negotiable instruments, section 3-307, assignee subject to defenses, sections 3-403 and 3-404, restrictions on liability in consumer leases, section 3-401, balloon payment, section 3-308, security in sales or leases, section 3-301, cross-collateral, sections 3-302 and 3-303, assignments of earnings, section 3-305, attorney's fees, section 2-507, limitations on default charges, section 3-402, authorizations to confess judgment, section 3-306, restrictions on interests in land as security, section 2-307, limitations on the schedule of payments or loan term for regulated loans, section 2-308, for credit insurance, section 4-104, separate charges for excess charge for property insurance, section 4-301, restrictions on deficiency judgments, section 5-103, garnishment before judgment, section 5-104, or limitations on garnishment, section 5-105, cure of default, section 5-111, misrepresentation, section 5-115, illegal, fraudulent or unconscionable conduct in an attempted collection of debts, section 5-116, any aggrieved consumer has a right to recover actual damages from a person violating this Act, or in lieu thereof any consumer named as a plaintiff in the complaint as originally filed has a right to recover from a person violating this Act an amount determined by the court not less than \$250 nor more than \$1,000. With respect to violations from open-end credit, no action pursuant to this subsection may be brought more than 2 years after the violations occurred. With respect to violations arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than 2 years after the due date of the last scheduled payment of the agreement.

[PL 1979, c. 660, §9 (AMD).]

2. If a creditor has violated the provisions of this Act applying to authority to make supervised loans, section 2-301, the debtor is not obligated to pay the loan. If the debtor has paid any part of the loan, the debtor has a right to recover the payment from the person violating this Act or from an assignee of that person's rights who undertakes direct collection of payments or enforcement of rights arising from the debt. With respect to violations arising from loans made pursuant to open-end credit, no action pursuant to this subsection may be brought more than 2 years after the violation occurred. With respect to violations arising from other loans, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was paid.

[PL 2021, c. 297, §2 (AMD).]

2-A. If a lender has violated the provisions of this Act applying to authority to make supervised loans as set forth in section 2-301, the lender:

A. May not furnish information concerning a debt associated with that violation to a consumer reporting agency, as defined in Title 10, section 1308, subsection 3; and [PL 2021, c. 297, §3 (NEW).]

B. May not refer a debt associated with that violation to a debt collector, as defined in Title 32, section 11002, subsection 6. [PL 2021, c. 297, §3 (NEW).]

[PL 2021, c. 297, §3 (NEW).]

3. A debtor is not obligated to pay a charge in excess of that allowed by this Act, and if he has paid an excess charge he has a right to a refund. A refund may be made by reducing the debtor's obligation by the amount of the excess charge. If the debtor has paid an amount in excess of the lawful obligation under the agreement, the debtor may recover 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 debtors arising from the debt.

[PL 1973, c. 762, §1 (NEW).]

4. If a creditor has contracted for or received a charge in excess of that allowed by this Act, or if a debtor is entitled to a refund and a person liable to the debtor refuses to make a refund within a reasonable time after demand, the debtor may recover from the creditor or the person liable an amount determined by the court not less than \$250 nor more than \$1,000. With respect to excess charges arising from open-end credit, no action pursuant to this subsection may be brought more than 2 years after the time the excess charge was made. With respect to excess charges arising from other consumer credit transactions, no action pursuant to this subsection may be brought more than one year after the due date of the last scheduled payment of the agreement pursuant to which the charge was made, or the date the agreement was paid in full, whichever was earlier.

[PL 1987, c. 129, §65 (AMD).]

5. Except as otherwise provided, no violation of this Act impairs rights on a debt.

[PL 1973, c. 762, §1 (NEW).]

6. If an employer discharges an employee in violation of the provisions prohibiting discharge, section 5-106, the employee may within one year bring a civil action for recovery of wages lost as a result of the violation and for an order requiring the reinstatement of the employee. Damages recoverable shall not exceed lost wages for 6 weeks.

[PL 1973, c. 762, §1 (NEW).]

7. A creditor has no liability under subsection 1 or subsection 4 if, within 60 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 creditor notifies the person concerned of the error and corrects the error. If the violation consists of a prohibited agreement, giving the debtor a corrected copy of the writing containing the error is sufficient notification and correction. If the violation consists of an excess charge, correction shall be made by an adjustment or refund.

[PL 1985, c. 763, Pt. A, §47 (AMD).]

8. If the creditor establishes by a preponderance of evidence that a violation is unintentional and the result of a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such violation or error, no liability is imposed under subsections 1 and 3, the validity of the transaction is not affected, and no liability is imposed under subsection 4, except for refusal to make a refund.

[PL 1993, c. 496, §2 (AMD).]

9. In an action in which it is found that a creditor has violated this Act, the court shall award the debtor the costs of the action together with reasonable attorney's fees. Reasonable attorney's fees shall be determined by the value of the time reasonably expended by the attorney and not by the amount of the recovery on behalf of the debtor.

[PL 1973, c. 762, §1 (NEW).]

10. A creditor has no liability under subsection 1 or subsection 4, or under subsection 2 of section 6-113, for any act done or omitted in good faith in conformity with any rule, regulation or interpretation thereof by the administrator, notwithstanding that after such act or omission has occurred, such rule, regulation or interpretation is amended, rescinded or determined by judicial or other authority to be invalid for any reason.

[PL 1973, c. 762, §1 (NEW).]

SECTION HISTORY

PL 1973, c. 762, §1 (NEW). PL 1975, c. 134, §2 (AMD). PL 1979, c. 660, §9 (AMD). PL 1985, c. 763, §§A46,47 (AMD). PL 1987, c. 129, §65 (AMD). PL 1993, c. 496, §§1,2 (AMD). PL 2021, c. 297, §§2, 3 (AMD).

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