

HB 4147

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OFFICE WEST VIRGINIA
SECRETARY OF STATE

WEST VIRGINIA LEGISLATURE
SECOND REGULAR SESSION, 2014



ENROLLED

COMMITTEE SUBSTITUTE
FOR

House Bill No. 4147

(By Mr. Speaker, (Mr. Miley)
and Delegate Armstead)
(By Request of the Executive)



Passed March 8, 2014

In effect from its passage.

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H. B. 4147

(BY MR. SPEAKER, (MR. MILEY)
AND DELEGATE ARMSTEAD)

[By Request of the Executive]

[Passed March 8, 2014; in effect from its passage.]

AN ACT to amend and reenact §15-5-1 and §15-5-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §46A-6J-1, §46A-6J-2, §46A-6J-3 and §46A-6J-4 of said code, all relating to emergency preparedness; revising the policy statement for the Division of Homeland Security and Emergency Management; authorizing the Governor or the Legislature to declare a state of preparedness; limiting a state of preparedness to thirty days; identifying conditions that permit a declaration of a state of

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preparedness; adding the term “state of preparedness” to where “state of emergency” is referred throughout the code; providing that a state of preparedness has the same effect as a state of emergency for the purposes of the Emergency Management Assistance Compact and the Statewide Mutual Aid System; revising the definition of “state of emergency” in the West Virginia Consumer Protection Act; defining “state of preparedness” and “large-scale threat” in the West Virginia Consumer Protection Act; requiring the Governor to specifically list items or services subject to unfair pricing provisions in a proclamation declaring a state of preparedness; requiring notification of a state of preparedness by the Secretary of State; and making other technical and stylistic revisions.

Be it enacted by the Legislature of West Virginia:

That §15-5-1 and §15-5-6 of the Code of West Virginia, 1931, as amended, be amended and reenacted; and that §46A-6J-1, §46A-6J-2, §46A-6J-3 and §46A-6J-4 of said code be amended and reenacted, all to read as follows:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.

§15-5-1. Policy and purpose.

1 In view of the existing and increasing possibility of the
2 occurrence of disasters of unprecedented size and destructive-
3 ness and large-scale threats, resulting from terrorism, enemy
4 attack, sabotage or other hostile action, or from fire, flood,
5 earthquakes or other natural or man-made causes and in order to
6 insure that preparations of this state will be adequate to deal with
7 the disasters and large-scale threats, and generally to provide for
8 the common defense and to protect the public peace, health and
9 safety and to preserve the lives and property of the people of the
10 state, it is found and declared to be necessary: (1) To create the

11 Division of Homeland Security and Emergency Management
12 and to authorize the creation of local and regional organizations
13 for emergency services in the political subdivisions of the state;
14 (2) to confer upon the Governor and upon the executive heads of
15 governing bodies of the political subdivisions of the state the
16 emergency powers provided herein; (3) to provide for the
17 rendering of mutual aid among the political subdivisions of the
18 state and with other states and to cooperate with the federal
19 government with respect to the carrying out of emergency
20 services and homeland security functions; and (4) to establish
21 and implement comprehensive homeland security and emer-
22 gency management plans to deal with such disasters and large-
23 scale threats. It is further declared to be the purpose of this
24 article and the policy of the state that all homeland security and
25 emergency management funds and functions of this state be
26 coordinated to the maximum extent with the Secretary of the
27 Department of Military Affairs and Public Safety and with the
28 comparable functions of the federal government including its
29 various departments and agencies, of other states and localities
30 and of private agencies of every type, so that the most effective
31 preparation and use may be made of the nation's and this state's
32 manpower, resources and facilities for dealing with any disaster
33 or large-scale threat that may occur.

§15-5-6. Emergency powers of Governor.

1 (a) The provisions of this section are operative only during
2 the existence of a state of emergency or state of preparedness.
3 The existence of a state of emergency or state of preparedness
4 may be proclaimed by the Governor or by concurrent resolution
5 of the Legislature if the Governor in the proclamation, or the
6 Legislature in the resolution, finds that an attack upon the United
7 States has occurred or is anticipated in the immediate future, or
8 that a natural or man-made disaster of major proportions has
9 actually occurred or is imminent within the state, or that an
10 emergency exists or may be imminent due to a large-scale threat
11 beyond local control, and that the safety and welfare of the

12 inhabitants of this state require an invocation of the provisions
13 of this section.

