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Memorandum

January 6, 2021

TO: Interested Persons

FROM: Luisa Altmann, Senior Research Analyst, 303-866-3518

SUBJECT: State and Federal Laws Prohibiting Price Gouging During Declared Emergencies

Summary

This memorandum provides information related to state and federal laws prohibiting price gouging during declared disaster emergencies.

Colorado

In response to the COVID-19 public health emergency, the Colorado General Assembly passed [House Bill 20-1414](#), which became effective on July 14, 2020. The bill creates a deceptive trade practice for price gouging during a declared disaster emergency and for 180 days following the initial disaster declaration. The law applies to excessive prices that are charged for: building materials; consumer food items; emergency supplies; fuel; medical supplies; other necessities; repair or reconstruction services; transportation, freight, or storage services; or services used in an emergency cleanup.

The law specifies that a price will not be considered unreasonably excessive if the seller can prove that, due to the events that gave rise to the disaster declaration, the price charged by the seller is directly attributable to additional costs imposed by the seller's supplier or other direct costs of providing the good or service sold.

The Attorney General or the district attorney's office with jurisdiction over the specific geographic area identified in the disaster declaration may bring a civil action against individuals who violate the law. Individuals may be fined up to \$20,000 for each violation, or \$50,000 for price gouging that was committed against an elderly person.

More information about price gouging from the Attorney General's Office can be found here:

<https://coag.gov/app/uploads/2020/04/Price-Gouging-Consumer-Alert.png>

A price gouging complaint can be filed with the Attorney General's Office here:

stopfraudcolorado.gov.

Federal Law

Section 102 of the Federal Defense Production Act (DPA) allows the president to designate materials as “scarce materials or materials the supply of which would be threatened by such accumulation.”¹ For materials with this designation, the law prohibits individuals from accumulating:

- in excess of the reasonable demands of business, personal, or home consumption; or
- for the purpose of resale at prices in excess of prevailing market prices.

In response to the COVID-19 public health emergency, the President issued Executive Order 13910 on March 23, 2020. The Executive Order and the DPA gave the Secretary of Health and Human Services (HHS) the authority to prevent hoarding of health and medical resources necessary to respond to the spread of COVID-19 within the U.S.² On March 25, 2020, the HHS Secretary issued a notice designating a variety of medical supplies—such as N95 facemasks, ventilators, respirators, and other personal protective equipment—as scarce or threatened materials, thereby triggering the DPA.³

Other State Laws

Statutory Prohibitions on Price Gouging During an Emergency

Twenty-nine states have statutory language that specifically prohibits price gouging during a declared emergency or other abnormal market disruption. In addition to the overview provided below, each state’s laws are summarized in Table 1.

Price gouging determinations. The laws in many of these states leave it up to the courts to determine whether a specific price increase during a declared emergency is excessive or unconscionable. However, some states specify the criteria by which a price increase is to be considered price gouging under the law. For example, the Alabama law specifies that a price increase is considered to be unconscionable if it is 25 percent higher than the average price at which the same item was obtainable in the affected area in the 30 days immediately prior to the declared emergency and the increase in the price is not attributable to reasonable costs incurred in connection with the rental or sale of the commodity.

Other states outline specific criteria by which a seller can defend a price increase during an emergency. For example, the Kentucky law specifies that a price is not considered to be grossly in excess of the price prior to the emergency if it is: (1) related to an additional cost imposed by a supplier of a good or other costs of providing the good or service, including an additional cost for labor or materials used to provide a service; (2) 10 percent or less above the price prior to the declaration; (3) 10 percent or less above the sum of the person’s costs and normal markup for a good or service; (4) generally consistent with fluctuations in applicable commodity, regional, national, or international markets, or seasonal fluctuations; or (5) a contract price, or the result of a price formula, established prior to the declaration.

¹50 U.S.C. § 4512.

²<https://www.federalregister.gov/documents/2020/03/26/2020-06478/preventing-hoarding-of-health-and-medical-resources-to-respond-to-the-spread-of-covid-19>.

³<https://www.hhs.gov/sites/default/files/hhs-dfa-notice-of-scarce-materials-for-hoarding-prevention.pdf>.

Duration of coverage. Many of these state laws are in effect for 30 days after an emergency is declared. Several of these states allow the Governor, or other government official, to extend this time period.

