

# Legal Update

## Pricing Compliance in the United States During the COVID-19 Pandemic

Since the beginning of the COVID-19 pandemic, media reports have highlighted coronavirus-related price gouging on items ranging from necessary medical supplies (such as respirators) to basic household essentials (such as toilet paper). Public scrutiny of, and political interest in, coronavirus-related price gouging has led to rapid shifts in pricing compliance enforcement and regulations. Prior to this public health crisis, only 33 states, plus Washington DC, had anti-price gouging statutes. Now, all but four states have enacted anti-price gouging legislation, temporarily banned price gouging during the COVID-19 pandemic, and/or announced their intention to enforce anti-price gouging measures under existing consumer protection statutes.

Further, on March 23, 2020, the President of the United States signed an Executive Order prohibiting hoarding and price gouging of critical medical supplies.<sup>1</sup> The EO authorizes the Department of Justice to investigate and prosecute price gouging of medical resources. Pursuant to that authorization, the Department of Justice created a task force charged with addressing hoarding and price gouging associated with COVID-19.<sup>2</sup> In conjunction with the task force, some US Attorney offices have announced enforcement efforts within their districts to tackle hoarding and price gouging.<sup>3</sup>

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<sup>1</sup> <https://www.whitehouse.gov/briefings-statements/president-donald-i-trump-will-not-tolerate-price-gouging-hoarding-critical-supplies-needed-combat-coronavirus/>

<sup>2</sup> <https://www.justice.gov/file/1262776/download>

<sup>3</sup> E.g., <https://www.justice.gov/usao-ak/pr/us-attorney-bryan-schroder-announces-efforts-prosecute-hoarding-and-price-gouging>; <https://www.justice.gov/usao-sd/pr/us-attorney-urges-public-report-suspected-covid-19-fraud-or-price-gouging>

Because anti-price gouging regulations vary from state to state, and because the statutory landscape is changing almost daily, it can be challenging for consumer-facing businesses to ensure that they are in statutory compliance in all jurisdictions in which they operate. To assist, we have created the below quick reference guide concerning the **current** state of anti-price gouging measures in the United States.

This guide provides a state-by-state overview of (1) the relevant price gouging statute or other regulation, (2) the event that triggers anti-price gouging measures, (3) the measure of price gouging in the state and (4) the penalties an individual or entity might face for violating the state’s anti-price gouging measures.

It should be noted that additional factors may influence whether a business is in compliance in a particular jurisdiction. For example, most states allow for price increases directly related to additional costs imposed by the emergency. In many states, a wholesale price increase of 20% may be passed along by the retailer with an additional 20% markup on its retail prices. Further, many statutes consider supply chain price increases to include the increased costs of housing and services, not just merchandise at retail. For the sake of brevity, these statutes are not summarized in detail. Finally, this summary focuses on statutes specific to price gouging; however, as noted above, many states and local jurisdictions may invoke (and in some cases, have already invoked) consumer protection or other generalized laws to address price gouging.

State	Statute	Triggering Event	Price Gouging	Punishable By
<b>Alabama</b>	Ala. Code §§ 8-31-1 <i>et seq.</i>	Emergency declaration by the Governor	A price increase equal to or greater than 25% more than the average price charged for similar commodities in the affected area during the 30 days immediately prior to the declaration of the state of emergency	Civil penalties of up to \$1,000 per violation, with an aggregate total of \$25,000 for any 24-hour period. Constitutes a violation of the consumer protection statute.
<b>Alaska</b>	None	N/A	Alaska does not have an anti-price gouging law. However, the Alaska Attorney General is relying on the Unfair Trade Practices Act, Alaska Stat. Ann. §§ 45.50.471 - .561, for price gouging enforcement and has filed a complaint against at least one person for re-selling N95 respirators at “outrageous, unconscionable, and unfair prices.” <sup>4</sup>	Civil penalties of between \$1,000 and \$25,000 per violation; injunctive relief; restitution; attorneys’ fees and costs, including the costs of investigation.
<b>Arizona</b>	Executive Order 2020-7, dated March 11, 2020	N/A	Along with issuing an emergency declaration, the Arizona Governor issued an executive order prohibiting price gouging of COVID-19 testing and treatment services. <sup>5</sup> Arizona does not have any	N/A

<sup>4</sup> <http://www.law.state.ak.us/press/releases/2020/040120-Aune.html>

<sup>5</sup> <https://azgovernor.gov/governor/news/2020/03/governor-doug-ducey-issues-declaration-emergency-executive-order-combat>

