

537.5201 Effect of violations on rights of parties.

1. The consumer, other than a lessee in a consumer rental purchase agreement, has a cause of action to recover actual damages and in addition a right in an action other than a class action to recover from the person violating this chapter a penalty in an amount determined by the court, but not less than one hundred dollars nor more than one thousand dollars, if a person has violated the provisions of this chapter relating to:

- a. Authority to make supervised loans under section 537.2301.
- b. Restrictions on interests in land as security under section 537.2307.
- c. Limitations on the schedule of payments or loan terms for supervised loans under section 537.2308.
- d. Attorney fees under section 537.2507.
- e. Charges for other credit transactions under section 537.2601.
- f. Disclosure with respect to consumer leases under section 537.3202.
- g. Notice to consumers under section 537.3203.
- h. Receipts, statements of account and evidences of payment under section 537.3206.
- i. Form of insurance premium loan agreement under section 537.3207.
- j. Notice to cosigners and similar parties under section 537.3208.
- k. Restrictions on rates stated to the consumer under section 537.3210.
- l. Security in consumer credit transactions under section 537.3301.
- m. Prohibition against assignments of earnings under section 537.3305.
- n. Authorizations to confess judgment under section 537.3306.
- o. Certain negotiable instruments prohibited under section 537.3307.
- p. Referral sales and leases under section 537.3309.
- q. Limitations on executory transactions under section 537.3310.
- r. Prohibition against discrimination under section 537.3311.
- s. Limitations on default charges under section 537.3402.
- t. Card issuer subject to claims and defenses under section 537.3403.
- u. Assignees subject to claims and defenses under section 537.3404.
- v. Lenders subject to claims and defenses arising from sales and leases, under section 537.3405.
- w. Door-to-door sales under section 537.3501.
- x. Assurance of discontinuance under section 537.6109.
- y. Prohibitions against unfair debt collection practices under section 537.7103.
- z. Failure to provide a proper notice of cure or right to cure under sections 537.5110 and 537.5111.
- aa. Failure to provide a notice of consumer paper under section 537.3211.

With respect to violations arising from sales or loans made pursuant to open end credit, no action pursuant to this subsection may be brought more than two 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 one year after the due date of the last scheduled payment of the agreement.

2. A consumer is not obligated to pay a charge in excess of that allowed by this chapter, and has a right of refund of any excess charge paid. A refund may not be made by reducing the consumer's obligation by the amount of the excess charge unless the creditor has notified the consumer that the consumer may request a refund and the consumer has not so requested within thirty days thereafter. If the consumer has paid an amount in excess of the lawful obligation under the agreement, the consumer may recover the excess amount either 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 consumers arising from the debt.

3. If a creditor has contracted for or received a charge in excess of that allowed by this chapter, or if a consumer is entitled to a refund and a person liable to the consumer refuses to make a refund within a reasonable time after demand, the consumer may recover from the creditor or the person liable, in an action other than a class action, the excess charge or refund and a penalty in an amount determined by the court not less than one hundred dollars or more than one thousand dollars. With respect to excess charges arising from sales or loans

made pursuant to open end credit, no action pursuant to this subsection may be brought more than two 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. For purposes of this subsection, a reasonable time is presumed to be thirty days.

4. Except as otherwise provided in this chapter, no violation of this chapter impairs rights on a debt.

5. If an employer discharges an employee in violation of the provisions prohibiting discharge in section 642.21, subsection 2, paragraph "c", the employee may within two years 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 six weeks.

6. A person is not liable for a penalty under subsection 1 or 3 if the person notifies the consumer of an error before the person receives from the consumer written notice of the error or before the consumer has brought an action under this section, and the person corrects the error within forty-five days after notifying the consumer. If the violation consists of a prohibited agreement, giving the consumer 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 as provided in subsection 2. The administrator, and any official or agency of this state having supervisory authority over a person, shall give prompt notice to a person of any errors discovered pursuant to an examination or investigation of the transactions, business, records and acts of the person.

7. A person may not be held liable in any action brought under this section for a violation of this chapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid the error.

8. In an action in which it is found that a person has violated this chapter, the court shall award to the consumer the costs of the action and to the consumer's attorneys their reasonable 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 consumer.

[C75, 77, 79, 81, §537.5201]

87 Acts, ch 80, §51