WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2011

ENROLLED

Senate Bill No. 192

(By Senators Jenkins, Kessler (Acting President), Barnes, Browning, Palumbo, Stollings, Williams, Yost, Unger, Foster, Plymale, Minard and Klempa)

[Passed March 12, 2011; in effect ninety days from passage.]
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(BY SENATORS JENKINS, KESSLER (ACTING PRESIDENT), BARNES, BROWNING, PALUMBO, STOLLINGS, WILLIAMS, YOST, UNGER, FOSTER, PLYMALE, MINARD AND KLEMPA)

[Passed March 12, 2011; in effect ninety days from passage.]

AN ACT to amend and reenact §46A-6J-2, §46A-6J-3 and §46A-6J-6 of the Code of West Virginia, 1931, as amended, all relating to protection of consumers from price gouging and unfair pricing practices; the sale of gasoline or other motor fuels during a "state of emergency"; amending definition of "state of emergency"; creating an alternative pricing formula for fuel suppliers; and updating the preemption provisions.

Be it enacted by the Legislature of West Virginia:

That §46A-6J-2, §46A-6J-3 and §46A-6J-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:

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


1 (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) "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 section two, article nine, chapter twenty-one of this code.

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

(i) "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.

(j) "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 pursuant to the provisions of 42 U.S.C. §5122.

(k) "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.


(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 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, 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: Provided, however, That where a supplier of gasoline or other motor fuels cannot determine their daily costs, the supplier may sell gasoline or other motor fuels to distributors 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, 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.


This article preempts any local ordinance prohibiting the same or similar conduct.
The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman Senate Committee

Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

Clerk of the Senate

Clerk of the House of Delegates

Acting President of the Senate

Speaker of the House of Delegates

The within ................................ this the ................................ Day of .................................................., 2011.

Governor
PRESENTED TO THE GOVERNOR

MAR 28 2011

Time: 3:32 PM