

WEST VIRGINIA LEGISLATURE
REGULAR SESSION, 1974

ENROLLED

HOUSE BILL No. 1243
Originating in the Committee on
(By Mr. *the Judiciary*)

PASSED March 9 1974

In Effect from Passage



1243

FILED IN THE OFFICE
RODAR T. WICKELL III
SECRETARY OF STATE
THIS DATE 3-22-74

ENROLLED

H. B. 1243

(Originating in the House Committee on the Judiciary)

[Passed March 9, 1974; in effect from passage.]

AN ACT to amend article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new section, designated section twenty-six, all relating to fuel emergencies in this state or any part thereof; setting forth a statement of legislative purposes; defining terms; providing that 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, he shall have the power to proclaim a fuel emergency; providing that upon the issuance of any such proclamation, the governor shall have the power and authority by orders, rules and regulations to allocate or distribute gasoline or special fuel within certain limitations and to control, restrict and regulate the sale by retail dealers of gasoline and special fuel; relating to the territorial application of such orders, rules and regulations; establishing procedures with respect to the issuance, promulgation, filing and recordation of certain such orders, rules and regulations; establishing constructive notice of such orders, rules and regulations; relating to the publication of certain notices; relating to certified copies and the admissibility thereof into evidence; relating to the distribution of gasoline or special fuel from a producer or distributor upon the failure of such producer or distributor to comply in a timely manner with an order, rule or regulation of the governor; providing for compensation for gasoline and special fuel distributed by the governor; providing for written notice by the

governor of his intent to distribute gasoline or special fuel; relating to the enforcement of all such orders, rules and regulations; relating to others who are to assist the governor in this regard; authorizing temporary restraining orders, injunctions and other remedies; providing that an injunction bond shall not be required; relating to judicial review; providing criminal offenses and penalties; relating to jurisdiction of misdemeanor offenses; relating to period of validity of all such orders, rules and regulations and the termination of any such fuel emergency; and providing that the provisions of the section shall expire on July one, one thousand nine hundred seventy-four.

Be it enacted by the Legislature of West Virginia:

That article one, chapter five of the code of West Virginia, one thousand nine hundred thirty-one, as amended, be amended by adding thereto a new section, designated section twenty-six, to read as follows:

ARTICLE 1. THE GOVERNOR.

§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.

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

10 (b) As used herein or as used in any proclamation,
11 order, rule or regulation issued by the governor pursuant
12 to this section, unless the context requires a different
13 meaning, the terms or phrases "actual metered gallons," "dis-
14 tributor," "producer," "gallon," "gasoline," "importer," "per-
15 son," "petroleum carrier," "purchase," "receive," "retail deal-

16 er,” “sale,” “special fuel,” “supply tank,” “tank wagon” and
17 “user” shall have the same meanings ascribed to those terms
18 or phrases in section two, article fourteen, chapter eleven of
19 this code.

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

30 (1) Allocate or distribute gasoline or special fuel to the
31 extent permitted by any federal law relating to the allocation
32 or distribution of gasoline or special fuel and rules and regula-
33 tions promulgated thereunder or to the extent permitted by
34 the appropriate federal agency.

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

45 Any such order, rule or regulation shall have such statewide,
46 regional, county or other area application, as the governor shall
47 specify therein. Whenever the nature and severity of a fuel
48 emergency varies from area to area in the state, the governor
49 shall have plenary power and authority, within the limitations
50 of subsections (1) and (2) above, to establish different alloca-
51 tion or distribution formulae, controls, restrictions and regula-
52 tions for different areas of the state at different times.

53 (d) Any orders, rules or regulations issued pursuant to

54 this section shall be valid only during the period of any such
55 fuel emergency and may be issued or promulgated without com-
56 plying with the provisions of chapter twenty-nine-a of this
57 code: *Provided*, That a copy of every such order, rule or
58 regulation shall be filed in the office of the secretary of state
59 before the same is effective and the secretary of state shall,
60 within five days thereafter, forward a certified copy thereof
61 to the clerk of the county court of each county and every
62 such clerk shall forthwith admit such order, rule or regulation
63 to record in the miscellaneous records of the county court kept
64 in the office of each such clerk, but such filing in the office of
65 the secretary of state shall alone constitute constructive notice
66 to any person affected by such order, rule or regulation:
67 *Provided, however*, That the county court of each county shall,
68 when the first such order, rule or regulation is admitted to
69 record, forthwith cause to be published a notice to the effect
70 that such order, rule or regulation is, and that all further
71 orders, rules and regulations or record copies thereof shall be,
72 available for inspection in the office of the county clerk of
73 such county. Such notice shall be published as a Class I
74 legal advertisement in compliance with the provisions of
75 article three, chapter fifty-nine of this code, and the publica-
76 tion area for such publication shall be such county. A copy
77 of any such order, rule or regulation certified by the secretary
78 of state shall be admissible in any court in this state as proof
79 of the contents thereof.