State	Statute	Triggering Event	Price Gouging	Punishable By
			existing anti-price gouging law, and the Arizona Attorney General's office has stated that it is not able to take action against price gougers without statutory authority. However, two Arizona state congressmen have called for federal, state, and congressional investigations into at least one company that engaged in price gouging. Further, the Arizona Attorney General penned a letter asking the Kentucky Attorney General to investigate a Kentucky-based company that allegedly engaged in price gouging in sales of personal protective equipment to Arizona first responders. <sup>6</sup>	
<b>Arkansas</b>	A.C.A. §§ 4-88-301 <i>et seq.</i>	Emergency declaration by the President, Dept. of Homeland Security, Governor, or local authorities	A price more than 10% above the price charged by that person or entity for those goods and services immediately prior to the declaration of the state of emergency	<p><b>Criminal Penalties</b> Constitutes a Class A misdemeanor (up to \$2,500 fine and up to one year in jail per violation).</p> <p><b>Civil Penalties</b> Constitutes a violation of the consumer protection statute. Attorney General has authority to apply all remedies and penalties available under the consumer protection statute.</p>
<b>California</b>	Cal. Penal Code § 396	Emergency declaration by the President, Governor, or local authorities	A price more than 10% above the price charged by that person or entity for those goods and services immediately prior to the declaration of the state of emergency	<p><b>Criminal Penalties</b> Constitutes a misdemeanor punishable by up to a \$10,000 fine and/or up to one year in jail</p> <p><b>Civil Penalties</b> Constitutes a violation of consumer protection statute subject to restitution, injunctive</p>

<sup>6</sup> <https://www.12news.com/article/news/health/coronavirus/attorney-general-asked-to-investigate-vendor-accused-of-trying-to-price-gouge-first-responders/75-8fc3d4bc-b2e8-46eb-a750-f9c3c5226c1d>

State	Statute	Triggering Event	Price Gouging	Punishable By
				relief, and civil penalties of up to \$2,500 per violation.
<b>Colorado</b>	None ( <i>but see</i> Colo. Rev. Stat. Ann. § 6-1-101 <i>et seq.</i> )	N/A	Colorado does not have an anti-price gouging law, but the Colorado Attorney General has urged consumers to report any coronavirus-driven price gouging, citing broad authority under the Colorado consumer protection act to protect consumers from unfair, unconscionable, or deceptive acts or practices. <sup>7</sup>	Will depend on which statute the Attorney General uses to enforce anti-price gouging measures.
<b>Connecticut</b>	Conn. Gen. Stat. §§ 42-230 <i>et seq.</i>	Emergency declaration by the President or Governor	Any increase in retail prices of any item offered for sale at retail in a location subject to an emergency declaration, to the extent the increase is not attributable to fluctuations in price during the normal course of business	Civil penalties of up to \$99. Constitutes a violation of the statute prohibiting unfair trade practices, subject to restitution, injunctive relief, and civil penalties of up to \$25,000 per violation.
<b>Delaware</b>	Del. Declaration of State of Emergency issued March 12, 2020 <sup>8</sup> ; Del. Code Ann. tit. 6, § 2511 <i>et seq.</i> ; Del. Code Ann. tit. 6, § 2513	Gubernatorial COVID-19 emergency declaration	A price increase more than 10% from the cost customarily applied in the usual course of business immediately prior to the declaration of the state of emergency	Civil penalties of up to \$10,000 per violation; injunctive relief; restitution. Private cause of action available.
<b>District of Columbia (DC)</b>	D.C. Code §§ 28-4101 <i>et seq.</i>	Emergency declaration by the Mayor	Charging more than the “normal average retail price,” defined as either (1) for services, not more than 10% more than the price at which similar services were offered in the Washington Metropolitan Area during the 90-day period preceding the declaration of the state of emergency; or (2) for merchandise, a price equal to the wholesale cost plus a retail mark-up that is the same percentage over wholesale cost as the retail mark-up for similar merchandise sold in the Washington Metropolitan Area	Civil penalty of up to \$1,000. Constitutes a civil infraction under the Civil Infractions Act, subject to any civil fines, penalties, and fees pursuant to that act.

<sup>7</sup> <https://coag.gov/press-releases/3-16-20/>

<sup>8</sup> Delaware did not have any specific anti-price gouging measures until the Delaware governor’s March 12, 2020 COVID-19 emergency declaration created one. The language of the order suggests that this measure is solely in connection with the current public health emergency, so it is unclear if this measure will remain in place once the state of emergency is lifted.

