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When Will It End? – Price Gouging Restrictions Remain in Place for Uncertain Period

Minding Your Business Blog on **July 9, 2020**

The pandemic has demonstrated that price gouging laws are not only written in an ambiguous manner, but are ambiguous as to whether they are in effect or not. A recurring problem faced by businesses is that some states are not widely circulating information about whether their price gouging laws are still active, when they expire, or whether they've already expired. As a result, law abiding businesses may find it difficult to find accurate, publicly available information about price gouging law end dates.

Some commentators have categorically stated – potentially incorrectly – that certain price gouging laws have expired. For example, some say that Kentucky's price gouging law expired on April 21, 2020. By statute, Kentucky's price gouging law is in effect for fifteen days after notification of the price gouging law going into effect. After the fifteen days expire, the Governor may renew the provisions up to "three additional fifteen (15) day periods [] if necessary to protect the lives, property, or welfare of the citizens". Ky. Rev. Stat. §367.374(1)(b). Despite what the statute says, the Governor continued to extend the price gouging law, and on May 21, 2020, issued an executive order stating that the price gouging laws shall remain in effect for the duration of Kentucky's state of emergency. However, it is unclear whether the Governor has the authority to extend price gouging laws beyond the length laid out by statute. Other state Governors, who have extended price gouging laws beyond the scope of the respective state statute, may also find the legality of the extensions questioned.

Further, while it appears Tennessee's price gouging law may have expired – as some have indicated – the Tennessee's Office of the Attorney General, Division of Consumer Affairs has not provided clarity on the question. In early June, the Division said the statute is still in effect. In early July, the Division stated that while they're happy to take any consumer complaints, they are unable to answer whether the price gouging statute is still in effect.

Also noteworthy, when the Wisconsin Bureau of Consumer Protection was recently asked whether there is still an abnormal market disruption, the Bureau stated that they are still accepting price gouging complaints, but have “no idea” when the abnormal market disruption will end. One day later the Wisconsin Department of Agriculture, Trade and Consumer Protection released a statement stating “Governor Tony Evers approved ending the declared period of abnormal economic disruption, allowing sellers to resume sale of consumer goods and services without the restrictions outlined in Wisconsin’s price gouging statutes.”

Businesses making efforts to comply with the law need to know the law in order to comply. The lack of clarity is not only poor policy, but it is bad government. A state’s consumer protection agency should be able to give businesses a simple yes or no answer as to whether a price gouging law remains in effect.

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