80 (e) The governor is hereby granted plenary power and
81 authority to enforce any order, rule or regulation issued pur-
82 suant to this section and, in so doing, may secure the assistance
83 of any state agency, the attorney general or his designate, the
84 prosecuting attorneys of the several counties and any state or
85 local law-enforcement agencies or officers. Such persons shall
86 assist the governor in enforcing the provisions of any such
87 order, rule or regulation so issued and promulgated by the
88 governor when called upon to do so by the governor. The
89 governor may petition any circuit court of this state for the
90 issuance of a temporary restraining order or injunction or for
91 any other remedy, as may be appropriate, to compel any per-
92 son to comply with any such order, rule or regulation, and it
93 shall be the duty of the attorney general and the prosecuting

94 attorneys of the various counties to assist and cooperate with
95 the governor in obtaining such relief. No injunction bond shall
96 be required, and in the event of an appeal to the West Virginia
97 supreme court of appeals, the filing of such appeal shall not
98 stay enforcement of the final judgment of the circuit court
99 enforcing any such order, rule or regulation.

100 (f) Whenever it appears to the governor that there exists
101 a serious, direct and immediate threat to the health and
102 safety of any persons in this state because of the failure or
103 refusal of a producer or distributor to comply, in a timely
104 manner, with an order, rule or regulation issued pursuant to
105 the provisions of subsection (c) of this section, the governor
106 shall have the authority to distribute or cause to have dis-
107 tributed from the supplies of gasoline or special fuel owned,
108 retained or possessed by such producer or distributor a suf-
109 ficient amount of gasoline or special fuel as may be required to
110 alleviate any such emergency. Such producer or distributor
111 shall be compensated by the user, consumer or retail dealer
112 receiving such gasoline or special fuel at the then existing
113 average market value, either retail value or wholesale value,
114 as the case may be: *Provided*, That there shall be deducted
115 from such compensation the amount necessary to pay for the
116 cost of distribution of such gasoline or special fuel: *Provided*,
117 *however*, That the governor shall be required to serve written
118 notice of his intent to exercise the powers granted by this sub-
119 section to the parties involved: *Provided further*, That upon
120 the issuance of such notice, the governor shall cause to be
121 initiated those legal proceedings relevant to the enforcement
122 of any order, rule or regulation as required by and hereinbefore
123 set out in subsection (e) of this section. *And provided further*,
124 That such order, rule or regulation issued by the governor shall
125 not conflict with or be contrary to any federal law relating to
126 the allocation or distribution of gasoline or special fuel and
127 rules and regulations promulgated thereunder or to any power
128 granted the governor by any federal agency.

129 (g) Any producer or distributor violating any provision
130 of any such order, rule or regulation of the governor issued
131 or promulgated pursuant to this section, shall be guilty of a
132 misdemeanor and, upon conviction thereof, shall be fined not
133 less than one hundred dollars nor more than twenty-five

134 thousand dollars, or imprisoned in the county jail for not more
135 than one year, or both fined and imprisoned. Any retail
136 dealer violating any provision of any such order, rule or
137 regulation of the governor issued or promulgated pursuant to
138 this section, shall be guilty of a misdemeanor and, upon
139 conviction thereof, shall be fined not less than twenty-five
140 dollars nor more than one hundred dollars. Each day or part
141 thereof that any such violation shall take place, or continue to
142 take place, shall be deemed to constitute a distinct and separate
143 offense and shall be punishable accordingly.

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

148 (i) The provisions of this section shall expire on July one,
149 one thousand nine hundred seventy-four.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

H. Darrel Darby
Chairman Senate Committee

Clarence C. Christen, Jr.
Chairman House Committee

Originated in the House.

Takes effect from passage.

Harold Wilson
Clerk of the Senate

C. A. Blankenship
Clerk of the House of Delegates

H. T. Brotherton, Jr.
President of the Senate

Lewis F. McMane
Speaker House of Delegates

The within approved this the 21st
day of March, 1974.

Arch A. Moore, Jr.
Governor

PRESENTED TO THE
GOVERNOR

Date 3/21/74

Time 10:30 a.m.