

1 **Senate Bill No. 561**

2 (By Senators Edgell, Wills, D. Facemire, Browning, Helmick,
3 Fanning, Miller, Laird,, Tucker and Williams)

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5 [Introduced February 10, 2012; referred to the Committee on
6 Transportation and Infrastructure; and then to the Committee on
7 the Judiciary.]
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11 A BILL to amend and reenact §46A-6-102 of the Code of West
12 Virginia, 1931, as amended; and to amend and reenact §47-10-6a
13 of said code, all relating to prohibiting fractional pricing
14 in the retail sale of gasoline; and defining such pricing as
15 an unfair or deceptive practice.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §46A-6-102 of the Code of West Virginia, 1931, as
18 amended, be amended and reenacted; and that §47-10-6a of said code
19 be amended and reenacted, all to read as follows:

20 **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT**

21 **AND PROTECTION ACT.**

22 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

23 **§46A-6-102. Definitions.**

1 When used in this article, the following words, terms and
2 phrases, and any variations thereof required by the context, shall
3 have the meaning ascribed to them in this article, except where the
4 context indicates a different meaning:

5 (1) "Advertisement" means the publication, dissemination or
6 circulation of any matter, oral or written, including labeling,
7 which tends to induce, directly or indirectly, any person to enter
8 into any obligation, sign any contract or acquire any title or
9 interest in any goods or services and includes every word device to
10 disguise any form of business solicitation by using such terms as
11 "renewal", "invoice", "bill", "statement" or "reminder" to create
12 an impression of existing obligation when there is none or other
13 language to mislead any person in relation to any sought-after
14 commercial transaction.

15 (2) "Consumer" means a natural person to whom a sale or lease
16 is made in a consumer transaction and a "consumer transaction"
17 means a sale or lease to a natural person or persons for a
18 personal, family, household or agricultural purpose.

19 (3) "Cure offer" means a written offer of one or more things
20 of value, including, but not limited to, the payment of money, that
21 is made by a merchant or seller and that is delivered by certified
22 mail to a consumer claiming to have suffered a loss as a result of
23 a consumer transaction or to the attorney for such person.

1 (4) "Merchantable" means, in addition to the qualities
2 prescribed in section three hundred fourteen, article two, chapter
3 forty-six of this code, that the goods conform in all material
4 respects to applicable state and federal statutes and regulations
5 establishing standards of quality and safety of goods and, in the
6 case of goods with mechanical, electrical or thermal components,
7 that the goods are in good working order and will operate properly
8 in normal usage for a reasonable period of time.

9 (5) "Sale" includes any sale, offer for sale or attempt to
10 sell any goods for cash or credit or any services or offer for
11 services for cash or credit.

12 (6) "Trade" or "commerce" means the advertising, offering for
13 sale, sale or distribution of any goods or services and shall
14 include any trade or commerce, directly or indirectly, affecting
15 the people of this state.

16 (7) "Unfair methods of competition and unfair or deceptive
17 acts or practices" means and includes, but is not limited to, any
18 one or more of the following:

19 (A) Passing off goods or services as those of another;

20 (B) Causing likelihood of confusion or of misunderstanding as
21 to the source, sponsorship, approval or certification of goods or
22 services;

23 (C) Causing likelihood of confusion or of misunderstanding as

1 to affiliation, connection or association with or certification by
2 another;

3 (D) Using deceptive representations or designations of
4 geographic origin in connection with goods or services;

5 (E) Representing that goods or services have sponsorship,
6 approval, characteristics, ingredients, uses, benefits or
7 quantities that they do not have or that a person has a
8 sponsorship, approval, status, affiliation or connection that he or
9 she does not have;

10 (F) Representing that goods are original or new if they are
11 deteriorated, altered, reconditioned, reclaimed, used or
12 secondhand;

13 (G) Representing that goods or services are of a particular
14 standard, quality or grade, or that goods are of a particular style
15 or model if they are of another;

16 (H) Disparaging the goods, services or business of another by
17 false or misleading representation of fact;

18 (I) Advertising goods or services with intent not to sell them
19 as advertised;

20 (J) Advertising goods or services with intent not to supply
21 reasonably expectable public demand, unless the advertisement
22 discloses a limitation of quantity;

23 (K) Making false or misleading statements of fact concerning

1 the reasons for, existence of or amounts of price reductions;

2 (L) Engaging in any other conduct which similarly creates a
3 likelihood of confusion or of misunderstanding;

4 (M) The act, use or employment by any person of any deception,
5 fraud, false pretense, false promise or misrepresentation, or the
6 concealment, suppression or omission of any material fact with
7 intent that others rely upon such concealment, suppression or
8 omission, in connection with the sale or advertisement of any goods
9 or services, whether or not any person has in fact been misled,
10 deceived or damaged thereby;

11 (N) Advertising, printing, displaying, publishing,
12 distributing or broadcasting, or causing to be advertised, printed,
13 displayed, published, distributed or broadcast in any manner, any
14 statement or representation with regard to the sale of goods or the
15 extension of consumer credit including the rates, terms or
16 conditions for the sale of such goods or the extension of such
17 credit, which is false, misleading or deceptive or which omits to
18 state material information which is necessary to make the
19 statements therein not false, misleading or deceptive;

20 (O) Representing that any person has won a prize, one of a
21 group of prizes or any other thing of value if receipt of the prize
22 or thing of value is contingent upon any payment of a service
23 charge, mailing charge, handling charge or any other similar charge

1 by the person or upon mandatory attendance by the person at a
 2 promotion or sales presentation at the seller's place of business
 3 or any other location: *Provided*, That a person may be offered one
 4 item or the choice of several items conditioned on the person
 5 listening to a sales promotion or entering a consumer transaction
 6 if the true retail value and an accurate description of the item or
 7 items are clearly and conspicuously disclosed along with the
 8 person's obligations upon accepting the item or items; such
 9 description and disclosure shall be typewritten or printed in at
 10 least eight point regular type, in upper or lower case, where
 11 appropriate; ~~or~~

12 (P) Selling gasoline at a fractional-cent price, as prohibited
 13 in section six-a, article ten, chapter forty-seven of this code; or

14 ~~(P)~~ (Q) Violating any provision or requirement of article six-
 15 b of this chapter.

16 (8) "Warranty" means express and implied warranties described
 17 and defined in sections three hundred thirteen, three hundred
 18 fourteen and three hundred fifteen, article two, chapter forty-six
 19 of this code and expressions or actions of a merchant which assure
 20 the consumer that the goods have described qualities or will
 21 perform in a described manner.

22 **CHAPTER 47. REGULATION OF TRADE.**

23 **ARTICLE 10. LIQUID FUELS AND LUBRICATING OILS.**

1 **§47-10-6a. Posting of the alcoholic content of gasoline; retail**
2 **prices, fractional-cent pricing prohibited.**

3 (a) Any retail distributor of gasoline who sells gasoline to
4 which has been added any alcohol, whether methanol, ethanol or
5 other form of alcohol, shall post upon or near every pump
6 maintained for the delivery of gasoline to a consumer a prominent
7 notice stating the name of the alcoholic additive and the
8 percentage it comprises of the gasoline delivered through the
9 pumps.

10 (b) Notwithstanding any provision in this code to the
11 contrary, no retail distributor of gasoline may sell regular,
12 unleaded, mid-grade, premium gasoline or diesel for a fractional-
13 cent price. For purposes of this subsection, "fractional-cent
14 price" means any price that includes a fraction of a cent.

NOTE: The purpose of this bill is to prohibit fractional pricing in the retail sale of gasoline and to define such pricing as an unfair or deceptive practice.

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