

1 COMMITTEE SUBSTITUTE

2 for

3 **H. B. 4147**

4
5 (By Mr. Speaker, (Mr. Miley) and Delegate Armstead)

6 [By Request of the Executive]

7 (Originating in the Committee on the Judiciary)

8 [January 30, 2014]

9
10 A BILL to amend and reenact §15-5-1 and §15-5-6 of the Code of West
11 Virginia, 1931, as amended; and to amend and reenact
12 §46A-6J-1, §46A-6J-2, §46A-6J-3 and §46A-6J-4 of said code,
13 all relating to emergency preparedness; revising the policy
14 statement for the Division of Homeland Security and Emergency
15 Management; authorizing the Governor or the Legislature to
16 declare a state of preparedness; limiting a state of
17 preparedness to thirty days; identifying conditions that
18 permit a declaration of a state of preparedness; adding the
19 term "state of preparedness" to where "state of emergency" is
20 referred throughout the code; providing that a state of
21 preparedness has the same effect as a state of emergency for
22 the purposes of the Emergency Management Assistance Compact
23 and the Statewide Mutual Aid System; revising the definition
24 of "state of emergency" in the West Virginia Consumer
25 Protection Act; defining "state of preparedness" in the West

1 Virginia Consumer Protection Act; requiring notification of a
2 state of preparedness by the Secretary of State; and making
3 other technical and stylistic revisions.

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

5 That §15-5-1 and §15-5-6 of the Code of West Virginia, 1931,
6 as amended, be amended and reenacted; and that §46A-6J-1,
7 §46A-6J-2, §46A-6J-3 and §46A-6J-4 of said code be amended and
8 reenacted, all to read as follows:

9 **CHAPTER 15. PUBLIC SAFETY.**

10 **ARTICLE 5. DIVISION OF HOMELAND SECURITY AND EMERGENCY MANAGEMENT.**

11 **§15-5-1. Policy and purpose.**

12 In view of the existing and increasing possibility of the
13 occurrence of disasters of unprecedented size and destructiveness,
14 and large-scale threats, resulting from terrorism, enemy attack,
15 sabotage or other hostile action, or from fire, flood, earthquakes
16 or other natural or man-made causes and in order to insure that
17 preparations of this state will be adequate to deal with ~~such~~ the
18 disasters, and generally to provide for the common defense and to
19 protect the public peace, health and safety and to preserve the
20 lives and property of the people of the state, it is ~~hereby~~ found
21 and declared to be necessary: (1) To create the Division of
22 Homeland Security and Emergency Management and to authorize the
23 creation of local and regional organizations for emergency services
24 in the political subdivisions of the state; (2) to confer upon the
25 Governor, and upon the executive heads of governing bodies of the

1 political subdivisions of the state the emergency powers provided
2 herein; (3) to provide for the rendering of mutual aid among the
3 political subdivisions of the state and with other states and to
4 cooperate with the federal government with respect to the carrying
5 out of emergency services and homeland security functions; ~~(4)~~ and
6 (4) to establish and implement comprehensive homeland security and
7 emergency management plans to deal with such disasters. It is
8 further declared to be the purpose of this article and the policy
9 of the state that all homeland security and emergency management
10 funds and functions of this state be coordinated to the maximum
11 extent with the Secretary of the Department of Military Affairs and
12 Public Safety and with the comparable functions of the federal
13 government including its various departments and agencies, of other
14 states and localities and of private agencies of every type, so
15 that the most effective preparation and use may be made of the
16 nation's and this state's manpower, resources and facilities for
17 dealing with any disaster that may occur.

18 **§15-5-6. Emergency powers of Governor.**

19 (a) The provisions of this section ~~shall be~~ are operative only
20 during the existence of a state of emergency or state of
21 preparedness. The existence of a state of emergency or state of
22 preparedness may be proclaimed by the Governor or by concurrent
23 resolution of the Legislature if the Governor in ~~such~~ the
24 proclamation, or the Legislature in ~~such~~ the resolution, finds that
25 an attack upon the United States has occurred or is anticipated in

1 the immediate future, or that a natural or man-made disaster of
2 major proportions has actually occurred or is imminent within the
3 state, or that an emergency exists or may be imminent due to a
4 large-scale threat beyond local control, and that the safety and
5 welfare of the inhabitants of this state require an invocation of
6 the provisions of this section.

7 (b) Any such state of emergency or state of preparedness,
8 whether proclaimed by the Governor or by the Legislature, ~~shall~~
9 ~~terminate~~ terminates upon the proclamation of the termination
10 ~~thereof~~ by the Governor, or the passage by the Legislature of a
11 concurrent resolution terminating ~~such the state of emergency or~~
12 state of preparedness: Provided, That in no case shall a state of
13 preparedness last longer than thirty days.

14 (c) So long as such a state of emergency or state of
15 preparedness exists, the Governor ~~shall have~~ has and may exercise
16 the following additional emergency powers:

17 ~~(a)~~ (1) To enforce all laws and rules relating to the
18 provision of emergency services and to assume direct operational
19 control of any or all emergency service forces and helpers in the
20 state;

21 ~~(b)~~ (2) To sell, lend, lease, give, transfer or deliver
22 materials or perform functions relating to emergency services on
23 ~~such~~ terms and conditions ~~as he or she shall prescribe~~ prescribes
24 and without regard to the limitations of any existing law and to
25 account to the State Treasurer for any funds received for ~~such the~~

1 property;

