

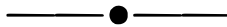
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2002 MAR 18 P 5:35

OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE

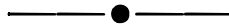
SECOND REGULAR SESSION, 2002



ENROLLED

House Bill No. 4116

(By Mr. Speaker, Mr. Kiss, and Delegates Stemple,
Williams, Varner, Swartzmiller, Staton and Mezzatesta)



Passed March 8, 2002

In Effect Ninety Days from Passage

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H. B. 4116

(BY MR. SPEAKER, MR. KISS, AND DELEGATES STEMPLE,
WILLIAMS, VARNER, SWARTZMILLER, STATON AND MEZZATESTA)

[Passed March 8, 2002; in effect ninety days from passage.]

AN ACT to amend chapter forty-six-a of the code of West Virginia, one thousand nine hundred thirty-one, as amended, by adding thereto a new article, designated article six-j, all relating to protecting consumers from price gouging and unfair pricing practices during and shortly after a declaration of a state of emergency; defining terms; declaring legislative findings; restricting price increases during state of emergency; making violations of price restrictions and unfair method of competition or unfair or deceptive practice; misdemeanor offenses; providing remedies and penalties; and requiring the promulgation of rules to establish a system to notify persons affected by the price restrictions.

Be it enacted by the Legislature of West Virginia:

That chapter forty-six-a of the code of West Virginia, one thousand thirty-one, as amended, be amended by adding thereto a new article, designated article six-j, to read as follows:

**ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING
AND UNFAIR PRICING PRACTICES DURING AND
SHORTLY AFTER A STATE OF EMERGENCY.**

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

1 The Legislature hereby finds that during emergencies and
2 major disasters, including, but not limited to, tornadoes,
3 earthquakes, fires, floods, storms or civil disturbances, some
4 merchants have taken unfair advantage of consumers by greatly
5 increasing prices for essential consumer goods or services.
6 While the pricing of consumer goods and services is generally
7 best left to the marketplace under ordinary conditions, when a
8 declared state of emergency results in abnormal disruptions of
9 the market, the public interest requires that excessive and
10 unjustified increases in the prices of essential consumer goods
11 and services be prohibited. It is the intent of the Legislature in
12 enacting this article to protect citizens from excessive and
13 unjustified increases in the prices charged during or shortly
14 after a declared state of emergency for goods and services that
15 are vital and necessary for the health, safety and welfare of
16 consumers. Further, it is the intent of the Legislature that this
17 article be liberally construed so that its beneficial purposes may
18 be served.

§46A-6J-2. Definitions.

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

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

6 (c) "Disaster" means the occurrence or imminent threat of
7 widespread or severe damage, injury, or loss of life or property

8 resulting from any natural or man-made cause, including fire,
9 flood, earthquake, wind, snow, storm, chemical or oil spill or
10 other water or soil contamination, epidemic, air contamination,
11 blight, drought, infestation or other public calamity requiring
12 emergency action;

13 (d) "Essential consumer item" means any article that is
14 necessary to the health, safety and welfare of consumers,
15 including but not limited to clothing, diapers, soap, cleaning
16 supplies and toiletries.

17 (e) "Emergency supplies" includes, but is not limited to,
18 water, flashlights, radios, batteries, candles, blankets, genera-
19 tors, heaters and temporary shelters.

20 (f) "Medical supplies" includes, but is not limited to,
21 prescription and nonprescription medications, bandages, gauze,
22 isopropyl alcohol and antibacterial products.

23 (g) "Repair or reconstruction services" means any services
24 performed by any person for repairs to residential, commercial
25 or public property of any type that is damaged as a result of a
26 disaster.

27 (h) "Gasoline" means any fuel used to power any motor
28 vehicle or power tool.

29 (i) "Transportation, freight and storage services" means any
30 service that is performed by any company that contracts to
31 move, store or transport personal or business property or rents
32 equipment or storage space for those purposes.

33 (j) "Housing" means any rental housing leased on a
34 month-to-month term or the sale of manufactured homes, as
35 that term is defined in section two, article nine, chapter twenty-
36 one of this code.

