



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

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

19 **§15-5-6. Emergency powers of Governor.**

20 (a) The provisions of this section ~~shall be~~ are operative only  
21 during the existence of a state of emergency or state of  
22 preparedness. The existence of a state of emergency or state of  
23 preparedness may be proclaimed by the Governor or by concurrent  
24 resolution of the Legislature if the Governor in ~~such~~ the

1 proclamation, or the Legislature in ~~such~~ the resolution, finds that  
2 an attack upon the United States has occurred or is anticipated in  
3 the immediate future, or that a natural or man-made disaster of  
4 major proportions has actually occurred or is imminent within the  
5 state, or that an emergency exists or may be imminent due to a  
6 large-scale threat beyond local control, and that the safety and  
7 welfare of the inhabitants of this state require an invocation of  
8 the provisions of this section.

9       **(b)** Any ~~such~~ state of emergency or state of preparedness,  
10 whether proclaimed by the Governor or by the Legislature, ~~shall~~  
11 ~~terminate~~ terminates upon the proclamation of the termination  
12 ~~thereof~~ by the Governor, or the passage by the Legislature of a  
13 concurrent resolution terminating ~~such~~ the state of emergency or  
14 state of preparedness.

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

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

22       **(b)** **(2)** To sell, lend, lease, give, transfer or deliver  
23 materials or perform functions relating to emergency services on  
24 ~~such~~ terms and conditions ~~as he or she shall prescribe~~ prescribes

1 and without regard to the limitations of any existing law and to  
2 account to the State Treasurer for any funds received for ~~such~~ the  
3 property;

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

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

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

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

23       ~~(g)~~ (7) To suspend the provisions of any regulatory statute  
24 prescribing the procedures for conduct of state business or the

1 orders, rules ~~or regulations~~ of any state agency, if strict  
 2 compliance therewith would in any way prevent, hinder or delay  
 3 necessary action in coping with the emergency;

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

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

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

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

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

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

22 **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT**

23 **AND PROTECTION ACT.**

24 **ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING AND UNFAIR**

1                   **PRICING PRACTICES DURING AND SHORTLY AFTER A STATE**  
2                   **OF EMERGENCY OR STATE OF PREPAREDNESS.**

3 **§46A-6J-1. Emergencies and natural disasters - Taking unfair**  
4                   **advantage of consumers.**

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

23 **§46A-6J-2. Definitions.**

1           (a) "Building materials" means lumber, construction tools,  
2 windows and any other item used in the building or rebuilding of  
3 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 property  
8 resulting from any natural or man-made cause, including fire,  
9 flood, earthquake, wind, snow, storm, chemical or oil spill or  
10 other water or soil contamination, epidemic, air contamination,  
11 blight, drought, infestation or other public calamity requiring  
12 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, 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



1 code.

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

5 (i) "Repair or reconstruction services" means any services  
6 performed by any person for repairs to residential, commercial or  
7 public property of any type that is damaged as a result of a  
8 disaster.

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

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

22 ~~(k)~~ (l) "Transportation, freight and storage services" means  
23 any service that is performed by any company that contracts to  
24 move, store or transport personal or business property or rents

1 equipment or storage space for those purposes.

2 **§46A-6J-3. Prohibited unfair pricing practices.**

3 (a) Upon the declaration of a state of emergency or state of  
4 preparedness, and continuing for the existence of the state of  
5 emergency or state of preparedness or for thirty days following the  
6 declaration, whichever period is longer, it is unlawful for any  
7 person, contractor, business, or other entity to sell or offer to  
8 sell to any person in the area subject to the declaration any  
9 consumer food items, essential consumer items, goods used for  
10 emergency cleanup, emergency supplies, medical supplies, home  
11 heating oil, building materials, housing, transportation, freight  
12 and storage services, or gasoline or other motor fuels for a price  
13 greater than ten percent above the price charged by that person for  
14 those goods or services on the tenth day immediately preceding the  
15 declaration of emergency, unless the increase in price is directly  
16 attributable to additional costs imposed on the seller by the  
17 supplier of the goods or directly attributable to additional costs  
18 for labor or materials used to provide the services: *Provided,*  
19 That in those situations where the increase in price is  
20 attributable to additional costs imposed by the seller's supplier  
21 or additional costs of providing the good or service during the  
22 state of emergency, the price is no greater than ten percent above  
23 the total of the cost to the seller plus the markup customarily  
24 applied by the seller for that good or service in the usual course

1 of business on the tenth day immediately preceding the declaration:  
2 *Provided, however,* That where a supplier of gasoline or other motor  
3 fuels cannot determine their daily costs, the supplier may sell  
4 gasoline or other motor fuels to distributors on any day at a rate  
5 not to exceed the average of the Oil Price Information Service's  
6 average wholesale rack price for that product at the  
7 Montvale/Roanoke, Virginia, Fairfax, Virginia and Pittsburgh,  
8 Pennsylvania wholesale racks for the previous day.

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

1 for that good or service in the usual course of business on the  
2 tenth day immediately preceding to the declaration of the state of  
3 emergency.

4 (c) Any business offering an item for sale at a reduced price  
5 ten days immediately prior to the declaration of the state of  
6 emergency or state of preparedness may use the price at which it  
7 usually sells the item to calculate the price pursuant to  
8 subsection (a) or (b) of this section.

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

11 **§46A-6J-4. Notification by the Secretary of State; registry.**

12 The Secretary of State shall promulgate rules to establish a  
13 system by which any person, corporation, trade association or  
14 partnership may register to receive notification that a state of  
15 emergency or state of preparedness, has been declared and that the  
16 provisions of this article are in effect. The rules promulgated  
17 pursuant to the authority conferred by this section may include a  
18 requirement of the payment of fees for registration.

NOTE: The purpose of this bill is to provide emergency powers  
to prepare for an anticipated large-scale threat to public peace,  
health and safety.

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