State	Statute	Triggering Event	Price Gouging	Punishable By
			during the 90-day period preceding the declaration of the state of emergency	
<b>Florida</b>	Fla. Stat. Ann. § 501.160	Emergency declaration by the Governor	An unconscionable price, defined as either (1) a gross disparity between the price of the commodity and the average price at which it was sold in the usual course of business during the 30 days immediately preceding the declaration of the state of emergency; or (2) an amount that grossly exceeds the average price at which similar commodities were readily obtainable in the trade area during the 30 days immediately preceding the declaration of the state of emergency	<p><b>Criminal Penalties</b> Constitutes a second degree misdemeanor, punishable by fines of up to \$500 and/or up to 60 days imprisonment</p> <p><b>Civil Penalties</b> Constitutes a violation of the Florida Deceptive and Unfair Trade Practices Act, subject to civil penalties of up to \$10,000 per violation Private cause of action available.</p>
<b>Georgia</b>	Ga. Code Ann. § 10-1-393.4	Emergency declaration by the Governor	Any price increase (1) higher than that at which the goods were sold or offered immediately prior to the declaration of the state of emergency; or (2) greater than the cost to the retailer, plus the retailer's average markup percentage applied in the 10 days immediately prior to the declaration of the state of emergency	Civil penalties of up to \$2,000 per violation (imposed by the Attorney General) or \$5,000 per violation (imposed by the Court); injunctive relief; restitution; and other equitable relief as the court deems just. Violation of an injunction may result in an additional civil penalty of up to \$25,000 per violation.
<b>Hawaii</b>	Haw. Rev. Stat. § 127A-30	Emergency declaration by the Governor or, locally, the Mayor	Any increase in the selling price of any commodity, at retail or at wholesale, except for documentable additional operating expenses, which may be passed on to the consumer	Civil penalties of not less than \$500 and not more than \$10,000 per violation.
<b>Idaho</b>	Idaho Code § 48-603	Emergency declaration by the President or Governor	An exorbitant or excessive price, to be determined by the court based on the facts and circumstances, including: (1) a comparison of the price paid by the seller for the commodities, and the price for which the seller sold the same commodity immediately before and immediately after the period specified in the declaration of the state of emergency;	Constitutes a violation of the consumer protection act, subject to injunctive relief, restitution, civil penalties of up to \$5,000 per violation, and recovery of costs by the investigating attorney general.

State	Statute	Triggering Event	Price Gouging	Punishable By
			(2) additional costs of doing business incurred by the seller because of the emergency; (3) duration of the emergency declaration.	
<b>Illinois</b>	14 Ill. Admin. Code 465.10 <i>et seq.</i> ; 815 Ill. Comp. Stat. Ann. 505/7.	Market emergency, or as determined by the state Attorney General or the Courts	An unconscionably high price, defined as gross disparity between the price of the product and either (1) the price at which it was sold in usual course of business prior to the emergency, or (2) the price at which similar products are readily obtainable by other buyers in the trade area <sup>9</sup>	Constitutes a violation of consumer protection statute, subject to injunctive relief, restitution, and civil penalties of up to \$50,000 per violation. Additional civil penalties for violations committed against a person age 65 or older. Private cause of action available.
<b>Indiana</b>	Ind. Code §§ 4-6-9.1-1 <i>et seq.</i> ; <i>see also</i> Executive Order 20-04; Ind. Code Ann. § 24-5-0.5-1 <i>et seq.</i>	Emergency declaration by the Governor	Indiana’s price gouging law is specific to price gouging of fuel prices during a declared state of emergency. However, the Indiana Attorney General, with the support of the Governor, has stated that it will enforce anti-price gouging measures during the COVID-19 pandemic under its authority to enforce the Deceptive Consumer Sales Act. <sup>10</sup>	Civil penalties of up to \$5,000 per violation (imposed by the Attorney General); injunctive relief; restitution; recovery of costs of the investigation. Violation of an injunction may result in an additional civil penalty of up to \$15,000 per violation. Private cause of action available, including treble damages.
<b>Iowa</b>	Iowa Admin. Code r. 61-31.1(714); Iowa Code Ann. § 714.16 (West)	Emergency declaration by the President or Governor	An excessive price, defined as one not justified by the seller's actual costs of acquiring, producing, selling, transporting, and delivering the actual product sold, plus a reasonable profit. An excessive price is presumed from (1) a substantial increase in the price of any merchandise over the price at which it was sold in the usual course of business immediately prior to the onset of the emergency, or (2) from a substantial	Constitutes a violation of the Consumer Fraud Act, subject to restitution, injunctive relief, and civil penalties of up to \$40,000 per violation.

<sup>9</sup> Illinois’s price gouging statute specifically concerns petroleum products, but allows the Attorney General or the Courts to determine that other acts constitute price gouging. Both the Illinois Attorney General and Governor have stated that action will be taken against entities that attempt to price gouge during the COVID-19 pandemic, but did not provide guidance as to what constitutes “price gouging.” Therefore, this definition incorporates the petroleum-product price gouging statute.

