

Hurricane Harvey and Price Gouging: Considerations for Franchisors

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PRACTICES Franchise and Distribution

In the wake of Hurricane Harvey, franchisors should take action to avoid potential liability for price gouging committed by franchisees in affected areas. Price gouging occurs when a seller increases prices of goods, services or commodities to a level that is exploitive and unethical. Texas law explicitly prohibits price gouging following a natural disaster, and fines for price gouging can be up to \$20,000 per violation.

Specifically, The Texas Deceptive Trade Practices-Consumer Protection Act strictly prohibits taking advantage of a natural disaster declared by the governor by: “(A) selling or leasing fuel, food, medicine or another necessity at an exorbitant price; or (B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity.”

All franchisors who have franchisees located in areas impacted by Hurricane Harvey need to be aware of the potential for franchisee price gouging, which may result in vicarious liability for the franchisor. Because of this, any franchisor that becomes aware of franchisee price gouging should consider taking immediate remedial action, such as a letter to the franchisee in question that quotes The Texas Deceptive Trade Practices-Consumer Protection Act and demands indemnification under the franchise agreement. Such steps may help to protect the franchisor in the event a demand or other legal action or complaint is made against the franchisor. In addition, a franchisor may need to respond directly to local authorities regarding allegations of price gouging. While a franchisor should be sensitive and supportive of its franchisees during times of crisis, it must also take action to try to protect itself against potential prosecution and fines.

Conclusion

If you have any questions about the potential impact of price gouging on franchisors, or strategies to prevent or address potential price gouging, please contact one of the attorneys listed below.