# WEST VIRGINIA CODE: §5-1-26

**§5-1-26. Fuel emergency; power of the Governor to declare an emergency; duties of the Governor with respect to such emergency; assistance of other state agencies and local law-enforcement agencies; injunctive relief; penalties; jurisdiction.**

(a) The Legislature hereby finds and declares that the purposes of this section are to protect and promote the public peace, safety, economy, revenue, health and welfare and interest of the people of this state and, to do so, it is necessary to ensure free and competitive access to gasoline and special fuel for and to the users of gasoline or special fuel in this state during the time of any fuel emergency as declared by the Governor pursuant to the power and authority herein granted.

(b) As used herein or as used in any proclamation, order, rule or regulation issued by the Governor pursuant to this section, unless the context requires a different meaning, the terms or phrases "actual metered gallons," "distributor," "producer," "gallon," "gasoline," "importer," "person," "petroleum carrier," "purchase," "receive," "retail dealer," "sale," "special fuel," "supply tank," "tank wagon" and "user" shall have the same meanings ascribed to those terms or phrases in section two, article fourteen, chapter eleven of this code.

(c) When the public peace, safety, economy, revenue, health, welfare or interest of the people of this state is impaired or imperiled because of a shortage of gasoline or special fuel, and the Governor so finds, the Governor is hereby empowered and authorized and it shall be his duty to issue a proclamation declaring the existence of a fuel emergency in this state or any part thereof. Upon the issuance of such proclamation by the Governor, the Governor is hereby granted plenary power and authority to issue, amend, suspend or revoke orders, rules and regulations to:

(1) Allocate or distribute gasoline or special fuel to the extent permitted by any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to the extent permitted by the appropriate federal agency.

(2) Control, restrict and regulate the sale by distributors, producers, importers and retail dealers of gasoline and special fuel to users by any appropriate means including, but not limited to, the establishment of quotas, rationing, specifications that certain users may purchase gasoline or special fuel only on certain days, and other conditions upon the purchase of gasoline or special fuel to the extent permitted by any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to the extent permitted by the appropriate federal agency.

Any such order, rule or regulation shall have such statewide, regional, county or other area application, as the Governor shall specify therein. Whenever the nature and severity of a fuel emergency varies from area to area in the state, the Governor shall have plenary power and authority, within the limitations of subdivisions (1) and (2) above, to establish different

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allocation or distribution formulae, controls, restrictions and regulations for different areas of the state at different times.

(d) Any orders, rules or regulations issued pursuant to this section shall be valid only during the period of any such fuel emergency and may be issued or promulgated without complying with the provisions of chapter twenty-nine-a of this code: Provided, That a copy of every such order, rule or regulation shall be filed in the office of the Secretary of State before the same is effective and the Secretary of State shall, within five days thereafter, forward a certified copy thereof to the clerk of the county court of each county and every such clerk shall forthwith admit such order, rule or regulation to record in the miscellaneous records of the county court kept in the office of each such clerk, but such filing in the office of the Secretary of State shall alone constitute constructive notice to any person affected by such order, rule or regulation: Provided, however, That the county court of each county shall, when the first such order, rule or regulation is admitted to record, forthwith cause to be published a notice to the effect that such order, rule or regulation is, and that all further orders, rules and regulations or record copies thereof shall be, available for inspection in the office of the county clerk of such county. Such notice shall be published as a Class I legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be such county. A copy of any such order, rule or regulation certified by the Secretary of State shall be admissible in any court in this state as proof of the contents thereof.

(e) The Governor is hereby granted plenary power and authority to enforce any order, rule or regulation issued pursuant to this section and, in so doing, may secure the assistance of any state agency, the Attorney General or his designate, the prosecuting attorneys of the several counties and any state or local law-enforcement agencies or officers. Such persons shall assist the Governor in enforcing the provisions of any such order, rule or regulation so issued and promulgated by the Governor when called upon to do so by the Governor. The Governor may petition any circuit court of this state for the issuance of a temporary restraining order or injunction or for any other remedy, as may be appropriate, to compel any person to comply with any such order, rule or regulation, and it shall be the duty of the Attorney General and the prosecuting attorneys of the various counties to assist and cooperate with the Governor in obtaining such relief. No injunction bond shall be required, and in the event of an appeal to the West Virginia Supreme Court of Appeals, the filing of such appeal shall not stay enforcement of the final judgment of the circuit court enforcing any such order, rule or regulation.

(f) Whenever it appears to the Governor that there exists a serious, direct and immediate threat to the health and safety of any persons in this state because of the failure or refusal of a producer or distributor to comply, in a timely manner, with an order, rule or regulation issued pursuant to the provisions of subsection (c) of this section, the Governor shall have the authority to distribute or cause to have distributed from the supplies of gasoline or special fuel owned, retained or possessed by such producer or distributor a sufficient amount of gasoline or special fuel as may be required to alleviate any such emergency. Such producer or distributor shall be compensated by the user, consumer or retail dealer



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receiving such gasoline or special fuel at the then existing average market value, either retail value or wholesale value, as the case may be: Provided, That there shall be deducted from such compensation the amount necessary to pay for the cost of distribution of such gasoline or special fuel: Provided, however, That the Governor shall be required to serve written notice of his intent to exercise the powers granted by this subsection to the parties involved: Provided further, That upon the issuance of such notice, the Governor shall cause to be initiated those legal proceedings relevant to the enforcement of any order, rule or regulation as required by and hereinbefore set out in subsection (e) of this section: And provided further, That such order, rule or regulation issued by the Governor shall not conflict with or be contrary to any federal law relating to the allocation or distribution of gasoline or special fuel and rules and regulations promulgated thereunder or to any power granted the Governor by any federal agency.

(g) Any producer or distributor violating any provision of any such order, rule or regulation of the Governor issued or promulgated pursuant to this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $25,000, or imprisoned in the county jail for not more than one year, or both fined and imprisoned. Any retail dealer violating any provision of any such order, rule or regulation of the Governor issued or promulgated pursuant to this section, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $25 nor more than $100. Each day or part thereof that any such violation shall take place, or continue to take place, shall be deemed to constitute a distinct and separate offense and shall be punishable accordingly.

(h) When the Governor determines that any such fuel emergency no longer exists, he shall issue a proclamation terminating all orders, rules or regulations issued pursuant to the provisions of this section.

(i) The provisions of this section shall expire on July 1, 1974.

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