

1 **H. B. 2363**

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3 (By Delegates Iaquinta and Wells)

4 [Introduced February 13, 2013; referred to the
5 Committee on Energy, Industry and Labor, Economic
6 Development and Small Business then the Judiciary.]

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10 A BILL to amend and reenact §46A-6-102 of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact §47-10-6a
12 of said code, all relating to prohibiting fractional pricing
13 in the retail sale of gasoline; and defining that pricing as
14 an unfair method of competition and unfair or deceptive act or
15 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.

24 (4) "Merchantable" means, in addition to the qualities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

17 (O) Representing that any person has won a prize, one of a
18 group of prizes or any other thing of value if receipt of the prize
19 or thing of value is contingent upon any payment of a service
20 charge, mailing charge, handling charge or any other similar charge
21 by the person or upon mandatory attendance by the person at a
22 promotion or sales presentation at the seller's place of business
23 or any other location: *Provided*, That a person may be offered one
24 item or the choice of several items conditioned on the person

1 listening to a sales promotion or entering a consumer transaction
 2 if the true retail value and an accurate description of the item or
 3 items are clearly and conspicuously disclosed along with the
 4 person's obligations upon accepting the item or items; such
 5 description and disclosure shall be typewritten or printed in at
 6 least eight point regular type, in upper or lower case, where
 7 appropriate; ~~or~~

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

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

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

18 **CHAPTER 47. REGULATION OF TRADE.**

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

20 **§47-10-6a. Posting of the alcoholic content of gasoline; retail**
 21 **prices, fractional-cent pricing prohibited.**

22 (a) Any retail distributor of gasoline who sells gasoline to
 23 which has been added any alcohol, whether methanol, ethanol or

1 other form of alcohol, shall post upon or near every pump
2 maintained for the delivery of gasoline to a consumer a prominent
3 notice stating the name of the alcoholic additive and the
4 percentage it comprises of the gasoline delivered through the
5 pumps.

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