WEST VIRGINIA LEGISLATURE

2020 REGULAR SESSION

FILED
2020 MAR 25 P 3:52
OFFICE WEST VIRGINIA
SECRETARY OF STATE

Enrolled

Committee Substitute

for

Senate Bill 208

SB208

SENATOR TARR, *original sponsor*

[Passed March 3, 2020; in effect 90 days from passage]

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AN ACT to amend and reenact §46A-6J-2 and §46A-6J-3 of the Code of West Virginia, 1931, as amended, all relating to the protection of consumers from price gouging and unfair pricing practices during and shortly after a state of emergency; amending definition of "state of emergency"; and authorizing the Governor to periodically review the scope and the time period for which prices for certain goods may not be changed following a state of emergency.

Be it enacted by the Legislature of West Virginia:

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

§46A-6J-2. Definitions.

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

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

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

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

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

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

(g) "Housing" means any rental housing leased on a month-to-month term or the sale of manufactured homes, as that term is defined in §21-9-2 of this code.

(h) "Large-scale threat" means circumstances which present a reasonable probability that necessary services or public order would be disrupted, and effect a significant number of people from either natural or man-made causes.

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

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

(k) "State of emergency" means the situation existing during or after the occurrence of a disaster or large-scale threat in which a state of emergency has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

(l) "State of preparedness" means the situation existing before a disaster or large-scale threat in which a state of preparedness has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

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

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

(a) Upon the declaration of a state of emergency or state of preparedness, and continuing for the existence of the state of emergency or state of preparedness, or for 30 days following the declaration, whichever period is longer, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell to any person in the area subject to the declaration any consumer food items, essential consumer items, goods used for emergency cleanup, emergency supplies,

medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline or other motor fuels, for a price greater than 10 percent above the price charged by that person for those goods or services on the 10th day immediately preceding the declaration of emergency state of preparedness, unless the increase in price is directly attributable to additional costs imposed on the seller by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided,* That in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency or state of preparedness, the price is no greater than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business on the 10th day immediately preceding the declaration: *Provided, however,* That where a supplier of gasoline or other motor fuels cannot determine its daily costs, the supplier may sell gasoline or other motor fuels to distributers on any day at a rate not to exceed the average of the Oil Price Information Service's average wholesale rack price for that product at the Montvale/Roanoke, Virginia, Fairfax, Virginia, and Pittsburgh, Pennsylvania, wholesale racks for the previous day.

(b) Upon the declaration of a state of emergency or state of preparedness, and for a period of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup in the area subject to the declaration for a price greater than 10 percent above the price charged by that person for those services on the 10th day immediately preceding the declaration, unless the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided,* That in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service, the price is no greater than 10 percent above the total of the cost to the contractor plus the markup customarily applied by

the contractor for that good or service in the usual course of business on the 10th day immediately preceding to the declaration of the state of emergency or state of preparedness.

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

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

(e) On the 15th day after the declaration of a state of emergency, and each 15th day thereafter for so long as the state of emergency persists, the Governor shall review the scope of goods to which this article applies and may issue a proclamation maintaining, limiting, terminating, or extending the price restrictions imposed by this article with respect to any categories of goods.

The Joint Committee on Enrolled Bills hereby certifies that the foregoing bill is correctly enrolled.

Chairman, Senate Committee

Chairman, House Committee

Originated in the Senate.

In effect 90 days from passage.

Clerk of the Senate

Clerk of the House of Delegates

President of the Senate

Speaker of the House of Delegates

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The within ..is..... approved this the..25th.....

Day of .....March....., 2020.

Governor

PRESENTED TO THE GOVERNOR

MAR 13 2020

Time 3:16 pm