

CORONAVIRUS INFORMATION & UPDATES

April 1, 2020

Consumer Protection and COVID-19

Federal and state agencies have ramped up their enforcement of consumer protection laws in the wake of certain businesses and individuals seeking to defraud or take advantage of consumers in connection with the ongoing COVID-19 pandemic. This increased focus responds to the growing national concern that certain goods and services are becoming increasingly expensive and scarce as a result of the current crisis.

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The Chairman of the Federal Trade Commission (“FTC”), Joe Simons, announced on March 26, 2020 that the FTC “will not tolerate businesses seeking to take advantage of consumers’ concerns and fears regarding coronavirus disease, exigent circumstances, or financial distress.” In this statement, Chairman Simons vowed that the FTC would take action to combat consumer fraud and deception during the COVID-19 crisis.¹ Currently, there is no federal price-gouging law on the books. To date, the FTC has focused on using its enforcement authority under the FTC Act in order to combat deceptive marketing of products, including those that claim to alleviate or “cure” COVID-19.²

Numerous State Attorneys General have announced that they will aggressively enforce consumer protection *and* specific price-gouging laws to prosecute businesses that seek to exploit, and unfairly profit from, the current health crisis.³ Several large companies, including Amazon and Facebook, have agreed to cooperate with State Attorneys General in these efforts.⁴

What is Price-gouging?

Price-gouging laws generally *prohibit companies from increasing prices of goods or services during a state of emergency declared by the state or federal government*. As President Trump declared COVID-19 a State of Emergency

¹ Press Release, [Statement from FTC Chairman Joe Simons Regarding Consumer Protection](#), FTC (Mar. 26, 2020) <https://www.ftc.gov/>.

² Press Release, [FTC, FDA Send Warning Letters to Seven Companies about Unsupported Claims that Products Can Treat or Prevent Coronavirus](#), FTC (Mar. 9, 2020), <https://www.ftc.gov/>.

³ Press Release, [AG James: Price Gouging Will Not Be Tolerated](#), NY Att’y Gen. (Mar. 10, 2020), <https://ag.ny.gov/> (NY Attorney General stated “[o]n my watch, we will not tolerate schemes or frauds designed to turn large profits by exploiting people’s health concerns.”); Press Release, [Attorney General Becerra Issues Consumer Alert on Price Gouging Following Statewide Declaration of Emergency for Novel Coronavirus Cases in California Communities](#), Cal. Att’y Gen. (Mar. 4, 2020), <https://oag.ca.gov/> (CA Attorney General sent out an alert stating “price gouging is illegal in all California communities during the declared state of emergency.”); Press Release, [AG Ferguson Statement on Price Gouging in Public-Health Emergency](#), Wash. Att’y Gen. (Mar. 4, 2020), <https://atg.wa.gov/> (WA Attorney General’s “office is investigating price gouging in the wake of the COVID-19 public health emergency.”)

⁴ Pennsylvania’s Democratic Attorney General, Josh Shapiro, sent a letter to the companies saying they “have an ethical obligation and patriotic duty to help your fellow citizens in this time of need by doing everything in your power to stop price gouging in real-time.” Lauren Feiner & Scott Zamost, [State AGs call on Amazon, Facebook and others to crack down on coronavirus price gouging](#), CNBC (Mar. 26, 2020), <https://www.cnbc.com/>.

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on March 15, 2020, with some states declaring the emergency before then, there are numerous price-gouging laws in effect nationwide. Thirty-four states and the District of Columbia have specific price-gouging laws.⁵

Some states that do not currently have price-gouging laws are using other mechanisms to prohibit price increases (such as the declarations of a state of emergency in [Delaware](#) and [Minnesota](#)) or are considering implementing new price gouging laws (such as in [Maryland](#)).

Price-gouging laws vary from state to state, but most, if not all, address the following factors:

- *Price Increases.* Certain states prohibit **any** price increase during a state of emergency, while other states prohibit increases of more than 25% of the pre-emergency value of the goods or services. Many states prohibit increases of 10% or more, while others only include subjective language prohibiting “unreasonable,” “excessive,” or “unconscionable” increases in price.
- *Goods and Services.* While some states only prohibit increases on certain categories of goods and services, other laws are broadly applicable and potentially apply to any increases for any good or service.
- *Length of Prohibition During Emergency.* State price-gouging laws generally continue for at least the duration of the declared emergency, with some laws continuing for a set period (e.g., 30 days) after the emergency has ended.
- *Exceptions.* Certain state price-gouging laws contain limited exceptions allowing for price increases — for example, price increases attributable to petroleum commodity markets, price increases approved by government agencies, or increases attributable to factors unrelated to the emergency.
- *Penalties.* Penalties differ from state to state, but may include civil fines and injunctions, as well as criminal penalties. For example, on March 18 eight individuals were arrested in California after an undercover investigation into suspected online price gouging relating to reselling health-related products on Facebook, Craigslist, and Offer-Up at as much as 20 times their ordinary price.

What This Means for Businesses:

During the current state of emergency, companies should exercise caution in increasing prices or restricting the availability of products and/or services – especially goods and services needed by health care facilities and professionals. For additional guidance or questions, please contact Chong S. Park, Anne Johnson Palmer, or the Ropes & Gray attorney who usually advises you with any questions you may have if you would like additional information.

⁵ States with specific price-gouging laws include AL, AK, CA, CT, DC, FL, GA, HI, ID, IL, IN, IA, KS, KY, LA, ME, MA, MI, MS, MO, NJ, NY, NC, OK, OR, PA, RI, SC, TN, TX, UT, VT, VA, WV and WI.