

062776212

HOUSE BILL NO. 1094

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the Senate Committee on Commerce and Labor
on February 27, 2006)

(Patron Prior to Substitute—Delegate Amundson)

A BILL to amend the Code of Virginia by adding in Chapter 46 of Title 59.1 a section numbered 59.1-529.1, relating to enforcement of the Virginia Post-Disaster Anti-Price Gouging Act; emergency orders; penalties.

Be it enacted by the General Assembly of Virginia:

1. That the Code of Virginia is amended by adding in Chapter 46 of Title 59.1 a section numbered 59.1-529.1 as follows:

§ 59.1-529.1. Emergency orders; penalties.

A. Upon finding that during a time of disaster a supplier is selling, leasing, or licensing, or offering to sell, lease, or license, a necessary good or service within the area for which the state of emergency is declared at such an unconscionable price that such selling, leasing, or licensing, or offering to sell, lease, or license presents an imminent and substantial danger of endangering the public welfare by creating public panic or acute economic disruption, the Governor is authorized to issue, without hearing, an emergency order directing the supplier to reduce the price of the necessary good or service to the prevailing price in the local market, pending a hearing pursuant to subsection C. Subject to any cancellation pursuant to the provisions of subsection C, emergency orders shall be effective upon personal delivery to the supplier pursuant to the provisions of subsection B and shall remain effective for a period determined by the Governor, not to exceed 30 days, and shall not be renewed. The issuance of an emergency order shall be considered a case decision as defined in § 2.2-4001. The confidentiality of all evidence, testimony, documents, or other results of investigations leading to issuance of the emergency order, including the names of the complainant and the person that is the subject of the investigation, shall be maintained.

B. The supplier to whom such emergency order is issued shall be notified by certified mail, return receipt requested, sent to the last known address of the supplier, and by personal delivery by an agent of the Governor. The emergency order shall include notice of the time and place of the opportunity for a hearing as provided in subsection C.

C. The Governor shall provide an opportunity for a hearing within 48 hours of the personal delivery of the emergency order pursuant to the provisions of subsection B, which hearing shall be before a hearing officer appointed by the Supreme Court in accordance with § 2.2-4020, at which time the supplier shall be given the opportunity to demonstrate that the price previously charged was not unconscionable as defined in § 59.1-527. The hearing officer may affirm, modify, amend, or cancel such emergency order.

D. If the supplier who has been issued such an emergency order is not complying with the terms thereof pending a hearing provided pursuant to subsection C, the Governor may institute a proceeding in the appropriate circuit court for an injunction, mandamus, or other appropriate remedy compelling the person to comply with such order. The court may issue an injunction compelling compliance with the emergency order pending the hearing provided pursuant to subsection C.

E. Any supplier violating or failing, neglecting, or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection D shall be subject, in the discretion of the court, to a civil penalty not to exceed \$2,500. In determining the amount of any civil penalty to be assessed pursuant to this subsection, the court shall consider, in addition to such other factors as it may deem appropriate, the size of the supplier's business, the severity of the economic impact of the penalty on the supplier, and the seriousness of the violation. Any civil penalties assessed by a court shall be paid into the state treasury.

SENATE SUBSTITUTE

HB1094S1