

WEST VIRGINIA LEGISLATURE

2025 REGULAR SESSION

Introduced

Senate Bill 663

By Senator Azinger

[Introduced March 4, 2025; referred
to the Committee on Banking and Insurance; and
then to the Committee on the Judiciary]

1 A BILL to amend and reenact §46A-6-102 and §46A-6-105 of the Code of West Virginia, 1931, as
2 amended; and to amend the code by adding a new article, designated §46A-6O-1, §46A-
3 6O-2, §46A-6O-3, §46A-6O-4, §46A-6O-5, and §46A-6O-6, relating to creating the
4 Transparency and Accountability in Financial Services Act; providing a short title; setting
5 forth legislative declarations; providing definitions; requiring transparency upon request
6 and prohibiting discrimination; establishing enforcement provisions; providing for
7 severability; and clarifying relevant consumer protection provisions.

Be it enacted by the Legislature of West Virginia:

CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT AND PROTECTION ACT.

ARTICLE 6O. TRANSPARENCY AND ACCOUNTABILITY IN FINANCIAL SERVICES.

§46A-6O-1. Short title.

1 This article shall be known and may be cited as the "Transparency and Accountability in
2 Financial Services Act".

§46A-6O-2. Legislative Declarations.

1 Obtaining access to financial services is a basic requirement for a person to meaningfully
2 participate in West Virginia's marketplace;

3 On account of their fundamental role in the marketplace, the West Virginia and United
4 States governments have given financial institutions significant privileges and have enacted state
5 and federal laws that guarantee access to certain financial services without discrimination based
6 on race, color, religion, national origin, sex, and other factors;

7 New banks and other financial institutions face significant barriers to entry that reduce the
8 competitiveness of the market and allow existing institutions to wield significant power;

9 Financial institutions should not act as de facto regulators of private conduct by denying
10 financial services based on a person's religious exercise, association, speech, social views, or

11 participation in a particular industry;

12 Financial institutions have a responsibility to make decisions about whether to provide a
13 person with financial services on the basis of impartial criteria free from discrimination or favoritism
14 based on the above factors;

15 Financial institutions also have a responsibility to disclose the conditions under which they
16 will deny financial services, and if they deny financial services, to provide upon request a truthful
17 and complete explanation to the person as to why financial services were denied;

18 Financial institutions face increasing internal and external pressures to impede otherwise
19 lawful commerce based on a person's religious exercise, associations, speech, social views, or
20 participation in particular industries, and to do so covertly, without informing the person or the
21 public why services were or will be denied;

22 When financial institutions omit material information about when they will deny financial
23 services or why they denied financial services to a person, this lack of transparency harms specific
24 persons and the general marketplace;

25 This kind of deception and unfair discrimination in the provision of financial services
26 threatens the economy, security, and soundness of banking and other financial markets in West
27 Virginia; and

28 These deceptive and unfairly discriminatory practices threaten the ability of West Virginia's
29 citizens to speak freely as part of the democratic process and to live freely according to the
30 dictates of their conscience, and these practices also violate the public trust.

§46A-6O-3. Definitions.

1 (a) As used in this subchapter:

2 (1) "Discriminate in the provision of financial services" means utilizing a social credit score
3 to directly or indirectly decline to provide full and equal enjoyment in the provision of financial
4 services, and includes refusing to provide, terminating, or restricting financial services.

5 (2) "Financial institution" means:

6 (A) A bank that has total assets over One Hundred Billion Dollars (\$100,000,000,000); or

7 (B) A payment processor, credit card company, credit card network, payment network,
8 payment service provider, or payment gateway that has processed more than One Hundred Billion
9 Dollars (\$100,000,000,000) in transactions in the last calendar year.

10 (C) A financial institution includes any affiliate or subsidiary company, even if that company
11 is also a financial institution.

12 (3) "Financial service" means any financial product or service offered by a financial
13 institution, notwithstanding §46A-6-105.

14 (4) "Person" means any individual, partnership, association, joint stock company, trust,
15 corporation, nonprofit organization, or other business or legal entity.

16 (5) "Protected from government interference" refers to any speech, religious exercise,
17 association, expression, or conduct that is protected by the First Amendment other than activities
18 that the Supreme Court of the United States has expressly held are unprotected as of the date of
19 this legislation, such as obscenity, fraud, incitement, true threats, fighting words, or defamation.

20 (6) "Social credit score" means any analysis, rating, scoring, list, or tabulation that
21 evaluates any of the following:

22 (A) Any person's exercise of religion that is protected from government interference by the
23 First Amendment to the United States Constitution, Article 3, Section 15 of the Constitution of
24 West Virginia, or federal or state law, including all aspects of religious observance and practice, as
25 well as belief and affiliation;

26 (B) Any person's speech, expression, or association that is protected from government
27 interference by the First Amendment to the United States Constitution, Article 3, Sections 7 and 16
28 of the Constitution of West Virginia, or federal or state law, including the person's opinions,
29 speech, or other expressive activities, including the lawful preservation of privacy regarding those
30 activities, such as the refusal to disclose lobbying, political activity, or contributions beyond what is

31 required by applicable state and federal law;

32 (C) Failure or refusal to adopt any targets or disclosures related to greenhouse gas
33 emissions beyond what is required by applicable state and federal law;

34 (D) Failure or refusal to conduct any type of racial, diversity, or gender audit or disclosure or
35 to provide any sort of quota, preference, or benefit based, in whole or in part, on race, diversity, or
36 gender;

37 (E) Failure or refusal to facilitate or assist employees in obtaining abortions or gender
38 transition services; or

39 (F) Except as provided in §46A-6-102, participation in the following lawful business
40 associations or business activities:

41 (i) Business activities with an entity that engages in the exploration, production, utilization,
42 transportation, sale, or manufacturing of fossil fuel sources or fossil-fuel-based energy; or

43 (ii) Business activities with an entity that engages in the manufacture, distribution,
44 wholesale, supply, or retail of firearms, firearms accessories, or ammunition.