<sup>10</sup> <https://calendar.in.gov/site/oag/event/ag-hill-urges-hoosiers-to-submit-complaints-online-amid-coronavirus-covid-19-outbreak/>

State	Statute	Triggering Event	Price Gouging	Punishable By
			increase in the markup from cost if wholesale prices or costs have increased.	
<b>Kansas</b>	Kan. Stat. Ann. § 50-6,106	Emergency declaration by the President or Governor	An unjustifiable increase in price, to be determined by the court, considering (1) whether the price charged by the supplier grossly exceeded the price charged by the supplier for similar property or services on the business day before the disaster; or (2) whether the amount charged by the supplier during the time of disaster grossly exceeded the price at which similar property or services were readily obtainable by other consumers in the trade area. A price difference of more than 25% is <i>prima facie</i> evidence of gross excess.	Constitutes a violation of the Consumer Protection Act, subject to injunctive relief, restitution, civil penalties of up to \$10,000 per violation, and recovery of costs. Private cause of action available.
<b>Kentucky</b>	Ky. Rev. Stat. Ann. § 367.374 <i>et seq.</i>	Emergency declaration by the President, Dept. of Homeland Security, or the Governor;	A price which is grossly in excess of the price prior to the declaration of the state of emergency, to be determined by the court considering all relevant circumstances. A price does <i>not</i> violate this section if (1) it is 10% or less above the price prior to the declaration; (2) it is 10% or less above the sum of the person's costs plus normal markup for a good or service, (3) consistent with fluctuations in applicable markets, or (4) is a contract price or result of price formula established prior to the declaration.	Civil penalties of up to \$5,000 for the first violation, and \$10,000 per violation for each subsequent violation (not to exceed \$25,000 in the aggregate for any 24 hour period). Additional remedies and penalties may be available under the Consumer Protection Act.
<b>Louisiana</b>	LA R.S. 29:732	Emergency declaration by the Governor or, locally, Parish President	A price in excess of the prices ordinarily charged for comparable goods and services in the same market area at or immediately before the time of the state of emergency. It is <i>prima facie</i> evidence of a violation if the amount charged (1) represents a gross disparity between the price of the goods and their value (measured by the price at which such goods were offered for sale by the merchant in the usual course of business immediately prior to the onset of the abnormal market disruption), or (2) grossly exceeded the price at which similar	<b>Criminal Penalties</b> Punishable by criminal fines of up to \$500 and/or imprisonment of up to 6 months. (To the extent violations result in serious bodily injury or property damage in excess of \$5,000, punishable by imprisonment at hard labor for up to 5 years.) <b>Civil Penalties</b> Injunctive relief, restitution, recovery of costs or attorney's fees, and civil penalties to be

State	Statute	Triggering Event	Price Gouging	Punishable By
			goods were readily obtainable by other consumers in the trade area.	imposed by the court, in addition to other civil remedies provided by law.
<b>Maine</b>	Me. Rev. Stat. tit. 10, § 1105; <i>see also</i> Me. Rev. Stat. tit. 5, § 207 <i>et seq.</i> ( <i>but not</i> Me. Rev. Stat. tit. 5, § 213).	Emergency declaration by the Governor	An unconscionable price. There is a rebuttable presumption that a price is unconscionable if it exceeds by more than 15% the sum of the price at which similar goods were sold by that person immediately prior to the beginning date of the abnormal market disruption and the increased cost calculated according to the method used by that person prior to the abnormal market disruption.  If the person did not sell that particular good immediately prior to emergency, then the baseline price is the price at which similar goods were sold by another person similarly situated prior to the abnormal market disruption.	Constitutes a violation of the consumer protection statute, subject to injunctive relief, restitution, recovery of costs and civil penalties of up to \$10,000 per violation.
<b>Maryland</b>	2020 Maryland Laws Ch. 13 (S.B. 1080) <sup>11</sup> ; Md. Code Ann., Com. Law § 13-101	Gubernatorial COVID-19 emergency declaration	Any increase in the sale or rental price of any good or service that increases the retailer's profit by more than 10%	<b>Criminal Penalties</b> Violation is considered a misdemeanor, subject to fine of \$1,000 and/or imprisonment of up to one year, in addition to civil penalties. <b>Civil Penalties</b> Constitutes a violation of consumer protection statute, subject to injunctive relief, restitution, recovery of costs, and civil penalties of up to \$10,000 per violation (up to \$25,000 for repeat offenders). Private cause of action available.

<sup>11</sup> Enacted on March 19, 2020, in connection with the COVID-19 public health crisis. Expires on April 30, 2021.

