

WEST VIRGINIA LEGISLATURE

2016 REGULAR SESSION

Introduced

House Bill 2551

2015 Carryover

(BY DELEGATE R. SMITH, NELSON, J., BORDER,
KESSINGER, ARVON, HOWELL, MOFFATT, EVANS, A.,
WAGNER, CADLE, EVANS, D.)

[Introduced January 13, 2016; referred to the
Committee on the Judiciary.]

1 A BILL to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article,
 2 designated §46A-6M-101, relating to prohibiting internet service providers from
 3 advertising or offering to provide high speed internet service that is not at least ten
 4 megabytes per second; creating a cause of action for consumers and the Attorney
 5 General; requiring the Attorney General to investigate complaints; granting the Attorney
 6 General with injunctive powers; and establishing monetary penalties.

Be it enacted by the Legislature of West Virginia:

1 That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new
 2 article, designated §46A-6M-101, to read as follows:

ARTICLE 6M. INTERNET SERVICE PROVIDERS.

§46A-6M-101. Unfair or deceptive acts or practices of Internet service providers.

1 (a) It is an unfair or deceptive act or practice and a violation of this article for any seller or
 2 Internet service provider to advertise or offer to provide "high speed Internet service" that is not
 3 at least ten megabytes per second.

4 (b) If a seller or Internet service provider violates subsection (a) of this section, the
 5 consumer has a cause of action to recover actual damages and, in addition, a right to recover
 6 from the violator a penalty in an amount, to be determined by the court, of not less than \$100 nor
 7 more than \$3,000. No action brought pursuant to this subsection may be brought more than two
 8 years after the date upon which the violation occurred or the due date of the last scheduled
 9 payment of the agreement, whichever is later.

10 (c) If a seller or Internet service provider violates subsection (a) of this section, any sale
 11 or contract for service is void and the consumer is not obligated to pay either the amount due, the
 12 amount paid or any late payment charge. If the consumer has paid any part of a bill or invoice,
 13 or of a late payment fee, he or she has a right to recover the payments from the violator or from

14 any assignee of the violator's rights who undertakes direct collection of payments or enforcement
15 of rights arising from the alleged debt.

16 (d) The Attorney General of this state shall investigate all complaints alleging violations of
17 subsection (a) of this section and has a right to recover from the violator a penalty in an amount,
18 to be determined by the court, of not less than \$500 nor more than \$5,000 per violation, with each
19 advertisement or contract to sell or provide "high speed Internet" being a separate violation. The
20 Attorney General also has the power to seek injunctive relief.

21 (e) Nothing contained in this section may be construed to adversely alter or affect a right
22 or benefit accruing to a consumer or the state in accordance with other provisions of this code or
23 common law, or to limit any civil or criminal remedy otherwise provided for by law. In the case
24 of provisions contained in this section that exempt a person from the requirements of this article
25 or that otherwise limit the applicability of this article to a person, those provisions are exclusive to
26 this article and may not be construed to otherwise exempt a person or to limit the applicability of
27 any other provisions of this code.

NOTE: The purpose of this is to prohibit Internet service providers from advertising or offering to provide high speed Internet service that is not at least ten megabytes per second. The bill creates a cause of action for consumers and the Attorney General. The bill requires the Attorney General to investigate complaints. The bill grants the Attorney General injunctive power. The bill establishes monetary penalties.

This article is new; therefore, it has been completely underscored.