14 (b) Any state of emergency or state of preparedness, whether
15 proclaimed by the Governor or by the Legislature, terminates
16 upon the proclamation of the termination by the Governor, or the
17 passage by the Legislature of a concurrent resolution terminating
18 the state of emergency or state of preparedness: *Provided*, That
19 in no case shall a state of preparedness last longer than thirty
20 days.

21 (c) So long as a state of emergency or state of preparedness
22 exists, the Governor has and may exercise the following addi-
23 tional emergency powers:

24 (1) To enforce all laws and rules relating to the provision of
25 emergency services and to assume direct operational control of
26 any or all emergency service forces and helpers in the state;

27 (2) To sell, lend, lease, give, transfer or deliver materials or
28 perform functions relating to emergency services on terms and
29 conditions he or she prescribes and without regard to the
30 limitations of any existing law and to account to the State
31 Treasurer for any funds received for the property;

32 (3) To procure materials and facilities for emergency
33 services by purchase, condemnation under the provisions of
34 chapter fifty-four of this code or seizure pending institution of
35 condemnation proceedings within thirty days from the seizing
36 thereof and to construct, lease, transport, store, maintain,
37 renovate or distribute the materials and facilities. Compensation
38 for property so procured shall be made in the manner provided
39 in chapter fifty-four of this code;

40 (4) To obtain the services of necessary personnel, required
41 during the emergency, and to compensate them for their services
42 from his or her contingent funds or other funds available to him
43 or her;

44 (5) To provide and compel the evacuation of all or part of
45 the population from any stricken or threatened area within the
46 state and to take steps that are necessary for the receipt and care
47 of the evacuees;

48 (6) To control ingress and egress to and from a disaster area
49 or an area where large-scale threat exists, the movement of
50 persons within the area and the occupancy of premises therein;

51 (7) To suspend the provisions of any regulatory statute
52 prescribing the procedures for conduct of state business or the
53 orders, rules of any state agency, if strict compliance therewith
54 would in any way prevent, hinder or delay necessary action in
55 coping with the emergency;

56 (8) To use available resources of the state and of its political
57 subdivisions that are reasonably necessary to cope with the
58 emergency;

59 (9) To suspend or limit the sale, dispensing or transportation
60 of alcoholic beverages, explosives and combustibles;

61 (10) To make provision for the availability and use of
62 temporary emergency housing; and

63 (11) To perform and exercise other functions, powers and
64 duties that are necessary to promote and secure the safety and
65 protection of the civilian population.

66 (d) The declaration of a state of preparedness has the same
67 effect as a declaration of a state of emergency for the purposes
68 of the Emergency Management Assistance Compact established
69 in section twenty-two of this article and the Statewide Mutual
70 Aid Systems set forth in section twenty-eight of this article.

71 (e) The powers granted under this section do not authorize
72 any action that would violate the prohibitions of section nine-
73 teen-a of this article.

**CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT
AND PROTECTION ACT.**

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

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

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

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

20 (f) "Gasoline" means any fuel used to power any motor
21 vehicle or power tool.

22 (g) "Housing" means any rental housing leased on a
23 month-to-month term or the sale of manufactured homes, as that
24 term is defined in section two, article nine, chapter twenty-one
25 of this code.

26 (h) "Large-scale threat" means circumstances which present
27 a reasonable probability that necessary services or public order
28 would be disrupted and effect a significant number of people
29 from either natural or man-made causes.

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

33 (j) "Repair or reconstruction services" means any services
34 performed by any person for repairs to residential, commercial
35 or public property of any type that is damaged as a result of a
36 disaster.

37 (k) "State of emergency" means the situation existing during
38 or after the occurrence of a disaster or large-scale threat in which
39 a state of emergency has been declared by the Governor or by
40 the Legislature pursuant to the provisions of section six, article
41 five, chapter fifteen of this code or in which a major disaster
42 declaration or emergency declaration has been issued by the
43 president of the United States pursuant to the provisions of 42 U.
44 S. C. § 5122.

