WEST VIRGINIA CODE CHAPTER 46a ARTICLE 6J

WV Legislature

§46A-6J-1. Emergencies and natural disasters - Taking unfair advantage of consumers.

The Legislature finds that during emergencies and major disasters, including, but not limited to, tornadoes, earthquakes, fires, floods, storms or civil disturbances or where a large-scale threat exists, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods or services. While the pricing of consumer goods and services is generally best left to the marketplace under ordinary conditions, when a declared state of emergency or state of preparedness results in abnormal disruptions of the market, the public interest requires that excessive and unjustified increases in the prices of essential consumer goods and services be prohibited. It is the intent of the Legislature in enacting this article to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency or state of preparedness for goods and services that are vital and necessary for the health, safety and welfare of consumers. Further, it is the intent of the Legislature that this article be liberally construed so that its beneficial purposes may be served.

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§46A-6J-2. Definitions.

(a) “Building materials” means lumber, construction tools, windows, and any other item used in the building or rebuilding of property.

(b) “Consumer food item” means any article that is used or intended for use for food or drink by a person or animal.

(c) “Disaster” means the occurrence or imminent threat of widespread or severe damage, injury, loss of life, or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill, or other water or soil contamination, epidemic, air contamination, blight, drought, infestation, or other public calamity requiring emergency action.

(d) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries, candles, blankets, generators, heaters, and temporary shelters.

(e) “Essential consumer item” means any article that is necessary to the health, safety, and welfare of consumers, including, but not limited to, clothing, diapers, soap, cleaning supplies, and toiletries.

(f) “Gasoline” means any fuel used to power any motor vehicle or power tool.

(g) “Housing” means any rental housing leased on a month-to-month term or the sale of manufactured homes, as that term is defined in §21-9-2 of this code.

(h) “Large-scale threat” means circumstances which present a reasonable probability that necessary services or public order would be disrupted, and effect a significant number of people from either natural or man-made causes.

(i) “Medical supplies” includes, but is not limited to, prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products.

(j) “Repair or reconstruction services” means any services performed by any person for repairs to residential, commercial, or public property of any type that is damaged as a result of a disaster.

(k) “State of emergency” means the situation existing during or after the occurrence of a disaster or large-scale threat in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

(l) “State of preparedness” means the situation existing before a disaster or large-scale threat in which a state of preparedness has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

(m) “Transportation, freight, and storage services” means any service that is performed by

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any company that contracts to move, store, or transport personal or business property, or rents equipment or storage space for those purposes.

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§46A-6J-3. Prohibited unfair pricing practices.

(a) Upon the declaration of a state of emergency or state of preparedness, and continuing for the existence of the state of emergency or state of preparedness, or for 30 days following the declaration, whichever period is longer, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell to any person in the area subject to the declaration any consumer food items, essential consumer items, goods used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline or other motor fuels, for a price greater than 10 percent above the price charged by that person for those goods or services on the 10th day immediately preceding the declaration of emergency state of preparedness, unless the increase in price is directly attributable to additional costs imposed on the seller by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided,* That in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency or state of preparedness, the price is no greater than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business on the 10th day immediately preceding the declaration: *Provided, however,* That where a supplier of gasoline or other motor fuels cannot determine its daily costs, the supplier may sell gasoline or other motor fuels to distributers on any day at a rate not to exceed the average of the Oil Price Information Service's average wholesale rack price for that product at the Montvale/Roanoke, Virginia, Fairfax, Virginia, and Pittsburgh, Pennsylvania, wholesale racks for the previous day.

(b) Upon the declaration of a state of emergency or state of preparedness, and for a period of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup in the area subject to the declaration for a price greater than 10 percent above the price charged by that person for those services on the 10th day immediately preceding the declaration, unless the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided,* That in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service, the price is no greater than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business on the 10th day immediately preceding to the declaration of the state of emergency or state of preparedness.

(c) Any business offering an item for sale at a reduced price 10 days immediately prior to the declaration of the state of emergency or state of preparedness may use the price at which it usually sells the item to calculate the price pursuant to subsection (a) or (b) of this section.

(d) Whenever the Governor declares a state of preparedness, the provisions of this article only apply to those items or services specifically set forth in the proclamation.

(e) On the 15th day after the declaration of a state of emergency, and each 15th day thereafter for so long as the state of emergency persists, the Governor shall review the scope of goods to which this article applies and may issue a proclamation maintaining, limiting, terminating, or extending the price restrictions imposed by this article with respect to any categories of goods.

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§46A-6J-4. Notification by the Secretary of State; registry.

The Secretary of State shall promulgate rules to establish a system by which any person, corporation, trade association or partnership may register to receive notification that a state of emergency or state of preparedness has been declared and that the provisions of this article are in effect. The rules promulgated pursuant to the authority conferred by this section may include a requirement of the payment of fees for registration.

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§46A-6J-5. Penalties, remedies and enforcement.

(a) A violation of this article is an unfair or deceptive act or practice within the meaning of section one hundred two, article six of this chapter and is subject to the enforcement provisions and remedies provided by this chapter.

(b) Any person violating the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or confined in the county or regional jail not more than one year, or both.

(c) The remedies and penalties provided by this article are cumulative, and do not prohibit any other remedy or punishment available under the laws of this state.

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§46A-6J-6. Preemption.

This article preempts any local ordinance prohibiting the same or similar conduct.

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