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WEST VIRGINIA LEGISLATURE
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REGULAR SESSION, 2011

SECRETARY OF STATE

SB/192



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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[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.**

§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) "Emergency supplies" includes, but is not limited to,
14 water, flashlights, radios, batteries, candles, blankets,
15 generators, 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, clean-
19 ing 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
24 that term is defined in section two, article nine, chapter
25 twenty-one of this code.

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

29 (i) "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.

33 (j) "State of emergency" means the situation existing after
34 the occurrence of a disaster in which a state of emergency
35 has been declared by the Governor or by the Legislature
36 pursuant to the provisions of section six, article five, chapter
37 fifteen of this code or in which a major disaster declaration

38 or emergency declaration has been issued by the president of
39 the United States pursuant to the provisions of 42 U.S.C.
40 §5122.

41 (k) "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.

§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 is directly attributable to additional costs imposed on the
15 seller by the supplier of the goods or directly attributable to
16 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.

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

[Handwritten Signature]

.....
Chairman Senate Committee

[Handwritten Signature]

.....
Chairman House Committee

Originated in the Senate.

In effect ninety days from passage.

[Handwritten Signature]

.....
Clerk of the Senate

[Handwritten Signature]

.....
Clerk of the House of Delegates

[Handwritten Signature]

.....
Acting President of the Senate

[Handwritten Signature]

.....
Speaker of the House of Delegates

SECRETARY OF STATE
OFFICE

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The within *is approved* this the *4th*

Day of *April*, 2011.

[Handwritten Signature]
.....
Governor

PRESENTED TO THE GOVERNOR

MAR 28 2011

Time 3:33 pm