

WEST VIRGINIA LEGISLATURE

2021 REGULAR SESSION

Introduced

Senate Bill 302

BY SENATORS HAMILTON, BEACH, LINDSAY, CAPUTO, AND

IHLENFELD

[Introduced February 17, 2021; 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 section,
 2 designated §47-11A-15, relating to unfair trade practices; prohibiting pricing goods and
 3 services on the basis of gender; authorizing the Attorney General to seek injunctions
 4 against offenders; and providing for civil fines and costs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. UNFAIR TRADE PRACTICES.

§47-11A-15. Pricing goods and services on the basis of gender prohibited.

1 (a) For the purposes of this section, the following terms have the following meanings:

2 “Business” means any business acting within the State of West Virginia that sells goods
 3 to any individual or entity including, but not limited to, retailers, suppliers, manufacturers, or
 4 distributors;

5 (b) “Goods” means any consumer product used, bought, or rendered primarily for
 6 personal, family or household purposes;

7 “Services” means any consumer services used, bought, or rendered primarily for personal,
 8 family or household purposes;

9 “Substantially similar” means:

10 (1) Two goods that exhibit no substantial differences in: (A) The materials used in
 11 production; (B) the intended use of the good; (C) the functional design and features of the good;
 12 and (D) the brand of the good; or

13 (2) Two services that exhibit no substantial difference in: (A) The amount of time to provide
 14 the services; (B) the difficulty in providing the services; and (C) the cost of providing the services.

15 A difference in coloring among any good may not be construed as a substantial difference for the
 16 purposes of this section.

17 (c) No person, firm, partnership, company, corporation, or business may charge a price
 18 for any two goods that are substantially similar if such goods are priced differently based on the
 19 gender of the individuals for whom the goods are marketed and intended.

20 (d) No person, firm, partnership, company, corporation, or business may charge a price
21 for any services that are substantially similar if such services are priced differently based upon
22 the gender of the individuals for whom the services are performed, offered, or marketed.

23 (e) Nothing in this section prohibits price differences in goods or services based
24 specifically upon the following:

25 (1) The amount of time it took to manufacture such goods or provide such services;

26 (2) The difficulty in manufacturing such goods or offering such services;

27 (3) The cost incurred in manufacturing such goods or offering such services;

28 (4) The labor used in manufacturing such goods or providing such services;

29 (5) The materials used in manufacturing such goods or providing such services; or

30 (6) Any other gender-neutral reason for having increased the cost of such goods or
31 services.

32 (f) Any person, firm, partnership, company, corporation, or business that provides
33 services, as defined by this section, shall provide the customer with a complete written price list
34 upon request.

35 (g) When there is a violation of this section, an application may be made by the Attorney
36 General in the name of the people of this state to a court having jurisdiction to issue an injunction,
37 and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance
38 of such violations. If it appears, to the satisfaction of the court, that the defendant has, in fact,
39 violated this section, an injunction may be issued by that court, enjoining, or restraining any
40 violation, without requiring proof that any person has, in fact, been injured or damaged thereby.
41 In any such proceeding the court may make allowances for fees and costs to the attorney general
42 as may be appropriate subject to §5-3-5 of this code, and may make direct restitution. In
43 connection with any such proposed application, the attorney general may take proof and make a
44 determination of the relevant facts and issue subpoenas in accordance with the West Virginia
45 Rules of Civil Procedure. If the court determines that a violation of this section has occurred, the

46 court may impose a civil penalty not to exceed \$250 for a first violation, and a civil penalty not to
47 exceed \$500 for each subsequent violation. For the purposes of this section, all identical items
48 priced on the basis of gender shall be considered a single violation.

NOTE: The purpose of this bill is to prohibit pricing goods and services on the basis of gender.

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