45 (l) "State of preparedness" means the situation existing
46 before a disaster or large-scale threat in which a state of pre-
47 paredness has been declared by the Governor or by the Legisla-
48 ture pursuant to the provisions of section six, article five, chapter
49 fifteen of this code.

50 (m) "Transportation, freight and storage services" means any
51 service that is performed by any company that contracts to move,
52 store or transport personal or business property or rents equip-
53 ment or storage space for those purposes.

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

1 (a) Upon the declaration of a state of emergency or state of
2 preparedness, and continuing for the existence of the state of
3 emergency or state of preparedness or for thirty days following
4 the declaration, whichever period is longer, it is unlawful for any
5 person, contractor, business, or other entity to sell or offer to sell
6 to any person in the area subject to the declaration any consumer
7 food items, essential consumer items, goods used for emergency
8 cleanup, emergency supplies, medical supplies, home heating
9 oil, building materials, housing, transportation, freight and
10 storage services, or gasoline or other motor fuels for a price
11 greater than ten percent above the price charged by that person
12 for those goods or services on the tenth day immediately
13 preceding the declaration of emergency state of preparedness,
14 unless the increase in price is directly attributable to additional
15 costs imposed on the seller by the supplier of the goods or

16 directly attributable to additional costs for labor or materials
17 used to provide the services: *Provided*, That in those situations
18 where the increase in price is attributable to additional costs
19 imposed by the seller's supplier or additional costs of providing
20 the good or service during the state of emergency or state of
21 preparedness, the price is no greater than ten percent above the
22 total of the cost to the seller plus the markup customarily applied
23 by the seller for that good or service in the usual course of
24 business on the tenth day immediately preceding the declaration:
25 *Provided, however*, That where a supplier of gasoline or other
26 motor fuels cannot determine their daily costs, the supplier may
27 sell gasoline or other motor fuels to distributors on any day at a
28 rate not to exceed the average of the Oil Price Information
29 Service's average wholesale rack price for that product at the
30 Montvale/Roanoke, Virginia, Fairfax, Virginia and Pittsburgh,
31 Pennsylvania wholesale racks for the previous day.

32 (b) Upon the declaration of a state of emergency or state of
33 preparedness, and for a period of one hundred eighty days
34 following that declaration, it is unlawful for any contractor to
35 sell or offer to sell any repair or reconstruction services or any
36 services used in emergency cleanup in the area subject to the
37 declaration for a price greater than ten percent above the price
38 charged by that person for those services on the tenth day
39 immediately preceding the declaration, unless the increase in
40 price was directly attributable to additional costs imposed on it
41 by the supplier of the goods or directly attributable to additional
42 costs for labor or materials used to provide the services: *Pro-*
43 *vided*, That in those situations where the increase in price is
44 attributable to the additional costs imposed by the contractor's
45 supplier or additional costs of providing the service, the price is
46 no greater than ten percent above the total of the cost to the
47 contractor plus the markup customarily applied by the contractor
48 for that good or service in the usual course of business on the
49 tenth day immediately preceding to the declaration of the state
50 of emergency state of preparedness.

51 (c) Any business offering an item for sale at a reduced price
52 ten days immediately prior to the declaration of the state of
53 emergency or state of preparedness may use the price at which
54 it usually sells the item to calculate the price pursuant to
55 subsection (a) or (b) of this section.

56 (d) Whenever the Governor declares a state of preparedness,
57 the provisions of this article shall only apply to those items or
58 services specifically set forth in the proclamation.

59 (e) The price restrictions imposed by this article may be
60 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 or state of preparedness has been declared and that
5 the provisions of this article are in effect. The rules promulgated
6 pursuant to the authority conferred by this section may include
7 a requirement of the payment of fees for registration.

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

Danny Wells
Chairman, House Committee

Rocky Fitzsimmons
~~Member~~ Chairman, Senate Committee

Originating in the House.

In effect from its passage.

Suzanne M. Snow
Clerk of the House of Delegates

Joseph M. Minard
Clerk of the Senate

[Signature]
Speaker of the House of Delegates

[Signature]
President of the Senate

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SECRETARY OF STATE

FILED

The within *is approved* this the *21st*
day of *March*, 2014.

Earl Ray Tomblin
Governor

PRESENTED TO THE GOVERNOR

MAR 20 2014

Time 11:00 am