

48-101-520. Recovery of damages - Actions - Treble damages - Settlement - Attorney's fees.

Statute text

(a)(1) Any solicitee or person who suffers an ascertainable loss of money or property, real, personal, or mixed, or any other article, commodity, or thing of value wherever situated, as a result of the use or employment by another person of an unfair, false, misleading or deceptive act or practice declared to be unlawful by this part or any other violation of this part, may bring an action individually to recover actual damages.

(2) The action may be brought in a court of competent jurisdiction in the county where the alleged unfair, false, misleading or deceptive act or practice, or other violation of this part, took place, is taking place, or is about to take place, or in the county in which such person conducting solicitations resides, has such person's principal place of conducting solicitations, conducts, transacts, or has transacted solicitations, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(3) Any private action commenced under the provisions of this part shall be brought within one (1) year from a person's discovery of the violation of this part, but in no event shall an action under this part be brought after four (4) years from the date of the solicitation giving rise to the claim for relief.

(b)(1) If the court finds that the use or employment of the unfair, false, misleading or deceptive act or practice or other violation was a willful or knowing violation of this part, the court may award three (3) times the actual damages sustained and may provide such other relief as it considers necessary and proper.

(2) In determining whether treble damages should be awarded, the trial court may consider, among other things:

(A) The competence of the solicitee;

(B) The nature of the deception or coercion practiced upon the solicitee;

(C) The damage to the solicitee; and

(D) The good faith of the person found to have violated the provisions of this part.

(c) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to

obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating or who is otherwise likely to violate this part; provided, that such action shall not be filed once the secretary of state has commenced a proceeding pursuant to § 48-101-514(c).

(d) Any person who has been affected by an act or practice declared to be a violation of this part may accept any written reasonable offer of settlement made by the person or persons considered to have violated this part; provided, that the tender of acceptance of such a settlement offer shall not abate any proceeding commenced by the secretary of state pursuant to § 48-101-514(c).

(e) Any permanent injunction, judgment, or final court order made pursuant to § 48-101-514(c), which has not been complied with, shall be prima facie evidence of the violation of this part in any action brought pursuant to this section.

(f) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorney's fees and costs.

(g) Upon the commencement of any action brought under subsections (a) and (b), the clerk of the court shall mail a copy of the complaint or other initial pleading to the secretary of state and, upon the entry of any judgment, order, or decree shall mail a copy to the secretary of state.

History

[Acts 1989, ch. 285, § 34; T.C.A., § 48-3-520.]