State	Statute	Triggering Event	Price Gouging	Punishable By
<b>Massachusetts</b> <sup>12</sup>	940 CMR 3.18; Amendment to 940 CMR 3:18, effective March 20, 2020	Emergency declaration by the Governor or declaration of a national emergency	An unconscionably high price, defined as gross disparity between the price charged and either (1) the price at which the same good was sold by the business in the usual course of business immediately preceding the declaration of the state or emergency, or (2) the price at which a similar product is readily obtainable from other businesses.	Constitutes a violation of the consumer protection statute, subject to injunctive relief, restitution, civil penalties of up to \$5,000 per violation, and recovery of costs. Private cause of action available
<b>Michigan</b>	Mich. Stat. Ann. 445.903(z)	N/A	Any price grossly in excess of the price at which similar property or services are sold.	Constitutes a violation of the consumer protection act, subject to injunctive relief and civil penalties of up to \$25,000. Private cause of action available.
<b>Minnesota</b>	Executive Order 20-10, signed March 20, 2020 <sup>13</sup> ; Minn. Stat. Ann. § 8.31.	Gubernatorial COVID-19 executive order	An unconscionably excessive price, defined as: (1) a gross disparity between the price sold and the price as sold in the usual course of business during the 30 days immediately prior to the emergency declaration; (2) an increase in price more than 20% greater than the price as sold in the usual course of business during the 30 days immediately prior to the emergency declaration; or (3) a price that grossly exceeds the price at which similar goods are readily obtainable by other purchasers in the trade area.	Civil penalties of up to \$10,000 per sale or transaction; additional relief as sought by the Attorney General pursuant to code. Private cause of action available.
<b>Mississippi</b>	Miss. Code Ann. § 75-24-25	Emergency declaration by the President, Governor, or local authorities	Any price that exceeds prices ordinarily charged for comparable goods in the same market area or immediately preceding the declaration of a state of emergency.	<b>Criminal Penalties</b> When the total value received for a violation is \$500 or greater, violation constitutes a felony punishable by fines of up to \$5,000 and/or imprisonment for 1-5 years.

<sup>12</sup> Massachusetts anti-price gouging laws were limited to petroleum-products until an amendment was filed by the Attorney General on March 20, 2020 (<https://www.mass.gov/news/ag-healey-issues-emergency-regulation-prohibiting-price-gouging-of-critical-goods-and-services>)

<sup>13</sup> Enacted specifically to address price gouging in connection with the COVID-19 public health crisis and in effect until the end of Minnesota's declared state of emergency.

State	Statute	Triggering Event	Price Gouging	Punishable By
				<p>When the total value received for a violation is \$500 or less, violation constitutes a misdemeanor punishable by fines of up to \$1,000 and/or imprisonment for up to 6 months.</p> <p><b>Civil Penalties</b>            Constitutes a violation of the consumer protection statute, subject to injunctive relief, restitution, and civil penalties of up to \$10,000 per violation. Private cause of action available.</p>
<b>Missouri</b>	Mo. Code Regs. Ann. tit. 15, § 60-8.030	Emergency declaration by federal or state authorities	Any price not justified by the seller's actual costs, plus the seller's "usual and customary profit margin" prior to the declaration of a disaster	<p><b>Criminal Penalties</b>            Constitutes a Class D felony, punishable by 1-7 years in prison, and up to \$10,000 in fines</p> <p><b>Civil Penalties</b>            Civil penalties of up to \$1,000 per violation; injunctive relief; restitution.</p>
<b>Montana</b>	None ( <i>but see</i> Mont. Code Ann. § 30-14-103; Mont. Code Ann. § 30-14-205)	N/A	Montana does not have an anti-price gouging law, but the Montana Attorney General has warned that price gouging in connection with the COVID-19 pandemic may be considered an unlawful act under Sections 30-14-103 and 30-14-205 of the Consumer Protection Act. <sup>14</sup>	<p>According to the press release by the Attorney General's office, persons found to be engaging in price gouging in connection with the COVID-19 pandemic are subject to the following penalties:</p> <p><b>Criminal Penalties</b>            Violations of Section 30-14-103 are subject to criminal sanctions of up to \$5,000 and one year in prison. Violations of Section 30-14-205 are subject to criminal penalties of up to five years in prison and a \$25,000 fine.</p> <p><b>Civil Penalties</b></p>

<sup>14</sup> <https://doimt.gov/attorney-general-fox-warns-of-potential-coronavirus-scams-price-gouging/>

