

1 **ENROLLED**

2 **COMMITTEE SUBSTITUTE**

3 **FOR**

4 **H. B. 4147**

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

7 [By Request of the Executive]

8 [Passed March 8, 2014; in effect from its passage.]

9
10 AN ACT 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

1 Protection Act; defining "state of preparedness" and "large-
2 scale threat" in the West Virginia Consumer Protection Act;
3 requiring the Governor to specifically list items or services
4 subject to unfair pricing provisions in a proclamation
5 declaring a state of preparedness; requiring notification of
6 a state of preparedness by the Secretary of State; and making
7 other technical and stylistic revisions.

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

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

13 **CHAPTER 15. PUBLIC SAFETY.**

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

15 **§15-5-1. Policy and purpose.**

16 In view of the existing and increasing possibility of the
17 occurrence of disasters of unprecedented size and destructiveness
18 and large-scale threats, resulting from terrorism, enemy attack,
19 sabotage or other hostile action, or from fire, flood, earthquakes
20 or other natural or man-made causes and in order to insure that
21 preparations of this state will be adequate to deal with the
22 disasters and large-scale threats, and generally to provide for the
23 common defense and to protect the public peace, health and safety
24 and to preserve the lives and property of the people of the state,
25 it is found and declared to be necessary: (1) To create the

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

23 **§15-5-6. Emergency powers of Governor.**

24 (a) The provisions of this section are operative only during
25 the existence of a state of emergency or state of preparedness.

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

11 (b) Any state of emergency or state of preparedness, whether
12 proclaimed by the Governor or by the Legislature, terminates upon
13 the proclamation of the termination by the Governor, or the passage
14 by the Legislature of a concurrent resolution terminating the state
15 of emergency or state of preparedness: *Provided*, That in no case
16 shall a state of preparedness last longer than thirty days.

17 (c) So long as a state of emergency or state of preparedness
18 exists, the Governor has and may exercise the following additional
19 emergency powers:

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

23 (2) To sell, lend, lease, give, transfer or deliver materials
24 or perform functions relating to emergency services on terms and
25 conditions he or she prescribes and without regard to the

1 limitations of any existing law and to account to the State
2 Treasurer for any funds received for the property;

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

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

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

19 (6) To control ingress and egress to and from a disaster area
20 or an area where large-scale threat exists, the movement of persons
21 within the area and the occupancy of premises therein;

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

1 coping with the emergency;

2 (8) To use available resources of the state and of its
3 political subdivisions that are reasonably necessary to cope with
4 the emergency;

5 (9) To suspend or limit the sale, dispensing or transportation
6 of alcoholic beverages, explosives and combustibles; (10) To make
7 provision for the availability and use of temporary emergency
8 housing; and

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

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

17 (e) The powers granted under this section do not authorize any
18 action that would violate the prohibitions of section nineteen-a of
19 this article.

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

21 **AND PROTECTION ACT.**

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

23 **PRICING PRACTICES DURING AND SHORTLY AFTER A STATE**

24 **OF EMERGENCY OR STATE OF PREPAREDNESS.**

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

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

21 **§46A-6J-2. Definitions.**

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

25 (b) "Consumer food item" means any article that is used or

1 intended for use for food or drink by a person or animal.

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

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

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

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

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

22

23 (h) "Large-scale threat" means circumstances which present a
24 reasonable probability that necessary services or public order
25 would be disrupted and effect a significant number of people from

1 either natural or man-made causes.

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

5 (j) "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 (k) "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 U.
16 S. C. § 5122.

17 (l) "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 (m) "Transportation, freight and storage services" means any
23 service that is performed by any company that contracts to move,
24 store or transport personal or business property or rents equipment
25 or storage space for those purposes.

1 **§46A-6J-3. Prohibited unfair pricing practices.**

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

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

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

1 emergency state of preparedness.

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

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

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

12 **§46A-6J-4. Notification by the Secretary of State; registry.**

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