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Can You Sue for Price Gouging?

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State Attorneys General are not the only ones enforcing price gouging laws in the current pandemic. Many states also provide a private right of action for victims of price gouging. Depending on the state, private litigants may seek injunctions, civil penalties, or even damages under state price gouging statutes and consumer protection laws. These remedies, and recent case filings, highlight the importance of price gouging compliance during this unprecedented global pandemic.

Violators of price gouging statutes in states with a private right of action could find themselves facing class actions and hefty damages claims. Remedies available to private litigants range from damages, restitution, injunctive relief, and/or attorneys' fees. New Jersey's Consumer Fraud Act, for example, provides that

[a]ny person who suffers any ascertainable loss of moneys or property . . . may bring an action . . . . In any action under this section the court shall, in addition to any other appropriate legal or equitable relief, award threefold the damages sustained by any person in interest. [T]he court shall also award reasonable attorneys' fees, filing fees and reasonable costs of suit.

N.J. Stat. Ann. § 56:8-19. North Carolina also provides for a private right of action under its consumer protection laws, which allows victims to recover treble damages, as well as attorneys' fees if the judge finds that the defendant willfully engaged in price gouging. N.C. Gen. Stat. § 75-16.

Some states, like Arkansas, have enhanced penalties for violators that target the elderly or disabled persons. Under Arkansas' Deceptive Trade Practices Act, "[a]n elder or disabled person who suffers damage or injury as a result of an offense or violation described in this chapter [including price gouging under § 4-88-301 et seq.] has a cause of action to recover actual damages, punitive damages, if appropriate, and reasonable attorney's fees." Ark. Code Ann. § 4-88-204. Michigan not only allows victims to recover their actual losses but also specifically allows for class actions. Under the Michigan Consumer Protection Act, "[a] person who suffers loss as a result of a violation of this act may bring a class action on behalf of persons residing or injured . . . for the actual damaged cause by . . . a method, act, or practice in trade or commerce defined as unlawful under section 3 [including price gouging]." Mich. Comp. Laws § 445.911(3)(a). California's consumer protection laws provide a private right of action for an injunction, though some have argued that restitution may also be available for price gouging—as in a recently filed California class action.

Several class actions have already been filed by consumers against companies for alleged price gouging, and more are expected in the coming weeks and months—even potentially where there have been only modest pricing movements and even after the emergency declarations have been lifted. Companies that are subject to the scope of price gouging statutes can engage in appropriate compliance efforts to seek to avoid such claims, and to ensure they can address such claims if they arise.

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