

H. B. 2537

(By Delegates Fleischauer, Miley, Ellem, Hunt,
Michael, Overington and Skaff)

[Introduced January 18, 2011; referred to the
Committee on the Judiciary then Finance.]

**Interim
Bill**

A BILL 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 sales 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.**

§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) "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,~~
19 ~~generators, heaters and temporary shelters.~~

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

24 ~~(f) "Medical supplies" includes, but is not limited to,~~

1 ~~prescription and nonprescription medications, bandages, gauze,~~
2 ~~isopropyl alcohol and antibacterial products. "Gasoline" means any~~
3 ~~fuel used to power any motor vehicle or power tool.~~

4 (g) ~~"Repair or reconstruction services" means any services~~
5 ~~performed by any person for repairs to residential, commercial or~~
6 ~~public property of any type that is damaged as a result of a~~
7 ~~disaster. "Housing" means any rental housing leased on a~~
8 ~~month-to-month term or the sale of manufactured homes, as that term~~
9 ~~is defined in section two, article nine, chapter twenty-one of this~~
10 ~~code.~~

11 (h) ~~"Gasoline" means any fuel used to power any motor vehicle~~
12 ~~or power tool. "Medical supplies" includes, but is not limited to,~~
13 ~~prescription and nonprescription medications, bandages, gauze,~~
14 ~~isopropyl alcohol and antibacterial products.~~

15 (i) ~~"Transportation, freight and storage services" means any~~
16 ~~service that is performed by any company that contracts to move,~~
17 ~~store or transport personal or business property or rents equipment~~
18 ~~or storage space for those purposes. "Repair or reconstruction~~
19 ~~services" means any services performed by any person for repairs to~~
20 ~~residential, commercial or public property of any type that is~~
21 ~~damaged as a result of a disaster.~~

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

1 ~~code.~~ "State of emergency" means the situation existing after the
2 occurrence of a disaster in which a state of emergency has been
3 declared by the Governor or by the Legislature pursuant to the
4 provisions of section six, article five, chapter fifteen of this
5 code or in which a major disaster declaration or emergency
6 declaration has been issued by the president of the United States
7 pursuant to the provisions of 42 U.S.C. §5122.

8 (k) ~~"State of emergency" means the situation existing after~~
9 ~~the occurrence of a disaster in which a state of emergency has been~~
10 ~~declared by the Governor or by the Legislature pursuant to the~~
11 ~~provisions of section six, article five, chapter fifteen of this~~
12 ~~code or in which a major disaster declaration or emergency~~
13 ~~declaration has been issued by the president of the United States.~~

14 "Transportation, freight and storage services" means any service
15 that is performed by any company that contracts to move, store or
16 transport personal or business property or rents equipment or
17 storage space for those purposes.

18 **§46A-6J-3. Prohibited unfair pricing practices.**

19 (a) Upon the declaration of a state of emergency and
20 continuing for the existence of the state of emergency or for
21 thirty days following the declaration, whichever period is longer,
22 it is unlawful for any person, contractor, business, or other
23 entity to sell or offer to sell to any person in the area subject
24 to the declaration any consumer food items, essential consumer

1 items, goods used for emergency cleanup, emergency supplies,
2 medical supplies, home heating oil, building materials, housing,
3 transportation, freight and storage services, or gasoline or other
4 motor fuels for a price greater than ten percent above the price
5 charged by that person for those goods or services on the tenth day
6 immediately preceding the declaration of emergency, unless the
7 increase in price ~~was~~ is directly attributable to additional costs
8 imposed on the seller by the supplier of the goods or directly
9 attributable to additional costs for labor or materials used to
10 provide the services: *Provided*, That in those situations where the
11 increase in price is attributable to additional costs imposed by
12 the seller's supplier or additional costs of providing the good or
13 service during the state of emergency, the price is no greater than
14 ten percent above the total of the cost to the seller plus the
15 markup customarily applied by the seller for that good or service
16 in the usual course of business on the tenth day immediately
17 preceding the declaration: *Provided, however, That where a*
18 *supplier of gasoline or other motor fuels cannot determine their*
19 *daily costs, the supplier may sell gasoline or other motor fuels to*
20 *distributers on any day at a rate not to exceed the average of the*
21 *Oil Price Information Service's average wholesale rack price for*
22 *that product at the Montvale/Roanoke, Virginia, Fairfax, Virginia*
23 *and Pittsburgh, Pennsylvania wholesale racks for the previous day.*

24 (b) Upon the declaration of a state of emergency, and for a

1 period of one hundred eighty days following that declaration, it is
2 unlawful for any contractor to sell or offer to sell any repair or
3 reconstruction services or any services used in emergency cleanup
4 in the area subject to the declaration for a price greater than ten
5 percent above the price charged by that person for those services
6 on the tenth day immediately preceding the declaration, unless the
7 increase in price was directly attributable to additional costs
8 imposed on it by the supplier of the goods or directly attributable
9 to additional costs for labor or materials used to provide the
10 services: *Provided*, That in those situations where the increase in
11 price is attributable to the additional costs imposed by the
12 contractor's supplier or additional costs of providing the service,
13 the price is no greater than ten percent above the total of the
14 cost to the contractor plus the markup customarily applied by the
15 contractor for that good or service in the usual course of business
16 on the tenth day immediately preceding to the declaration of the
17 state of emergency.

18 (c) Any business offering an item for sale at a reduced price
19 ten days immediately prior to the declaration of the state of
20 emergency may use the price at which it usually sells the item to
21 calculate the price pursuant to subsection (a) or (b) of this
22 section.

23 (d) The price restrictions imposed by this article may be
24 limited or terminated by proclamation of the Governor.

1 **§46A-6J-6. Preemption.**

2 ~~Nothing in this section preempts any local ordinance~~
3 ~~prohibiting the same or similar conduct or imposing a more severe~~
4 ~~penalty for the same conduct prohibited in this section. This~~
5 ~~article preempts any local ordinance prohibiting the same or~~
6 ~~similar conduct.~~

NOTE: The bill includes a special rule permitting suppliers of gasoline or other motor fuels to sell product to distributors at a price 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 during a state of emergency.

Strike-throughs indicate language that would be stricken from the present law, and underscoring indicates new language that would be added.

This bill was recommended for introduction and passage during the Regular Session of the Legislature by the Joint Committee on the Judiciary.