Items covered. The goods and services covered by these price gouging laws vary by state. The laws in ten states apply broadly to the prices charged for all consumer goods and services.⁴ The laws in 11 states are more focused on the prices charged for essential or necessary consumer goods and services.⁵ For example, the laws in New Jersey and North Carolina prohibit price gouging for any goods or services that are consumed or used as a direct result of an emergency or that are consumed to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property. An additional five states specifically list the following goods and services in their price gouging law: 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; storage services; gasoline; and other motor fuels.⁶ Finally, the price gouging laws in the following three states are limited to very specific items:

- the law in Idaho only applies to the sale of consumer fuel or food, pharmaceuticals, and water for human consumption;
- the law in Indiana only applies to the sale of fuel; and
- the law in Vermont only applies to the sale of petroleum and heating fuel products.

Administrative Rules Prohibiting Price Gouging During an Emergency

Four states, Illinois, Iowa, Massachusetts, and Missouri, have administrative rules that prohibit price gouging during declared emergencies. These rules have been promulgated pursuant to the states' existing unfair practices laws. The rules in Illinois and Massachusetts solely focus on price gouging for petroleum products, while the rules in Iowa and Missouri cover a broader range of consumer goods and services.

General Price Gouging Statutes

Three additional states, Michigan, Nebraska, and Ohio, have statutory language that prohibits price gouging at all times, not just during a declared emergency. The Michigan law specifies that charging the consumer a price that is grossly in excess of the price at which similar property or services are sold is unlawful. The laws in Nebraska and Ohio are broad and simply state that unconscionable acts by a supplier in connection with a consumer transaction is unlawful.

⁴Alabama, Connecticut, Hawaii, Louisiana, Mississippi, Oklahoma, Pennsylvania, South Carolina, Utah, and Wisconsin.

⁵Florida, Georgia, Kansas, Maine, New Jersey, New York, North Carolina, Oregon, Rhode Island, Texas, and Virginia.

⁶Arkansas, California, Kentucky, Tennessee, and West Virginia.

Table 1
State Laws Prohibiting Price Gouging During Declared Emergencies

State	Statutory Citation	Statutory Provisions
Alabama	Ala. Code § 8-31-1, <i>et seq.</i>	The Alabama Unconscionable Pricing Act makes it unlawful for any person to impose unconscionable prices for the sale or rental of any commodity or rental facility during the period of a declared state of emergency. An unconscionable price is one that is 25 percent or more than the average price the same commodity or rental facility was obtainable 30 days immediately prior to the declared state of emergency. Civil penalties for violations may not exceed \$1,000 per violation, up to \$25,000 for any 24-hour period. The court may also suspend or revoke any business license or certificate for continuous and willful violations.
Arkansas	Ark. Code § 4-88-301, <i>et seq.</i>	During a declared emergency, it is unlawful for any person to sell, or offer to sell, 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, storage services, gasoline, or other motor fuels for a price of more than 10 percent above the price charged immediately prior to the emergency. The statute also prohibits price gouging for repair or reconstruction services and emergency cleanup services. Individuals who are found guilty of violations are guilty of a Class A misdemeanor.
California	Cal. Penal Code § 396.	During a declared emergency, it is unlawful for any person to sell or offer to sell 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, storage services, gasoline, or other motor fuels for a price of more than 10 percent greater than the price charged by that person immediately prior to the emergency declaration. The statute also prohibits price gouging for repair or reconstruction services or any services used in emergency cleanup, hotel and motel rates, and increases in rental prices. Individuals who are found guilty of violations are guilty of a misdemeanor punishable by up to one year in jail and/or fined up to \$10,000.
Colorado	Section 6-1-730, C.R.S.	During a declared emergency, selling building materials; consumer food items; emergency supplies; fuel, medical supplies; other necessities; repair or construction services; transportation, freight, or storage services; or services used in an emergency cleanup at an unreasonably excessive price is considered to be an unfair or deceptive act. Civil penalties for violations may not exceed \$20,000, or \$50,000 for price gouging that was committed against an elderly person.
Connecticut	Conn. Gen. Stat. § 42-230 & Conn. Gen. Stat § 42-232.	During a declared emergency, the price of any item may not be increased until the emergency is declared to be at an end. The statute does not prohibit price fluctuations for items sold at retail that would occur during the normal course of business. Violators may be fined up to \$99. During a declared emergency, items that have been designated by the Governor to be in short supply may not be sold at a price that exceeds the price at which such product or service was sold in the usual course of business immediately prior to the emergency declaration. Violators may be fined up to \$1,000 and face up to one year in prison, except that individuals who intentionally or repeatedly violate the law may be guilty of a class D felony.
Florida	Fla. Stat. § 501.160.	During a declared emergency, it is unlawful for any person to rent or sell any essential commodity at an unconscionable price, or to impose an unconscionable price for the rental or lease of any dwelling unit or self-storage facility.
Georgia	Ga. Code Ann. § 10-1-393.4.	During a declared emergency, it is unlawful for any person to sell any goods or services identified by the Governor as being necessary to preserve, protect, or sustain the life, health, or safety of persons or their property, at a price higher than immediately before the emergency, except under specific circumstances.
Hawaii	Haw. Rev. Stat. § 127A-30.	During a declared emergency or severe weather warning, the selling price of any commodity may not be increased, whether at the retail or wholesale level. Each item sold at a price that is prohibited constitutes a separate violation, which is punishable by a fine of \$500 to \$10,000.
Idaho	Idaho Code Ann. § 48-603 (19).	Taking advantage of a declared disaster or emergency by selling to the ultimate consumer fuel or food, pharmaceuticals, or water for human consumption at an exorbitant or excessive price is considered to be an unfair or deceptive act.