2 ~~(c)~~ (3) To procure materials and facilities for emergency
3 services by purchase, condemnation under the provisions of chapter
4 fifty-four of this code or seizure pending institution of
5 condemnation proceedings within thirty days from the seizing
6 thereof and to construct, lease, transport, store, maintain,
7 renovate or distribute ~~such~~ the materials and facilities.
8 Compensation for property so procured shall be made in the manner
9 provided in chapter fifty-four of this code;

10 ~~(d)~~ (4) To obtain the services of necessary personnel,
11 required during the emergency, and to compensate them for their
12 services from his or her contingent funds or ~~such~~ other funds ~~as~~
13 ~~may be~~ available to him or her;

14 ~~(e)~~ (5) To provide and compel the evacuation of all or part of
15 the population from any stricken or threatened area within the
16 state and to take ~~such~~ steps ~~as~~ that are necessary for the receipt
17 and care of ~~such~~ the evacuees;

18 ~~(f)~~ (6) To control ingress and egress to and from a disaster
19 area, the movement of persons within the area and the occupancy of
20 premises therein;

21 ~~(g)~~ (7) To suspend the provisions of any regulatory statute
22 prescribing the procedures for conduct of state business or the
23 orders, rules ~~or regulations~~ of any state agency, if strict
24 compliance therewith would in any way prevent, hinder or delay
25 necessary action in coping with the emergency;

1 ~~(h)~~ (8) To ~~utilize such~~ use available resources of the state
2 and of its political subdivisions ~~as~~ that are reasonably necessary
3 to cope with the emergency;

4 ~~(i)~~ (9) To suspend or limit the sale, dispensing or
5 transportation of alcoholic beverages, explosives and combustibles;

6 ~~(j)~~ (10) To make provision for the availability and use of
7 temporary emergency housing; and

8 ~~(k)~~ (11) To perform and exercise ~~such~~ other functions, powers
9 and duties ~~as~~ that are necessary to promote and secure the safety
10 and protection of the civilian population.

11 (d) A declaration of a state of preparedness has the same
12 effect as a declaration of a state of emergency for the purposes of
13 the Emergency Management Assistance Compact established in section
14 twenty-two of this article and the Statewide Mutual Aid Systems set
15 forth in section twenty-eight of this article.

16 (e) ~~No~~ The powers granted under this section ~~may be~~
17 ~~interpreted to~~ do not authorize any action that would violate the
18 prohibitions of section nineteen-a of this article.

19 **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT**
20 **AND PROTECTION ACT.**

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

24 **§46A-6J-1. Emergencies and natural disasters - Taking unfair**

1 **advantage of consumers.**

2 The Legislature ~~hereby~~ finds that during emergencies and major
3 disasters, including, but not limited to, tornadoes, earthquakes,
4 fires, floods, storms or civil disturbances, some merchants have
5 taken unfair advantage of consumers by greatly increasing prices
6 for essential consumer goods or services. While the pricing of
7 consumer goods and services is generally best left to the
8 marketplace under ordinary conditions, when a declared state of
9 emergency or state of preparedness results in abnormal disruptions
10 of the market, the public interest requires that excessive and
11 unjustified increases in the prices of essential consumer goods and
12 services be prohibited. It is the intent of the Legislature in
13 enacting this article to protect citizens from excessive and
14 unjustified increases in the prices charged during or shortly after
15 a declared state of emergency or state of preparedness for goods
16 and services that are vital and necessary for the health, safety
17 and welfare of consumers. Further, it is the intent of the
18 Legislature that this article be liberally construed so that its
19 beneficial purposes may be served.

20 **§46A-6J-2. Definitions.**

21 (a) "Building materials" means lumber, construction tools,
22 windows and any other item used in the building or rebuilding of
23 property.

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

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

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

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

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

17 (g) "Housing" means any rental housing leased on a
18 month-to-month term or the sale of manufactured homes, as that term
19 is defined in section two, article nine, chapter twenty-one of this
20 code.

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

24 (i) "Repair or reconstruction services" means any services
25 performed by any person for repairs to residential, commercial or

1 public property of any type that is damaged as a result of a
2 disaster.

3 (j) "State of emergency" means the situation existing during
4 or after the occurrence of a disaster or large-scale threat in
5 which a state of emergency has been declared by the Governor or by
6 the Legislature pursuant to the provisions of section six, article
7 five, chapter fifteen of this code or in which a major disaster
8 declaration or emergency declaration has been issued by the
9 president of the United States pursuant to the provisions of 42
10 U.S.C. § 5122.

11 (k) "State of preparedness" means the situation existing
12 before a disaster or large-scale threat in which a state of
13 preparedness has been declared by the Governor or by the
14 Legislature pursuant to the provisions of section six, article
15 five, chapter fifteen of this code.

16 ~~(k)~~ (l) "Transportation, freight and storage services" means
17 any service that is performed by any company that contracts to
18 move, store or transport personal or business property or rents
19 equipment or storage space for those purposes.

20 **§46A-6J-3. Prohibited unfair pricing practices.**

21 (a) Upon the declaration of a state of emergency or state of
22 preparedness, and continuing for the existence of the state of
23 emergency or state of preparedness or for thirty days following the
24 declaration, whichever period is longer, it is unlawful for any
25 person, contractor, business, or other entity to sell or offer to

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

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

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

25 (d) The price restrictions imposed by this article may be

1 limited or terminated by proclamation of the Governor.

2 **§46A-6J-4. Notification by the Secretary of State; registry.**

3 The Secretary of State shall promulgate rules to establish a
4 system by which any person, corporation, trade association or
5 partnership may register to receive notification that a state of
6 emergency or state of preparedness, has been declared and that the
7 provisions of this article are in effect. The rules promulgated
8 pursuant to the authority conferred by this section may include a
9 requirement of the payment of fees for registration.