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HOUSE BILL NO. 1903

Offered January 14, 2009

Prefiled January 13, 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 price gouging.

Patron—Armstrong

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 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.

"Goods," and "services," and "supplier" 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" means the absence, unavailability, or reduced supply of any raw or processed natural resource, or any commodities, goods, or services of any kind that bear a substantial relationship to the health, safety, welfare, and economic well-being of the citizens of the Commonwealth that results from a state of emergency anywhere in the United States, when the state of emergency is declared by the President of the United States.

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

"Time of disaster" means the shorter of (i) the period of time when a state of emergency 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; 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.

§ 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 during the time of (i) a disaster, within the any area of the Commonwealth for which the state of emergency is declared, or (ii) a resource shortage, within any area of the Commonwealth that is affected by the resource shortage. Actual sales 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 the resource shortage or 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 the resource shortage or 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 in the trade area during the 10 days immediately prior to the time of the resource shortage or 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

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HB1903

59 costs imposed by the supplier's source. Proof that the supplier incurred such additional costs during the
60 time of *the resource shortage or* disaster shall be prima facie evidence that the price increase was not
61 unconscionable; and

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

67 § 59.1-529.1. Emergency orders; penalties.

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

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

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