**Table 1 (Cont.)
State Laws Prohibiting Price Gouging During Declared Emergencies**

State	Statutory Citation	Statutory Provisions
Indiana	Ind. Code § 4-6-9.1-1, <i>et seq.</i>	Price gouging, by charging an unconscionable price for the sale of fuel, is prohibited during, and immediately before, a declared emergency.
Kansas	Kan. Stat. Ann. § 50-6,106.	Profiteering from a disaster by a supplier unjustifiably increasing the price of any necessary property or service is considered to be an unconscionable act under state law.
Kentucky	Ky. Rev. Stat. Ann. § 367.372, <i>et seq.</i>	During a declared emergency, individuals are prohibited from selling or renting any of the following goods or services for a price that is grossly in excess of the price prior to the emergency and unrelated to any increased cost to the seller: consumer food items, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, storage services, gasoline, and other motor fuels.
Louisiana	La. Rev. Stat. Ann. § 29:732.	During a declared emergency, the prices charged for goods and services sold may not exceed the prices ordinarily charged for comparable goods and services in the same area immediately before the emergency.
Maine	Me. Rev. Stat. Ann. tit. 10 § 1105.	During a declared abnormal market disruption, a person may not sell necessities at an unconscionable price. A price is presumed to be unconscionable if the sum of the price at which similar goods or services were available for sale immediately prior to the disruption and any increased costs exceeds a 15 percent increase.
Mississippi	Miss. Code Ann. § 75-24-25.	During a declared emergency, the value received for all goods and services sold must not exceed the prices ordinarily charged for comparable goods or services immediately prior to the emergency. Individuals found guilty of violations that resulted in receiving a total value of less than \$500 during any 24-hour period are guilty of a misdemeanor and may be fined up to \$1,000 and face up to 6 months in jail. Individuals found guilty of violations that resulted in receiving a total value of \$500 or more during any 24-hour period are guilty of a felony and may be fined up to \$5,000 and face 1 to 5 years in prison.
New Jersey	N.J. Rev. Stat. § 56:8-109.	During a declared emergency, it is unlawful for any person to sell any merchandise which is consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety, or comfort of persons or their property for a price that constitutes an excessive price increase. Among other criteria, a price is deemed to be excessive if it exceeds the price at which the good or service was offered for sale immediately prior to the emergency by more than 10 percent.
New York	N.Y. Gen. Bus. Law § 396-r.	During any abnormal disruption of the market for consumer goods and services that are vital and necessary for the health, safety, and welfare of consumers, individuals within the supply chain are prohibited from selling these goods and services for an amount that represents an unconscionably excessive price.
North Carolina	N.C. Gen. Stat. § 75-38.	During a declared emergency, it is unlawful for any person to sell or rent any goods or services which are consumed or used as a direct result of an emergency or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge an intent to charge a price that is unreasonably excessive under the circumstances.
Oklahoma	Okla. Stat. Ann. tit. 15, § 777.1, <i>et seq.</i>	During a declared emergency, the Oklahoma Emergency Price Stabilization Act prohibits individuals from selling, renting, or leasing any goods, services, dwelling units, or storage space in the emergency area at a rate or price which is more than 10 percent above the rate or price charged by the person immediately prior to the emergency, except under specific circumstances.
Oregon	Or. Rev. Stat. § 401.965.	During a declared abnormal disruption of the market, merchants and wholesalers are prohibited from selling essential consumer goods or services for an amount that represents an unconscionably excessive price. An unconscionably excessive price is generally considered to be a price that is at least 15 percent more than the price immediately prior to the disruption.
Pennsylvania	73 Pa. Stat. Ann. § 232.1, <i>et seq.</i>	The Pennsylvania Price Gouging Act prohibits any party within the supply chain to sell consumer goods or services for an amount which represents an unconscionably excessive price. An unconscionably excessive price is generally considered to be a price that is at least 20 percent more than the average price immediately prior to the emergency. The Attorney General may bring an action to impose a civil penalty up to \$10,000 for each violation.

