

**Senate Bill No. 320**

(By Senators Kessler (Mr. President) and M. Hall,

By Request of the Executive)

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[Introduced January 10, 2014; referred to the Committee on  
Government Organization; and then to the Committee on the  
Judiciary.]

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11 A BILL to amend and reenact §15-5-1 and §15-5-6 of the Code of West  
12 Virginia, 1931, as amended; and to amend and reenact  
13 §46A-6J-1, §46A-6J-2, §46A-6J-3 and §46A-6J-4 of said code,  
14 all relating to emergency preparedness; revising the policy  
15 statement for the Division of Homeland Security and Emergency  
16 Management; authorizing the Governor or the Legislature to  
17 proclaim a state of preparedness; 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

1 and the Statewide Mutual Aid System; revising the definition  
2 of "state of emergency" in the West Virginia Consumer  
3 Protection Act; defining "state of preparedness" in the West  
4 Virginia Consumer Protection Act; requiring notification of a  
5 state of preparedness by the Secretary of State; and making  
6 other technical and stylistic revisions.

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

8 That §15-5-1 and §15-5-6 of the Code of West Virginia, 1931,  
9 as amended, be amended and reenacted; and that §46A-6J-1,  
10 §46A-6J-2, §46A-6J-3 and §46A-6J-4 of said code be amended and  
11 reenacted, all to read as follows:

12 **CHAPTER 15. PUBLIC SAFETY.**

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

14 **§15-5-1. Policy and purpose.**

15 In view of the existing and increasing possibility of the  
16 occurrence of disasters of unprecedented size and destructiveness,  
17 and large-scale threats, resulting from terrorism, enemy attack,  
18 sabotage or other hostile action, or from fire, flood, earthquakes  
19 or other natural or man-made causes and in order to insure that  
20 preparations of this state will be adequate to deal with ~~such~~ the  
21 disasters, and generally to provide for the common defense and to  
22 protect the public peace, health and safety and to preserve the

1 lives and property of the people of the state, it is hereby found  
2 and declared to be necessary: (1) To create the Division of  
3 Homeland Security and Emergency Management and to authorize the  
4 creation of local and regional organizations for emergency services  
5 in the political subdivisions of the state; (2) to confer upon the  
6 Governor, and upon the executive heads of governing bodies of the  
7 political subdivisions of the state the emergency powers provided  
8 herein; (3) to provide for the rendering of mutual aid among the  
9 political subdivisions of the state and with other states and to  
10 cooperate with the federal government with respect to the carrying  
11 out of emergency services and homeland security functions; ~~(4)~~ and  
12 (4) to establish and implement comprehensive homeland security and  
13 emergency management plans to deal with such disasters. It is  
14 further declared to be the purpose of this article and the policy  
15 of the state that all homeland security and emergency management  
16 funds and functions of this state be coordinated to the maximum  
17 extent with the Secretary of the Department of Military Affairs and  
18 Public Safety and with the comparable functions of the federal  
19 government including its various departments and agencies, of other  
20 states and localities and of private agencies of every type, so  
21 that the most effective preparation and use may be made of the  
22 nation's and this state's manpower, resources and facilities for

1 dealing with any disaster that may occur.

2 **§15-5-6. Emergency powers of Governor.**

3       (a) The provisions of this section ~~shall be~~ are operative only  
4 during the existence of a state of emergency or state of  
5 preparedness. The existence of a state of emergency or state of  
6 preparedness may be proclaimed by the Governor or by concurrent  
7 resolution of the Legislature if the Governor in ~~such the~~  
8 proclamation, or the Legislature in ~~such the~~ resolution, finds that  
9 an attack upon the United States has occurred or is anticipated in  
10 the immediate future, or that a natural or man-made disaster of  
11 major proportions has actually occurred or is imminent within the  
12 state, or that an emergency exists or may be imminent due to a  
13 large-scale threat beyond local control, and that the safety and  
14 welfare of the inhabitants of this state require an invocation of  
15 the provisions of this section.

