

State Attorneys General Are Focusing on Price Gouging Laws and You Should Too

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State Attorneys General across the nation are warning consumers about price gouging during the COVID-19 pandemic and offering easy online tools to report violations. Consumers have gotten the message. Texans, for example, have sent over 10,000 complaints of price gouging to the state AG's office during the pandemic.¹

Price gouging laws have been enacted by nearly 75 percent of states. The specifics of the statutes (including the goods and services covered) vary, but they have one thing in common — the penalties (civil and even criminal) and reputational damage associated with violations can be severe. Thus, businesses should take care to comply with applicable price gouging laws and, in the event of a government investigation, respond effectively to mitigate risk.

Price gouging laws. Price gouging refers to the practice of increasing the prices of essential consumer goods or services to abnormally high levels during times of crisis. Because price gouging is not federally regulated, approximately 35 states have price-gouging laws and numerous others have proposed legislation to make it illegal. While each state's law is unique, many share similar features.

In Texas, for example, the Deceptive Trade Practices-Consumer Protection Act (DTPA) makes it unlawful to raise prices of certain products to “exorbitant or excessive” rates during a disaster.² This applies to “fuel, food, medicine, lodging,” and any other “*necessity*,”³ and thus places retail, hospitality, health care, and food industries under the enforcement microscope. Businesses can be liable not only for “selling or leasing” such necessities at unlawful rates, but also simply for “*demanding*” higher prices.⁴ California similarly prohibits one from selling or offering to sell “essential consumer goods and services” at “excessive and unjustified” rates during a state or federal emergency.⁵ Unlike Texas, however, California defines what constitutes an unlawful increase, which is a price that is 10 percent greater than the price charged immediately prior to the emergency declaration.⁶

Penalties for violations. States have broad authority to investigate price gouging, including by subpoenaing documents, examining businesses, and requiring witness testimony.⁷ Penalties for violations can include injunctions, civil penalties, and even jail sentences.

The Texas AG's consumer protection division may seek up to \$10,000 *per violation*, among other penalties.⁸ Violators also may be required to reimburse consumers,⁹ and consumers can bring their own lawsuits to recover up to three times their damages.¹⁰ California, on the other hand, makes price gouging a misdemeanor punishable by imprisonment for up to one year and/or a fine of up to \$10,000.¹¹ Further, a violation of California's price gouging law automatically constitutes a violation of the state's Business and Professions Code, subjecting the violator to the potential for an

additional fine of \$2,500 *per violation* (i.e., sale).¹² Both states impose significant additional penalties if the violation is against a senior citizen.¹³

Conclusion. State authorities across the U.S. are pursuing investigations into price gouging during the COVID-19 pandemic, and this focus will likely persist. If you have questions about the potential impact of price gouging, strategies to prevent or address it, or how to respond to state investigations, please contact one of the attorneys listed below.

¹ Scott Friedman & Eva Parks, [NBC 5 Investigates: Price Gouging Complaints to Texas Attorney General Top 10,000](#), KXAS-TV (May 15, 2020).

² Tex. Bus. & Com. Code §§ 17.46(a), 17.46(b)(27), 17.4625. The DTPA does not define what constitutes an “exorbitant or excessive price,” and Texas courts have not yet addressed it. The prohibition on price gouging lasts until 30 days after the state or federal disaster declaration ends. *Id.* § 17.4625(a)(2).

³ *Id.* § 17.46(b)(27).

⁴ *Id.*

⁵ Cal. Penal Code § 396(a). This includes “any consumer food items or goods, goods or services 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.” *Id.* § 396(b); *cf. id.* §§ 396(c)-(f) (prohibiting increases for certain contractors, hotels and motels, and rental housing).

⁶ *Id.* § 396(b). There are certain exceptions, like if the seller can prove, among other things, that its price of goods, labor, or materials has increased during the emergency period and justifies the increase. *Id.* Further, the prohibition on price gouging ends 30 days after the disaster declaration is made (as opposed to after the disaster ends, as in Texas). *Id.* But the state can extend that period, as seen with COVID-19, where Governor Gavin Newsom extended the period through September 4, 2020.

⁷ *See, e.g.,* Tex. Bus. & Com. Code §§ 17.60, 17.61.

⁸ *Id.* § 17.47(c)(1).

⁹ *Id.* § 17.47(d).

¹⁰ *Id.* § 17.50.

¹¹ Cal. Penal Code § 396(h).

¹² *Id.* § 396(i); Cal. Bus. & Professions Code § 17206.

¹³ Tex. Bus. & Com. Code § 17.47(c)(2) (providing for up to \$250,000 in additional fines if consumer was over 65 years old); Cal. Bus. & Professions Code § 17206.1 (permitting an

additional \$2,500 fine *per violation* if against a “senior citizen or disabled person”).