

**Senate Bill No. 554**

(By Senator Walters)

\_\_\_\_\_  
[Introduced February 23, 2015; referred to the Committee on Finance.]  
\_\_\_\_\_

1  
2  
3  
4  
5  
6  
7  
8  
9 A BILL to amend and reenact §46A-6-102 of the Code of West Virginia, 1931, as amended; and to  
10 amend said code by adding thereto a new section, designated §46A-6-111, all relating to  
11 limiting termination fee a provider of broadband/Internet service may impose.

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

13 That §46A-6-102 of the Code of West Virginia, 1931, as amended, be amended and  
14 reenacted; and that said code be amended by adding thereto a new section, designated §46A-6-111,  
15 all to read as follows:

16 **ARTICLE 6. GENERAL CONSUMER PROTECTION.**

17 **§46A-6-102. Definitions.**

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

21 (1) "Advertisement" means the publication, dissemination or circulation of any matter, oral  
22 or written, including labeling, which tends to induce, directly or indirectly, any person to enter into

1 any obligation, sign any contract or acquire any title or interest in any goods or services and includes  
2 every word device to disguise any form of business solicitation by using such terms as "renewal",  
3 "invoice", "bill", "statement" or "reminder" to create an impression of existing obligation when there  
4 is none or other language to mislead any person in relation to any sought-after commercial  
5 transaction.

6 (2) "Broadband/Internet service contracts" means contracts for Internet service or broadband  
7 service between an Internet service provider and does not include contracts with cellular providers.

8 ~~(2)~~ (3) "Consumer" means a natural person to whom a sale or lease is made in a consumer  
9 transaction and a "consumer transaction" means a sale or lease to a natural person or persons for a  
10 personal, family, household or agricultural purpose. A home owners' association for the purposes  
11 of broadband/ Internet contracts is included within the definition of consumer as long as the cost for  
12 the services are paid for through monthly homeowner fees or direct reimbursements from the  
13 individual property owners.

14 ~~(3)~~ (4) "Cure offer" means a written offer of one or more things of value, including, but not  
15 limited to, the payment of money, that is made by a merchant or seller and that is delivered by  
16 certified mail to a consumer claiming to have suffered a loss as a result of a consumer transaction  
17 or to the attorney for such person.

18 ~~(4)~~ (5) "Merchantable" means, in addition to the qualities prescribed in section three hundred  
19 fourteen, article two, chapter forty-six of this code, that the goods conform in all material respects  
20 to applicable state and federal statutes and regulations establishing standards of quality and safety  
21 of goods and, in the case of goods with mechanical, electrical or thermal components, that the goods  
22 are in good working order and will operate properly in normal usage for a reasonable period of time.

1           ~~(5)~~ (6) "Sale" includes any sale, offer for sale or attempt to sell any goods for cash or credit  
2 or any services or offer for services for cash or credit.

3           ~~(6)~~ (7) "Trade" or "commerce" means the advertising, offering for sale, sale or distribution  
4 of any goods or services and shall include any trade or commerce, directly or indirectly, affecting the  
5 people of this state.

6           ~~(7)~~ (8) "Unfair methods of competition and unfair or deceptive acts or practices" means and  
7 includes, but is not limited to, any one or more of the following:

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

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

11           (C) Causing likelihood of confusion or of misunderstanding as to affiliation, connection or  
12 association with or certification by another;

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

15           (E) Representing that goods or services have sponsorship, approval, characteristics,  
16 ingredients, uses, benefits or quantities that they do not have or that a person has a sponsorship,  
17 approval, status, affiliation or connection that he or she does not have;

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

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

22           (H) Disparaging the goods, services or business of another by false or misleading

1 representation of fact;

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

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

5 (K) Making false or misleading statements of fact concerning the reasons for, existence of  
6 or amounts of price reductions;

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

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

14 (N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to  
15 be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement  
16 or representation with regard to the sale of goods or the extension of consumer credit including the  
17 rates, terms or conditions for the sale of such goods or the extension of such credit, which is false,  
18 misleading or deceptive or which omits to 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 group of prizes or any other thing  
21 of value if receipt of the prize or thing of value is contingent upon any payment of a service charge,  
22 mailing charge, handling charge or any other similar charge by the person or upon mandatory

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

8 (P) Violating any provision or requirement of article six-b of this chapter.

9 ~~(8)~~ (9) "Warranty" means express and implied warranties described and defined in sections  
10 three hundred thirteen, three hundred fourteen and three hundred fifteen, article two, chapter  
11 forty-six of this code and expressions or actions of a merchant which assure the consumer that the  
12 goods have described qualities or will perform in a described manner.

13 **§46A-6-111. Broadband/Internet service agreements termination fees.**

14 (a) *Limitation on termination fees.* -- On and after the effective date of this section, no  
15 provider of broadband/Internet service may, in connection with its continued provision of  
16 broadband/Internet service pursuant to an automatic renewal provision contained in a customer  
17 service agreement with a consumer, impose a termination fee that is greater than the charges for one  
18 month's service. The fee shall be computed by averaging the service charges invoiced to the  
19 terminating customer during the preceding four months.

20 (b) *Service agreements already automatically renewed.* -- If, as of the effective date of this  
21 section, a provider of broadband/Internet service is providing broadband/Internet service to a  
22 customer pursuant to an automatic renewal provision contained in a customer service agreement with

- 1 a consumer, the provider of broadband/Internet service may not impose a termination fee that is
- 2 greater than the charges for two months' service. The fee shall be computed by averaging the service
- 3 charges invoiced to the terminating customer during the preceding four months.

NOTE: The purpose of this bill is to limit the termination fee a provider of broadband/Internet service may impose.

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

§46A-6 111 is new; therefore, strike-throughs and underscoring have been omitted.