

# Senate Bill No. 192

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

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

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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 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.**

**§46A-6J-2. Definitions.**

1 (a) “Building materials” means lumber, construction tools,  
2 windows and any other item used in the building or rebuild-  
3 ing of 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  
8 property resulting from any natural or man-made cause,  
9 including fire, flood, earthquake, wind, snow, storm, chemi-  
10 cal or oil spill or other water or soil contamination, epidemic,  
11 air contamination, blight, drought, infestation or other  
12 public calamity requiring 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, clean-~~  
16 ~~ing 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, clean-  
23 ing supplies and toiletries.

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

27 “Gasoline” means any fuel used to power any motor vehicle  
28 or power tool.

29 ~~(g) “Repair or reconstruction services” means any services~~  
30 ~~performed by any person for repairs to residential, commer-~~  
31 ~~cial or public property of any type that is damaged as a~~  
32 ~~result of a disaster. “Housing” means any rental housing~~  
33 leased on a month-to-month term or the sale of manufac-  
34 tured homes, as that term is defined in section two, article  
35 nine, chapter twenty-one of this code.

36 ~~(h) “Gasoline” means any fuel used to power any motor~~  
37 ~~vehicle or power tool. “Medical supplies” includes, but is~~  
38 not limited to, prescription and nonprescription medications,  
39 bandages, gauze, isopropyl alcohol and antibacterial prod-  
40 ucts.

41 (i) ~~“Transportation, freight and storage services” means~~  
42 ~~any service that is performed by any company that contracts~~  
43 ~~to move, store or transport personal or business property or~~  
44 ~~rents equipment or storage space for those purposes. “Repair~~  
45 ~~or reconstruction services” means any services performed by~~  
46 ~~any person for repairs to residential, commercial or public~~  
47 ~~property of any type that is damaged as a result of a disaster.~~

48 (j) ~~“Housing” means any rental housing leased on a~~  
49 ~~month-to-month term or the sale of manufactured homes, as~~  
50 ~~that term is defined in section two, article nine, chapter~~  
51 ~~twenty-one of this code. “State of emergency” means the~~  
52 ~~situation existing after the occurrence of a disaster in which~~  
53 ~~a state of emergency has been declared by the Governor or~~  
54 ~~by the Legislature pursuant to the provisions of section six,~~  
55 ~~article five, chapter fifteen of this code or in which a major~~  
56 ~~disaster declaration or emergency declaration has been~~  
57 ~~issued by the president of the United States pursuant to the~~  
58 ~~provisions of 42 U.S.C. §5122.~~

59 (k) ~~“State of emergency” means the situation existing after~~  
60 ~~the occurrence of a disaster in which a state of emergency~~  
61 ~~has been declared by the Governor or by the Legislature~~  
62 ~~pursuant to the provisions of section six, article five, chapter~~

63 ~~fifteen of this code or in which a major disaster declaration~~  
64 ~~or emergency declaration has been issued by the president of~~  
65 ~~the United States.~~ “Transportation, freight and storage  
66 services” means any service that is performed by any  
67 company that contracts to move, store or transport personal  
68 or business property or rents equipment or storage space for  
69 those purposes.

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

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

15 the seller by the supplier of the goods or directly attributable  
16 to additional costs for labor or materials used to provide the  
17 services: *Provided*, That in those situations where the  
18 increase in price is attributable to additional costs imposed  
19 by the seller's supplier or additional costs of providing the  
20 good or service during the state of emergency, the price is no  
21 greater than ten percent above the total of the cost to the  
22 seller plus the markup customarily applied by the seller for  
23 that good or service in the usual course of business on the  
24 tenth day immediately preceding the declaration: *Provided*,  
25 *however*, That where a supplier of gasoline or other motor  
26 fuels cannot determine their daily costs, the supplier may sell  
27 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 Pitts-  
31 burgh, Pennsylvania wholesale racks for the previous day.

32 (b) Upon the declaration of a state of emergency, and for a  
33 period of one hundred eighty days following that declaration,  
34 it is unlawful for any contractor to sell or offer to sell any  
35 repair or reconstruction services or any services used in  
36 emergency cleanup in the area subject to the declaration for

37 a price greater than ten percent above the price charged by  
38 that person for those services on the tenth day immediately  
39 preceding the declaration, unless the increase in price was  
40 directly attributable to additional costs imposed on it by the  
41 supplier of the goods or directly attributable to additional  
42 costs for labor or materials used to provide the services:  
43 *Provided*, That in those situations where the increase in  
44 price is attributable to the additional costs imposed by the  
45 contractor's supplier or additional costs of providing the  
46 service, the price is no greater than ten percent above the  
47 total of the cost to the contractor plus the markup custom-  
48 arily applied by the contractor for that good or service in the  
49 usual course of business on the tenth day immediately  
50 preceding to the declaration of the state of emergency.

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 may use the price at which it usually sells the  
54 item to calculate the price pursuant to subsection (a) or (b) of  
55 this section.

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

**§46A-6J-6. Preemption.**

- 1 This article preempts any local ordinance prohibiting the
- 2 same or similar conduct.

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(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.

Section six is completely rewritten, therefore strike-through and underlining have been omitted.

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