

H. B. 2854

(By Delegates Manchin and Longstreth)
[Introduced February 20, 2015; referred to the
Committee on the Judiciary.]

A BILL to amend and reenact §46A-6J-3 of the Code of West Virginia, 1931, as amended, relating to protection of consumers from price gouging and unfair trade practices; decreasing the maximum allowable price increase on the sale of certain goods and services following the declaration of a “state of emergency” or “state of preparedness”; and making a technical correction.

Be it enacted by the Legislature of West Virginia:

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

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

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

(a) Upon the declaration of a state of emergency or state of preparedness, and continuing for

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

20 (b) Upon the declaration of a state of emergency or state of preparedness, and for a period
21 of one hundred eighty days following that declaration, it is unlawful for any contractor to sell or offer
22 to sell any repair or reconstruction services or any services used in emergency cleanup in the area

1 subject to the declaration for a price greater than ~~ten~~ three percent above the price charged by that
2 person for those services on the tenth day immediately preceding the declaration, unless the increase
3 in price was directly attributable to additional costs imposed on it by the supplier of the goods or
4 directly attributable to additional costs for labor or materials used to provide the services: *Provided,*
5 That in those situations where the increase in price is attributable to the additional costs imposed by
6 the contractor's supplier or additional costs of providing the service, the price is no greater than ~~ten~~
7 three percent above the total of the cost to the contractor plus the markup customarily applied by the
8 contractor for that good or service in the usual course of business on the tenth day immediately
9 preceding to the declaration of the state of emergency or state of preparedness.

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

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

15 (e) The price restrictions imposed by this article may be limited or terminated by
16 proclamation of the Governor.

NOTE: The purpose of this bill is to decrease the maximum allowable price increase from ten percent to three percent on the sale of certain goods and services following the declaration of a “state of emergency” or “state of preparedness.” The bill also makes a technical correction.

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