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.
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
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 prepared-
ness" 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
Division of Homeland Security and Emergency Management
and to authorize the creation of local and regional organizations
for emergency services in the political subdivisions of the state;
(2) to confer upon the Governor and upon the executive heads of
governing bodies of the political subdivisions of the state the
emergency powers provided herein; (3) to provide for the
rendering of mutual aid among the political subdivisions of the
state and with other states and to cooperate with the federal
government with respect to the carrying out of emergency
services and homeland security functions; and (4) to establish
and implement comprehensive homeland security and emerg-
ency management plans to deal with such disasters and large-
scale threats. It is further declared to be the purpose of this
article and the policy of the state that all homeland security and
emergency management funds and functions of this state be
coordinated to the maximum extent with the Secretary of the
Department of Military Affairs and Public Safety and with the
comparable functions of the federal government including its
various departments and agencies, of other states and localities
and of private agencies of every type, so that the most effective
preparation and use may be made of the nation’s and this state’s
manpower, resources and facilities for dealing with any disaster
or large-scale threat that may occur.


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

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

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

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

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

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

(4) To obtain the services of necessary personnel, required
during the emergency, and to compensate them for their services
from his or her contingent funds or other funds available to him
or her;
(5) To provide and compel the evacuation of all or part of
the population from any stricken or threatened area within the
state and to take steps that are necessary for the receipt and care
of the evacuees;

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

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

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

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

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

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

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

(e) The powers granted under this section do not authorize
any action that would violate the prohibitions of section nine-
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.


The Legislature finds that during emergencies and major disasters, including, but not limited to, tornadoes, earthquakes, fires, floods, storms or civil disturbances or where a large-scale threat exists, 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 or state of preparedness 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 or state of preparedness 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) "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) "Large-scale threat" means circumstances which present a reasonable probability that necessary services or public order would be disrupted and effect a significant number of people from either natural or man-made causes.

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

(j) "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.
(k) "State of emergency" means the situation existing during or after the occurrence of a disaster or large-scale threat 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.

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

(m) "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 or state of preparedness, and continuing for the existence of the state of emergency or state of preparedness 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 state of preparedness, 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 or state of preparedness, 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 or state of preparedness, 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 state of preparedness.
(c) Any business offering an item for sale at a reduced price ten days immediately prior to the declaration of the state of emergency or state of preparedness 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) Whenever the Governor declares a state of preparedness, the provisions of this article shall only apply to those items or services specifically set forth in the proclamation.

(e) 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 or state of preparedness 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.
That Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, House Committee

Originating in the House.
In effect from its passage.

Clerk of the House of Delegates

Clerk of the Senate

Speaker of the House of Delegates

President of the Senate

The within is approved this the 26th day of March, 2014.

Governor