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HOUSE BILL NO. 1849

Offered January 14, 2009

Prefiled January 12, 2009

A BILL to amend and reenact §§ 59.1-526, 59.1-527, and 59.1-529.1 of the Code of Virginia, relating to the Virginia Post-Disaster Anti-Price Gouging Act.

Patrons—Lingamfelter, Athey, Poindexter and Rust

Referred to Committee on Commerce and Labor

Be it enacted by the General Assembly of Virginia:

1. That §§ 59.1-526, 59.1-527, and 59.1-529.1 of the Code of Virginia are amended and reenacted as follows:

§ 59.1-526. Definitions.

As used in this chapter:

"Disaster" means (i) any "disaster," "emergency," or "major disaster," as those terms are used and defined in § 44-146.16, that results in the declaration of a state of emergency by the Governor or the President of the United States; or (ii) any resource shortage in the Commonwealth that results from a disaster for which the President has declared a state of emergency and for which the Governor has issued an executive order proclaiming that a shortage exists.

"Goods," "services," and "supplier consumer transaction" have the same meanings as are set forth for those terms in § 59.1-198.

"Necessary goods and services" means any necessary good or service for which consumer demand does, or is likely to, increase as a consequence of the disaster, and includes, but is not limited to, water, ice, consumer food items or supplies, property or services for emergency cleanup, emergency supplies, communication supplies and services, medical supplies and services, home heating fuel, building materials and services, tree removal supplies and services, freight, storage services, housing, lodging, transportation, and motor fuels.

"Resource shortage" has the same meaning as is set forth for this term in § 44-146.16.

"Supplier" means a seller, lessor, or licensor that advertises, solicits, or engages in consumer transactions, or a manufacturer, distributor, or licensor that sells, leases, or licenses goods or services to be resold, leased, or sublicensed by others in consumer transactions.

"Time of disaster" means ~~the shorter of~~ (i) the period of time ~~when~~ within 30 days after a state of emergency is declared by the Governor or the President of the United States as the result of a disaster, emergency, or major disaster, as those terms are used and defined in § 44-146.16, is in effect or (ii) 30 days after the occurrence of the disaster, emergency, or major disaster that resulted in the declaration of the state of emergency affecting areas within the Commonwealth; however, if the state of emergency is extended or renewed within 30 days after such an occurrence, then such period shall be extended to include the 30 days following the date the state of emergency was extended or renewed; or (ii) the period of time during which a proclamation from the Governor provides that a resource shortage exists.

§ 59.1-527. Prohibitions.

During any time of disaster, it shall be unlawful for any supplier to sell, lease, or license, or to offer to sell, lease, or license, any necessary goods and services at an unconscionable price within the area for which the state of emergency or resource shortage is declared. Actual sales transactions at the increased price shall not be required for the increase to be considered unconscionable. In determining whether a price increase is unconscionable, the following shall be considered:

1. Whether the price charged by the supplier grossly exceeded the price charged by the supplier for the same or similar goods or services during the 10 days immediately prior to the time of disaster, provided that, with respect to any supplier who was offering a good or service at a reduced price immediately prior to the time of disaster, the price at which the supplier usually offers the good or service shall be used as the benchmark for these purposes;

2. Whether the price charged by the supplier grossly exceeded the price at which the same or similar goods or services were readily obtainable by consumers purchasers in the trade area during the 10 days immediately prior to the time of disaster;

3. Whether the increase in the amount charged by the supplier was attributable solely to additional costs incurred by the supplier in connection with the sale of the goods or services, including additional costs imposed by the supplier's source. Proof that the supplier incurred such additional costs during the time of disaster shall be prima facie evidence that the price increase by that supplier was not unconscionable; and

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59 4. Whether the increase in the amount charged by the supplier was attributable solely to a regular
60 seasonal or holiday adjustment in the price charged for the good or service. Proof that the supplier
61 regularly increased the price for a particular good or service during portions of the period covered by
62 the time of disaster would be prima facie evidence that the price increase was not unconscionable during
63 those periods.

64 § 59.1-529.1. Emergency orders; penalties.

65 A. Upon finding that during a time of disaster a supplier is selling, leasing, or licensing, or offering
66 to sell, lease, or license, a necessary good or service within the area for which the state of emergency *or*
67 *resource shortage* is declared at such an unconscionable price that such selling, leasing, or licensing, or
68 offering to sell, lease, or license presents an imminent and substantial danger of endangering the public
69 welfare by creating public panic, the Governor is authorized to issue for a period not to exceed 30 days,
70 without hearing, an emergency order directing the supplier to reduce the price of the necessary good or
71 service to the prevailing price in the local market. The confidentiality of all evidence, testimony,
72 documents, or other results of investigations leading to issuance of the emergency order, including the
73 names of the complainant and the person that is the subject of the investigation, shall be maintained.

74 B. The supplier to whom such emergency order is issued shall be notified by certified mail, return
75 receipt requested, sent to the last known address of the supplier, and by personal delivery by an agent of
76 the Governor.

77 C. If the supplier who has been issued such an emergency order is not complying with the terms
78 thereof, the Governor shall notify the Attorney General, who shall immediately investigate as provided
79 for under this chapter.