**Table 1 (Cont.)
State Laws Prohibiting Price Gouging During Declared Emergencies**

State	Statutory Citation	Statutory Provisions
Rhode Island	R.I. Gen. Laws § 6-13-21.	During a declared emergency, it is considered to be an unfair sales practice for individuals or retailers to participate in price gouging by selling essential commodities for an amount that represents an unconscionably high price. For violations, the court may impose a fine of up to \$1,000 per violation and up to \$25,000 for any 24-hour period, among other penalties.
South Carolina	S.C. Code Ann. § 39-5-145.	During a declared emergency, it is unlawful for anyone to rent or sell a commodity at an unconscionable price or impose an unconscionable price for the rental or lease of a dwelling unit, including a hotel or motel unit, other temporary lodging, or self-storage facility. Anyone who in violation of this law is guilty of a misdemeanor and may be fined up to \$1,000 and/or imprisoned for up to 30 days.
Tennessee	Tenn. Code Ann. § 47-18-5101, <i>et seq.</i>	During a declared emergency, individuals are prohibited from charging any other person a price for the following goods and services that is grossly in excess of the price generally charged for the same or similar goods or services in the usual course of business: consumer food items, repair or construction services, emergency supplies, medical supplies, building materials, gasoline, transportation, freight, storage services, or housing.
Texas	Tex. Bus. & Com. Code § 17.46 (b)(27) & Tex. Bus. & Com. Code § 17.4625.	It is unlawful and considered to be a false, misleading, or deceptive act or practice to take advantage of a declared disaster by selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price.
Utah	Utah Code § 13-41-201, <i>et seq.</i>	During a declared emergency, a person may not charge a consumer an excessive price for goods or services at retail, with certain exceptions. An administrative fine of up to \$1,000 may be imposed for each violation, where each instance of charging an excessive price constitutes a separate violation, up to a maximum fine of \$10,000 per day.
Vermont	Vt. Stat. Ann. tit. 9, § 2461d.	It is considered to be an unfair and deceptive act and practice in commerce for any petroleum or heating fuel-related business to sell any petroleum product or heating fuel product for an amount that represents an unconscionably high price during or 7 days prior to a market emergency.
Virginia	Va. Code Ann. § 59.1-525, <i>et seq.</i> & Va. Code Ann. § 59.1-200.	The Virginia Post-Disaster Anti-Price Gouging Act makes it unlawful for any supplier to sell, lease, or license any necessary goods or services at an unconscionable price during any time of disaster.
West Virginia	W. Va. Code § 46A-6J-1, <i>et seq.</i>	During a declared emergency, it is unlawful for any person to sell any consumer food items, essential consumer items, goods used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, storage services, gasoline, or other motor fuels for a price greater than 10 percent above the price charged by that person on the tenth day immediately preceding the emergency, unless the price is directly attributable to additional costs imposed on the seller by the supplier. Individuals who are found guilty of violations are guilty of a misdemeanor punishable by up to one year in jail and/or or fined up to \$1,000.
Wisconsin	Wis. Stat. § 10.305.	During a declared emergency that results in an abnormal economic disruption, retailers and wholesalers are prohibited from selling consumer goods or services at unreasonably excessive prices.

Compiled by Legislative Council Staff.