

1 **ENROLLED**

2 **Senate Bill No. 192**

3 (BY SENATORS JENKINS, KESSLER (ACTING PRESIDENT), BARNES, BROWNING, PALUMBO,  
4 STOLLINGS, WILLIAMS, YOST, UNGER, FOSTER, PLYMALE, MINARD AND KLEMPA)

5 \_\_\_\_\_  
6 [Passed March 12, 2011; in effect ninety days from passage.]  
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9 AN ACT to amend and reenact §46A-6J-2, §46A-6J-3 and §46A-6J-6 of  
10 the Code of West Virginia, 1931, as amended, all relating to  
11 protection of consumers from price gouging and unfair pricing  
12 practices; the sale of gasoline or other motor fuels during a  
13 "state of emergency"; amending definition of "state of  
14 emergency"; creating an alternative pricing formula for fuel  
15 suppliers; and updating the preemption provisions.

16 *Be it enacted by the Legislature of West Virginia:*

17 That §46A-6J-2, §46A-6J-3 and §46A-6J-6 of the Code of West  
18 Virginia, 1931, as amended, be amended and reenacted, all to read  
19 as follows:

20 **ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING AND UNFAIR**  
21 **PRICING PRACTICES DURING AND SHORTLY AFTER A STATE**  
22 **OF EMERGENCY.**

23 **§46A-6J-2. Definitions.**

24 (a) "Building materials" means lumber, construction tools,

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

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

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

12 (d)

13 "Emergency supplies" includes, but is not limited to, water,  
14 flashlights, radios, batteries, candles, blankets, generators,  
15 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, cleaning  
19 supplies and toiletries.

20 (f) "Gasoline" means any fuel used to power any motor vehicle  
21 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 that term  
24 is defined in section two, article nine, chapter twenty-one of this  
25 code.

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

4 (i) "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.

8 (j) "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 pursuant to the provisions of 42 U.S.C. §5122.

15 (k) "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.

19 **§46A-6J-3. Prohibited unfair pricing practices.**

20 (a) Upon the declaration of a state of emergency and  
21 continuing for the existence of the state of emergency or for  
22 thirty days following the declaration, whichever period is longer,  
23 it is unlawful for any person, contractor, business, or other  
24 entity to sell or offer to sell to any person in the area subject  
25 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 five 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 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 five 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 supplier  
18 of gasoline or other motor fuels cannot determine their daily  
19 costs, the supplier may sell gasoline or other motor fuels to  
20 distributors 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  
25 period of one hundred eighty days following that declaration, it is

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

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

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

24 **§46A-6J-6. Preemption.**

25 This article preempts any local ordinance prohibiting the same

1 or similar conduct.