16       (b) Any ~~such state of~~ emergency or state of preparedness,  
17 whether proclaimed by the Governor or by the Legislature, ~~shall~~  
18 ~~terminate~~ terminates upon the proclamation of the termination  
19 ~~thereof~~ by the Governor, or the passage by the Legislature of a  
20 concurrent resolution terminating ~~such the state of~~ emergency or  
21 state of preparedness.

22       (c) So long as ~~such a~~ state of emergency or state of

1 preparedness exists, the Governor ~~shall have~~ has and may exercise  
2 the following additional emergency powers:

3       ~~(a)~~ (1) To enforce all laws and rules relating to the  
4 provision of emergency services and to assume direct operational  
5 control of any or all emergency service forces and helpers in the  
6 state;

7       ~~(b)~~ (2) To sell, lend, lease, give, transfer or deliver  
8 materials or perform functions relating to emergency services on  
9 ~~such~~ terms and conditions ~~as he or she shall prescribe~~ prescribes  
10 and without regard to the limitations of any existing law and to  
11 account to the State Treasurer for any funds received for ~~such~~ the  
12 property;

13       ~~(c)~~ (3) To procure materials and facilities for emergency  
14 services by purchase, condemnation under the provisions of chapter  
15 fifty-four of this code or seizure pending institution of  
16 condemnation proceedings within thirty days from the seizing  
17 thereof and to construct, lease, transport, store, maintain,  
18 renovate or distribute ~~such~~ the materials and facilities.  
19 Compensation for property so procured shall be made in the manner  
20 provided in chapter fifty-four of this code;

21       ~~(d)~~ (4) To obtain the services of necessary personnel,  
22 required during the emergency, and to compensate them for their

1 services from his or her contingent funds or ~~such~~ other funds ~~as~~  
2 ~~may be~~ available to him or her;

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

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

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

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

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

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

22       ~~(k)~~ (11) To perform and exercise ~~such~~ other functions, powers

1 and duties ~~as~~ that are necessary to promote and secure the safety  
2 and protection of the civilian population.

3 (d) A declaration of a state of preparedness has the same  
4 effect as a declaration of a state of emergency for the purposes of  
5 the Emergency Management Assistance Compact established in section  
6 twenty-two of this article and the Statewide Mutual Aid Systems set  
7 forth in section twenty-eight of this article.

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

11 **CHAPTER 46A. WEST VIRGINIA CONSUMER CREDIT**  
12 **AND PROTECTION ACT.**

13 **ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING AND UNFAIR**  
14 **PRICING PRACTICES DURING AND SHORTLY AFTER A STATE**  
15 **OF EMERGENCY OR STATE OF PREPAREDNESS.**

16 **§46A-6J-1. Emergencies and natural disasters - Taking unfair**  
17 **advantage of consumers.**

18 The Legislature ~~hereby~~ finds that during emergencies and major  
19 disasters, including, but not limited to, tornadoes, earthquakes,  
20 fires, floods, storms or civil disturbances, some merchants have  
21 taken unfair advantage of consumers by greatly increasing prices  
22 for essential consumer goods or services. While the pricing of

1 consumer goods and services is generally best left to the  
2 marketplace under ordinary conditions, when a declared state of  
3 emergency or state of preparedness results in abnormal disruptions  
4 of the market, the public interest requires that excessive and  
5 unjustified increases in the prices of essential consumer goods and  
6 services be prohibited. It is the intent of the Legislature in  
7 enacting this article to protect citizens from excessive and  
8 unjustified increases in the prices charged during or shortly after  
9 a declared state of emergency or state of preparedness for goods  
10 and services that are vital and necessary for the health, safety  
11 and welfare of consumers. Further, it is the intent of the  
12 Legislature that this article be liberally construed so that its  
13 beneficial purposes may be served.

14 **§46A-6J-2. Definitions.**

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

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

20 (c) "Disaster" means the occurrence or imminent threat of  
21 widespread or severe damage, injury, or loss of life or property  
22 resulting from any natural or man-made cause, including fire,



1 flood, earthquake, wind, snow, storm, chemical or oil spill or  
2 other water or soil contamination, epidemic, air contamination,  
3 blight, drought, infestation or other public calamity requiring  
4 emergency action.

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

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

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

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

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

21 (I) "Repair or reconstruction services" means any services  
22 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

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

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

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