45 (G) For the purposes of §46A-6O-3(a)(6) only, "social credit score" does not include the
46 financial institution evaluating quantifiable financial risks of a person based on impartial, financial-
47 risk-based standards that include activities described in §46A-6O-3(a)(6), if such standards are
48 established in advance by the financial institution and publicly disclosed to customers and
49 potential customers.

50 (b) These definitions shall be construed in favor of the broad protection of the conduct,
51 opinions, and beliefs protected by the First Amendment to the United States Constitution,
52 applicable federal laws, the Constitution of the State of West Virginia, and state law.

§46A-6O-4. Transparency required upon request; Discrimination prohibited.

1 (a) If a financial institution refuses to provide, restricts, or terminates service to a person,
2 that person may request a statement of specific reasons within ninety (90) days after receiving
3 notice of the refusal to provide, restriction of, or termination of service. The person may request the

statement from a customer service representative or designated account representative by phone, U.S. mail, or electronic mail. Unless otherwise prohibited by federal law, the financial institution shall transmit the statement of specific reasons via U.S. Mail and electronic mail, if known to the financial institution, within thirty (30) days of receiving the person's request. The statement of specific reasons must include:

(1) A detailed explanation of the basis for the denial or termination of service, including a description of any of the person's speech, religious exercise, business activity with a particular industry, or other conduct that was, in whole or in part, the basis of the financial institution's denial or termination of service;

(2) A copy of the terms of service agreed to by the person and the financial institution; and

(3) A citation to the specific provisions of the terms of service upon which the financial institution relied to refuse to provide, restrict, or terminate service.

(b) A financial institution shall not:

(1) Discriminate in the provision of financial services to a person; or

(2) Agree, conspire, or coordinate, directly or indirectly, including through any intermediary or third party, with another person, or group of persons, to engage in activity prohibited by subsection §46A-6O-4(b)(1).

§46A-6O-5. Enforcement.

(a) Any violation of this act shall constitute an unfair or deceptive trade practice in violation of §46A-6-102(7).

If the Attorney General has reasonable cause to believe that any financial institution has engaged in, is engaging in, or is about to engage in, any violation of this chapter, the Attorney General may investigate, bring a civil action, and seek remedies as provided in article seven of this chapter.

(b) In addition to the remedies provided in §46A-6-106, any person harmed by a violation of this article may initiate a civil action for either of the following:

(1) To recover actual damages, or Ten Thousand Dollars (\$10,000.00), whichever is greater, for each violation. If the trier of fact finds that the violation was willful, it may increase the damages to an amount of up to three (3) times the actual damages sustained, or Thirty Thousand Dollars (\$30,000.00), whichever is greater. A court shall award a prevailing plaintiff reasonable attorneys' fees and court costs; and

(2) To obtain preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order as is necessary to enforce the requirements of this article.

§46A-6O-6. Severability.

Each subsection, paragraph, and portion of each paragraph of this section is severable. If one or more sections, paragraphs, or portions of one or more paragraphs of this section are held invalid on their face or as applied to particular facts, then the remaining portions and applications of the section shall be given full effect to the greatest extent practicable.

ARTICLE 6. GENERAL CONSUMER PROTECTION.

§46A-6-102. Definitions.

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

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

(2) "Consumer" means a natural person to whom a sale or lease is made in a consumer

transaction and a "consumer transaction" means a sale or lease to a natural person or persons for a personal, family, household or agricultural purpose.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(N) Advertising, printing, displaying, publishing, distributing or broadcasting, or causing to be advertised, printed, displayed, published, distributed or broadcast in any manner, any statement or representation with regard to the sale of goods or the extension of consumer credit including the rates, terms or conditions for the sale of such goods or the extension of such credit, which is false, misleading or deceptive or which omits to state material information which is

necessary to make the statements therein not false, misleading or deceptive;

(O) Representing that any person has won a prize, one of a group of prizes or any other thing of value if receipt of the prize or thing of value is contingent upon any payment of a service charge, mailing charge, handling charge or any other similar charge by the person or upon mandatory attendance by the person at a promotion or sales presentation at the seller's place of business or any other location: *Provided*, That a person may be offered one item or the choice of several items conditioned on the person listening to a sales promotion or entering a consumer transaction if the true retail value and an accurate description of the item or items are clearly and conspicuously disclosed along with the person's obligations upon accepting the item or items; such description and disclosure shall be typewritten or printed in at least eight point regular type, in upper or lower case, where appropriate; or

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

(Q) Violating any provision or requirement of article six-o of this chapter.

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

§46A-6-105. Exempted transactions.

(a) This article does not apply to acts done by the publisher, owner, agent, or employee of a newspaper, periodical, or radio or television station in the publication or dissemination of an advertisement, when the owner, agent, or employee did not have knowledge of the false, misleading, or deceptive character of the advertisement, did not prepare the advertisement, and did not have a direct financial interest in the sale or distribution of the advertised goods or services.

(b) This article does not apply to time, savings, or demand deposit accounts provided by a bank as defined in §31A-1-2 of this code, except for violations of any requirement of article six-o of this chapter.

NOTE: The purpose of this bill is to create the Transparency and Accountability in Financial Services Act; provide a short title; set forth legislative declarations; provide definitions; requiring transparency upon request and prohibiting discrimination; establish enforcement provisions; provide for severability; and clarify relevant consumer protection provisions.

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