State	Statute	Triggering Event	Price Gouging	Punishable By
				Violations of Section 30-14-103 are subject to civil fines of up to \$20,000 for violations.
<b>Nebraska</b>	None	N/A	Nebraska does not have any specific anti-price gouging statutes, but the Attorney General has encouraged consumers to file complaints if they believe price gouging is taking place, and stated intent to investigate and prosecute, when possible. <sup>15</sup> He did not identify which Nebraska statute would be used to enforce anti-price gouging measures, but presumably would do so under Nebraska’s consumer protection statutes.	Will depend on which statute the Attorney General uses to enforce anti-price gouging measures.
<b>Nevada</b>	None	N/A	Nevada does not have an anti-price gouging law, but the Nevada Attorney General has urged consumers to report any coronavirus-driven price gouging, relying on fraud and antitrust statutes for enforcement. <sup>16</sup>	Will depend on which statute the Attorney General uses to enforce anti-price gouging measures.
<b>New Hampshire</b>	None	N/A	N/A	N/A
<b>New Jersey</b>	N.J.S.A. 56:8-107 <i>et seq.</i>	Emergency declaration by the President, Governor, or local authorities	An excessive and unjustified price increase, defined as price that either (1) exceeds by more than 10% the price at which the good was sold by the seller in the usual course of business immediately preceding the declaration of the state of emergency, or (2) represents an increase of more than 10% in the amount of markup from cost compared to the seller’s customary markup.	Civil penalties of up to \$10,000 for the first violation and up to \$20,000 per violation for subsequent violations, with each individual sale considered a separate and distinct event.
<b>New Mexico</b>	None ( <i>but see</i> N.M. Stat. Ann. § 57-12-2 <i>et seq.</i> ; N.M. Stat. Ann. § 57-17-15.)	N/A	New Mexico does not have specific anti-price gouging statutes, but increasing prices on “medical supplies, hand sanitizer, masks, and other items” may be a violation of the consumer protection statutes	<b>Criminal Penalties</b> Violations of Section 57-17-15 are a misdemeanor, punishable by a fine of \$20-\$100 and/or up to 3 months in prison on the first

<sup>15</sup> <https://ago.nebraska.gov/news/attorneys-general-warn-online-marketplaces-aren%E2%80%99t-exempt-price-gouging-laws>

<sup>16</sup> <https://lasvegassun.com/news/2020/mar/20/nevada-ag-reports-nearly-100-complaints-of-coronav/>

State	Statute	Triggering Event	Price Gouging	Punishable By
			forbidding misrepresentation of price and taking advantage of a consumer's situation to a "grossly unfair degree." <sup>17</sup>	offense, and a fine of \$50-500 and/or up to one year in prison for subsequent offenses. <b>Civil Penalties</b> Violations of the Unfair Trade Practices statutes can result in civil penalties of up to \$5,000 per violation. Private cause of action available.
<b>New York</b>	N.Y. Gen. Bus. Law § 396-r. Proposed legislation (Senate Bill S7932) would expressly prohibit price gouging of medical supplies during a public health emergency, but has not been enacted yet. <sup>18</sup>	An emergency declaration by the Governor can trigger the statute, but is not required by the current statute.	An unconscionably excessive price, to be determined by the court. It is <i>prima facie</i> evidence of price gouging if the amount charged (1) represents a gross disparity between the price of the goods and their value, measured by the seller's price in the usual course of business immediately preceding the abnormal market disruption, or (2) grossly exceeded the price at which similar goods were readily obtainable by other consumers in the trade area.	Civil penalties of up to \$25,000; injunctive relief; restitution.
<b>North Carolina</b>	N.C. Gen. Stat. Ann. § 75-38	Emergency declaration by the Governor, State Legislature, or local authorities	An unreasonably excessive price, based on whether (1) the price charges is attributable to the seller's additional costs, (2) the price charged exceeds the seller's average price in the 60 days preceding the declaration of the state of emergency (or, if the seller did not sell that particular good prior to the emergency, based on the price at which the goods were generally available in the trade area), and/or (3) the price charged is attributable to fluctuations in the applicable markets.	Civil penalties of up to \$5,000 per violation; injunctive relief; restitution. Private cause of action available.
<b>North Dakota</b>	None	N/A	N/A	N/A
<b>Ohio</b>	None ( <i>but see</i> Ohio Rev. Code Ann. § 1345.01 <i>et seq.</i> )	N/A	Ohio does not have any anti-price gouging laws, but does ban unconscionable sales practices under the Consumer Sales	Will depend on which statute the Attorney General uses to enforce anti-price gouging measures.

<sup>17</sup> <https://ladailypost.com/ag-warns-against-coronavirus-related-price-gouging/>