37 (k) "State of emergency" means the situation existing after
38 the occurrence of a disaster in which a state of emergency has
39 been declared by the governor or by the Legislature pursuant to
40 the provisions of section six, article five, chapter fifteen of this
41 code, or in which a major disaster declaration or emergency
42 declaration has been issued by the president of the United
43 States.

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

1 (a) Upon the declaration of a state of emergency, and
2 continuing for the existence of the state of emergency or for
3 thirty days following the declaration, whichever period is
4 longer, it is unlawful for any person, contractor, business, or
5 other entity to sell or offer to sell to any person in the area
6 subject to the declaration any consumer food items, essential
7 consumer items, goods used for emergency cleanup, emergency
8 supplies, medical supplies, home heating oil, building materials,
9 housing, transportation, freight and storage services, or gasoline
10 or other motor fuels for a price greater than ten percent above
11 the price charged by that person for those goods or services on
12 the tenth day immediately preceding the declaration of emer-
13 gency, unless the increase in price was directly attributable to
14 additional costs imposed on the seller by the supplier of the
15 goods or directly attributable to additional costs for labor or
16 materials used to provide the services: *Provided*, That in those
17 situations where the increase in price is attributable to addi-
18 tional costs imposed by the seller's supplier or additional costs
19 of providing the good or service during the state of emergency,
20 the price is no greater than ten percent above the total of the
21 cost to the seller plus the markup customarily applied by the
22 seller for that good or service in the usual course of business on
23 the tenth day immediately preceding the declaration.

24 (b) Upon the declaration of a state of emergency, and for a
25 period of one hundred eighty days following that declaration, it

26 is unlawful for any contractor to sell or offer to sell any repair
27 or reconstruction services or any services used in emergency
28 cleanup in the area subject to the declaration for a price greater
29 than ten percent above the price charged by that person for
30 those services on the tenth day immediately preceding the
31 declaration, unless the increase in price was directly attributable
32 to additional costs imposed on it by the supplier of the goods or
33 directly attributable to additional costs for labor or materials
34 used to provide the services: *Provided*, That in those situations
35 where the increase in price is attributable to the additional costs
36 imposed by the contractor's supplier or additional costs of
37 providing the service, the price is no greater than ten percent
38 above the total of the cost to the contractor plus the markup
39 customarily applied by the contractor for that good or service
40 in the usual course of business on the tenth day immediately
41 preceding to the declaration of the state of emergency.

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

47 (d) The price restrictions imposed by this article may be
48 limited or terminated by proclamation of the governor.

§46A-6J-4. Notification by the secretary of state; registry.

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

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

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

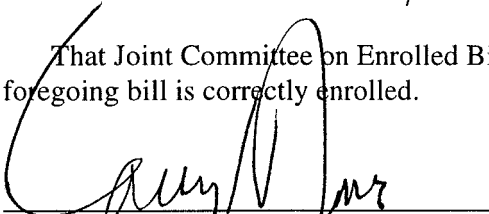
5 (b) Any person violating the provisions of this article is
6 guilty of a misdemeanor and, upon conviction thereof, shall be
7 fined not more than one thousand dollars, or confined in the
8 county or regional jail not more that one year, or both.

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

§46A-6J-6. Preemption.

1 Nothing in this section preempts any local ordinance
2 prohibiting the same or similar conduct or imposing a more
3 severe penalty for the same conduct prohibited in this section.


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

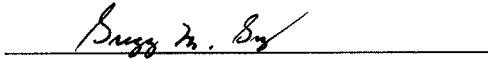

Chairman Senate Committee


Chairman House Committee

Originating in the House.

In effect ninety days from passage.

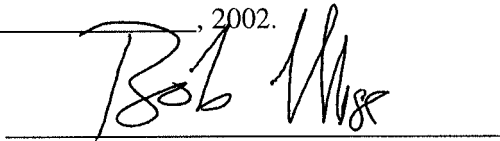

Clerk of the Senate


Clerk of the House of Delegates


President of the Senate


Speaker of the House of Delegates

The within is appeal this the 18th
day of March, 2002.


Governor

PRESENTED TO THE

GOVERNOR

Date 3/12/02

Time 3:30 pm