

WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

Committee Substitute

for

Senate Bill 208

SENATOR TARR, *original sponsor*

[Originating in the Committee on the Judiciary;

reported on February 5, 2020]

1 A BILL to amend and reenact §46A-6J-2 and §46A-6J-3 of the Code of West Virginia, 1931, as
2 amended, all relating to the protection of consumers from price gouging and unfair pricing
3 practices during and shortly after a state of emergency; amending definition of “state of
4 emergency”; and authorizing the Governor to periodically review the scope and the time
5 period for which prices for certain goods may not be changed following a state of
6 emergency.

Be it enacted by the Legislature of West Virginia:

**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, windows, and any other item
2 used in the building or rebuilding of property.

3 (b) “Consumer food item” means any article that is used or intended for use for food or
4 drink by a person or animal.

5 (c) “Disaster” means the occurrence or imminent threat of widespread or severe damage,
6 injury, loss of life, or property resulting from any natural or man-made cause, including fire, flood,
7 earthquake, wind, snow, storm, chemical or oil spill, or other water or soil contamination,
8 epidemic, air contamination, blight, drought, infestation, or other public calamity requiring
9 emergency action.

10 (d) “Emergency supplies” includes, but is not limited to, water, flashlights, radios, batteries,
11 candles, blankets, generators, heaters, and temporary shelters.

12 (e) “Essential consumer item” means any article that is necessary to the health, safety,
13 and welfare of consumers, including, but not limited to, clothing, diapers, soap, cleaning supplies,
14 and toiletries.

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

16 (g) "Housing" means any rental housing leased on a month-to-month term or the sale of
17 manufactured homes, as that term is defined in §21-9-2 of this code.

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

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

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

26 (k) "State of emergency" means the situation existing during or after the occurrence of a
27 disaster or large-scale threat in which a state of emergency has been declared by the Governor
28 or by the Legislature pursuant to the provisions of §15-5-6 of this code. ~~or in which a major disaster
29 declaration or emergency declaration has been issued by the president of the United States
30 pursuant to the provisions of 42 U. S. C. § 5122~~

31 (l) "State of preparedness" means the situation existing before a disaster or large-scale
32 threat in which a state of preparedness has been declared by the Governor or by the Legislature
33 pursuant to the provisions of §15-5-6 of this code.

34 (m) "Transportation, freight, and storage services" means any service that is performed by
35 any company that contracts to move, store, or transport personal or business property, or rents
36 equipment 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 preparedness, and continuing
2 for the existence of the state of emergency or state of preparedness, or for 30 days following the
3 declaration, whichever period is longer, it is unlawful for any person, contractor, business, or other

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

22 (b) Upon the declaration of a state of emergency or state of preparedness, and for a period
23 of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any
24 repair or reconstruction services or any services used in emergency cleanup in the area subject
25 to the declaration for a price greater than 10 percent above the price charged by that person for
26 those services on the 10th day immediately preceding the declaration, unless the increase in price
27 was directly attributable to additional costs imposed on it by the supplier of the goods or directly
28 attributable to additional costs for labor or materials used to provide the services: *Provided*, That
29 in those situations where the increase in price is attributable to the additional costs imposed by

30 the contractor's supplier or additional costs of providing the service, the price is no greater than
31 10 percent above the total of the cost to the contractor plus the markup customarily applied by
32 the contractor for that good or service in the usual course of business on the 10th day immediately
33 preceding to the declaration of the state of emergency or state of preparedness.

34 (c) Any business offering an item for sale at a reduced price 10 days immediately prior to
35 the declaration of the state of emergency or state of preparedness may use the price at which it
36 usually sells the item to calculate the price pursuant to subsection (a) or (b) of this section.

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

39 ~~(e) The price restrictions imposed by this article may be limited or terminated by~~
40 ~~proclamation of the Governor.~~ On the 15th day after the declaration of a state of emergency, and
41 each 15th day thereafter for so long as the state of emergency persists, the Governor shall review
42 the scope of goods to which this article applies and may issue a proclamation maintaining, limiting,
43 terminating, or extending the price restrictions imposed by this article with respect to any
44 categories of goods.

NOTE: The purpose of this bill is to modify the time period for which prices for certain goods may not be changed following a state of emergency.

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