<sup>18</sup> <https://www.nysenate.gov/legislation/bills/2019/s7932>

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			Practices Act, which the Attorney General has advised could be used to enforce anti-price gouging measures. <sup>19</sup> The Attorney General reportedly asked the state legislature to pass anti-price gouging measures during the COVID-19 pandemic. <sup>20</sup>	
<b>Oklahoma</b>	Okla. Stat. Ann. tit. 15, § 777.1 <i>et seq.</i>	Emergency declaration by the President or Governor	A price more than 10% above that charged by the person for the same or similar goods immediately prior to the declaration of the state of emergency.	<p>Constitutes a violation of the Consumer Protection Act, subject to the following:</p> <p><b>Criminal Penalties</b>            First offense constitutes a misdemeanor, subject to fines of up to \$1,000 and/or imprisonment for up to one year. Subsequent offenses, or when the value received by a violation is \$500 or more, a violation constitutes a felony, subject to fines of up to \$5,000 and/or up to 10 years imprisonment)</p> <p><b>Civil Penalties</b>            Civil penalties of up to \$10,000 per violation; injunctive relief; restitution; other penalties to be imposed by the court.            Private cause of action available.</p>
<b>Oregon</b>	Or. Rev. Stat. Ann. § 401.962 <i>et seq.</i>	Emergency declaration by the Governor	A grossly or unconscionably excessive price, evidenced by a price that exceeds by 15% or more either (1) the price at which goods were sold by the merchant in the usual course of business immediately prior to or during the declaration of the state of emergency, or (2) the price at which similar goods were readily obtainable by other	<p>Constitutes an unlawful trade practice, subject to injunctive relief, civil penalties of up to \$25,000 per violation, and other remedial measures as determined by the court.            Private cause of action available.</p>

<sup>19</sup> <https://www.cleveland19.com/2020/03/07/ohio-attorney-generals-office-addresses-concerns-coronavirus-price-gouging/>

<sup>20</sup> <https://www.dispatch.com/news/20200319/with-coronavirus-price-gouging-including-13-toilet-paper-yost-wants-consumer-protection-law>

State	Statute	Triggering Event	Price Gouging	Punishable By
			consumers in or near the geographic area covered by the declaration.	
<b>Pennsylvania</b>	73 Pa. Stat. Ann. § 232.4	Emergency declaration by the Governor	An unconscionably excessive price. It is <i>prima facie</i> evidence of price gouging if the price charged is 20% or greater than the average price at which similar goods were obtainable in the affected area during the last 7 days immediately prior to the declaration of the state of emergency.	Civil penalties of up to \$10,000 per violation; injunctive relief; restitution; recovery of costs.
<b>Rhode Island</b>	R.I. Gen. Laws § 6-13-21	Emergency declaration by the President or Governor	An unconscionably high price, defined as an amount that represents a gross disparity between the average price at which a similar commodity was readily available within the local trade area in the usual course of business during the 30 days immediately preceding the declaration of the state of emergency.	Civil penalties of \$1,000 per violation, with an aggregate total of \$25,000 per 24-hour period; disgorgement of profits; recovery of costs of litigation; other relief as determined by the court. Also constitutes a deceptive trade practice, subject to injunctive relief and additional civil penalties of \$10,000 per violation for a violation of an injunction. Private cause of action available.
<b>South Carolina</b>	S.C. Code Ann. § 39-5-145	Emergency declaration by the President, Governor, or State Attorney General	An unconscionable price, defined as an amount that either (1) represents a gross disparity between the price of the commodity and the average price at which it was sold in the usual course of business during the 30 days immediately preceding the declaration of the state of emergency, or (2) grossly exceeds the average price at which similar commodities were readily obtainable in the trade area during the 30 days immediately preceding the declaration.	<b>Criminal Penalties</b> Constitutes a misdemeanor, punishable by a fine of up to \$1,000 and/or imprisonment for up to 30 days. <b>Civil Penalties</b> Constitutes an unfair trade practice, subject to injunctive relief, civil penalties of up to \$5,000 per violation (\$15,000 per violation if an injunction has been issued), and recovery of costs. Private cause of action available.
<b>South Dakota</b>	None	N/A	N/A	N/A
<b>Tennessee</b>	Tenn. Code Ann. §§ 47-18-5101 <i>et seq.</i>	Emergency declaration by the Governor	A price that is grossly in excess of the price charged for the same or similar goods in the usual course of business	Constitutes a violation of the Consumer Protection Act, subject to injunctive relief, restitution, civil

