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Don’t Mess With Texas: Price Gouging in the Lone Star State

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When it comes to price gouging in the Lone Star State, Attorney General Ken Paxton is sending a message: don’t mess with Texas. On March 26, 2020, AG Paxton accused Auctions Unlimited, a Texas auctioneer, of price gouging disinfectant wipes, hand soaps, and 750,000 N95 respirator masks. Bidding for just 16 N95 respirator masks went as high as $180 – despite the owner receiving warnings from both AG Paxton and local police – before Texas authorities intervened and stopped the auction. The lawsuit seeks civil penalties of no more than $10,000 per violation, and $250,000 in the event the deception impacted anyone over 65 years of age.

Texas’ Deceptive Trade Practices Act (DTPA) prohibits price gouging during a “designated disaster period.” The DTPA defines this as the earliest date at which: (1) the date the disaster occurred; (2) the date of either the proclamation or executive order of the governor declaring the disaster; or (3) the declaration of the disaster by the president of the United States, if any part of Texas is named in the federally declared disaster area. On March 13, 2020 – the same day the President declared a national emergency – Governor Greg Abbott declared a state of disaster, triggering DTPA’s price gouging prohibition. Governor Abbott renewed his March 13 declaration on April 12, 2020. DTPA’s prohibition will remain in effect indefinitely under the President’s national emergency declaration, which currently has no end date.

Section 17.46(27) of the DTPA states that it is a false, misleading, or deceptive act or practice to take advantage of a disaster declared by the Governor, Government Code, or President by:

- Selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price; or
- Demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, lodging, building materials, construction tools, or another necessity.

While Texas' DTPA does not define what constitutes an exorbitant or excessive price, AG Abbott has stated that price gouging laws apply to "any person or entity selling necessities…[and] includes those who supply retailers." Unlike many state price gouging statutes, the DTPA does not contain an exception for increased costs. The DTPA also contains a private right of action in which injured buyers can sue to recover not only actual damages but treble damages if the violation was knowingly or intentional.

This is not the first time AG Paxton has taken an aggressive approach to protect consumers from price gouging. After Hurricane Harvey, AG Paxton stated "[p]rice gouging is something that no Texan should be confronted with when there's a declared disaster." Following the hurricane, the AOG settled, among others, with 48 businesses accused of charging exorbitant or excessive prices for gasoline, resulting in a total of $166,592 in civil restitution.

The Texas OAG has received more than 5,500 complaints related to coronavirus price gouging since the March 13th state of disaster declaration. As AG Abbott stated on March 21, "[n]o one is exempt from price gouging laws in Texas, and those who violate the Texas Deceptive Trade Practices Act will be met with the full force of the law."

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