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
ENROLLED

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.


The Legislature hereby finds that during emergencies and major disasters, including, but not limited to, tornadoes, earthquakes, fires, floods, storms or civil disturbances, 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 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 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.


(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, or 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) “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.

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

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

(g) “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.

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

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

(j) “Housing” means any rental housing leased on a month-to-month term or the sale of manufactured homes, as that term is defined in section two, article nine, chapter twenty-one of this code.
(k) "State of emergency" means the situation existing after the occurrence of a disaster in which a state of emergency has been declared by the governor or by the Legislature pursuant to the provisions of section six, article five, chapter fifteen of this code, or in which a major disaster declaration or emergency declaration has been issued by the president of the United States.


(a) Upon the declaration of a state of emergency, and continuing for the existence of the state of emergency or for thirty 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 ten percent above the price charged by that person for those goods or services on the tenth day immediately preceding the declaration of emergency, unless the increase in price was 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, the price is no greater than ten 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 tenth day immediately preceding the declaration.

(b) Upon the declaration of a state of emergency, and for a period of one hundred eighty 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 ten percent above the price charged by that person for
those services on the tenth 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 ten 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 tenth day immediately
preceding to the declaration of the state of emergency.

(c) Any business offering an item for sale at a reduced price
ten days immediately prior to the declaration of the state of
emergency 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) The price restrictions imposed by this article may be
limited or terminated by proclamation of the governor.

§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 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.
§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 one thousand dollars, or confined in the county or regional jail not more that 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.


Nothing in this section preempts any local ordinance prohibiting the same or similar conduct or imposing a more 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 approved this the 18th
day of March, 2002.

Governor