State	Statute	Triggering Event	Price Gouging	Punishable By
				penalties of up to \$1,000 per violation, and recovery of costs. No criminal penalties. Private cause of action available.
<b>Texas</b>	Tex. Bus. & Comm. Code Ann. § 17.46(b)(27); 17.4625	Emergency declaration by the President or Governor	An exorbitant or excessive price	Constitutes a violation of the consumer protection statute, subject to injunctive relief, restitution, and civil penalties of up to \$10,000 per violation (up to \$250,000 total if the affected customers are elderly).
<b>Utah</b>	Utah Code Ann. § 13-41-201 <i>et seq.</i>	Emergency declaration by the President or Governor	An excessive price. However, an excessive price does <i>not</i> violate the statute if (1) the cost of obtaining the good exceeds the average cost to the person in the 30-day period immediately preceding the day of the declaration of the state of emergency, and (2) the price does not exceed the sum of the person's customary markup plus 10% above the total cost to that person of obtaining the good or providing the service. If the good was not previously sold by that person, a price is not excessive if it does not exceed 30% above the person's total cost of obtaining the good.	Civil penalties of up to \$1,000 per violation (up to \$10,000 per day) and recovery of costs.
<b>Vermont</b>	Vt. Stat. Ann. tit. 9, § 2461d; <i>see also</i> Vt. Stat. Ann. tit. 9, § 2451 <i>et seq.</i>	Emergency declaration by the Governor	Vermont's price gouging law is specific to price gouging of petroleum and heating fuel products during a declared state of emergency. However, the Vermont Attorney General has stated that price gouging is illegal under the Consumer Protection Act, and encouraged consumers to report price gouging in connection with the COVID-19 pandemic. <sup>21</sup>	Civil penalties of up to \$10,000 per violation (capped at \$100,000 for an individual and \$1,000,000 for any other person); restitution, injunctive relief; recovery of the costs of investigation.
<b>Virginia</b>	Va. Code Ann. §§ 59.1-525 <i>et seq.</i>	Emergency declaration by the	An unconscionable price, determined by the following considerations:	Constitutes a prohibited practice under the Consumer Protect Act, subject to injunctive relief,

<sup>21</sup> <https://ago.vermont.gov/covid-19-updates-and-information-from-the-attorney-general/>

State	Statute	Triggering Event	Price Gouging	Punishable By
		President or Governor	<p>(1) Whether the price charged by the supplier grossly exceeded the price charged by the supplier for similar goods during the 10 days immediately preceding the declaration of the state of emergency;</p> <p>(2) Whether the price charged by the supplier grossly exceeded the price at which similar goods were readily obtainable by consumers in the trade area during the 10 days immediately preceding the declaration of the state of emergency;</p> <p>(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; and</p> <p>(4) Whether the increase in the amount charged by the supplier was attributable solely to a regular seasonal or holiday adjustments.</p>	restitution, civil penalties of up to \$2,500 per violation, and recovery of costs up to \$1,000 per violation.
<b>Washington</b>	None ( <i>but see</i> Wash. Rev. Code Ann. § 19.86 <i>et seq.</i> )	N/A	Washington state does not have any specific anti-price gouging statutes, but the Attorney General is enforcing anti-price gouging measures under the Consumer Protection Act during the COVID-19 pandemic. <sup>22</sup>	Will depend on which statute the Attorney General uses to enforce anti-price gouging measures. Private cause of action available.
<b>West Virginia</b>	W.V. Code §§ 46A-6J-1 <i>et seq.</i>	Emergency declaration by the President, Governor, or State Legislature	A price greater than 10% above that charged by the same person for those goods and services on the 10th day immediately preceding the declaration of the state of emergency.	<p><b>Criminal Penalties</b> Constitutes a misdemeanor, subject to a fine of up to \$1000 and/or up to one year imprisonment</p> <p><b>Civil Penalties</b> Constitutes a violation of the general consumer protection</p>

<sup>22</sup> <https://www.atg.wa.gov/news/news-releases/ag-ferguson-sends-cease-and-desist-letters-price-gouging-washington-based-online>

State	Statute	Triggering Event	Price Gouging	Punishable By
				statutes, subject to the remedies and penalties thereunder.
<b>Wisconsin</b>	Wis. Stat. Ann. § 100.305; Wis. Admin. Code § ATCP 106.01 <i>et seq.</i>	Emergency declaration by the Governor	An unreasonably excessive price, defined as a price more than 15% above the highest price at which the seller sold similar goods to similar customers in the trade area during the 60-day period immediately preceding the declaration of the state of emergency.	Civil penalties of up to \$10,000; injunctive relief.
<b>Wyoming</b>	None	N/A	Wyoming does not have any specific anti-price gouging statutes, but the Attorney General has encouraged consumers to report coronavirus-related price gouging and false marketing to the Consumer Protection Unit. <sup>23</sup> She did not identify which Wyoming statute would be used to enforce anti-price gouging measures, but presumably will do so under Wyoming's consumer protection statutes.	Will depend on which statute the Attorney General uses to enforce anti-price gouging measures.

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If you wish to receive regular updates on the range of the complex issues confronting businesses in the face of the novel coronavirus, please [subscribe](#) to our COVID-19 “Special Interest” mailing list.

And for any legal questions related to this pandemic, please contact the authors of this legal update or Mayer Brown’s COVID-19 Core Response Team at [FW-SIG-COVID-19-Core-Response-Team@mayerbrown.com](mailto:FW-SIG-COVID-19-Core-Response-Team@mayerbrown.com).

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<sup>23</sup> <https://drive.google.com/open?id=1pebrRikj-fqoGMJrb5dlWiamBpEw0Jdk>

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