Proskauer

# Price Gouging Weekly Round Up

**August 3, 2020**

## Price gouging enforcement and litigation is front and center for company counsel and business managers nationwide. Our weekly round up highlights some of the most relevant news and information to our clients and friends.

### Pennsylvania Insurance Commissioner Warns About Price Gouging

Pennsylvania's top insurance regulator, Insurance Commissioner Jessica Altman, recently announced that the state insurance department has submitted a notice to the Pennsylvania Bulletin addressing billing practices during the pandemic. This follows a March 21, 2020 notice, in which the department recommended health insurers make all necessary and useful information available so their customers would have access to important insurance information. This second notice acknowledges that some providers have been billing consumers an additional "fee" to cover their increased costs, including costs for PPE, and that some testing services have been "charging amounts that are well in excess of their costs." "Even if the charges are publicly posted," Insurance Commissioner Altman writes, "the amount may be considered improper price gouging." Since some charges "may be appropriate," she "encourage[d] insurers" to "examine their provider contracts" and to pass along only those permissible costs, to avoid improper price gouging.

### Price Gouging in Utah

The Utah Division of Consumer Protection has ordered more than $13,000 to be returned to consumers who have paid inflated prices for goods due to the COVID-19 pandemic. According to recent reports, the state has received 933 complaints of price gouging ranging from medical goods to grocery supplies. The Division has issued seven citations for price gouging, with some investigations still ongoing. In cases where the identity of the customer cannot be obtained, the Division has instructed that funds be paid to the state for deposit into its Consumer Protection Education and Training Fund. Utah's price gouging law, which prohibits charging an excessive price, applies to goods and services that are deemed necessary for consumption or use as a direct result of events giving rise to a state of emergency. A price is not excessive if it does not exceed 10% above the person's total cost of obtaining the good or providing the service plus a customary mark-up. However, if a good or service has not been sold by a person during the 30-day period immediately preceding the day on which the state of emergency is declared, a price is not excessive if it does not exceed 30% above the person's total cost of obtaining the good or providing the service. A violation of the law carries a maximum penalty of $1,000 per violation.

## Senator Thom Tillis Offers Multi-Pronged Covid-19 "Plan of Action" for North Carolina

North Carolina Senator Thom Tillis released a "plan of action" intended to "protect the health and well-being of North Carolinians." The plan includes, among other things, encouragement for individuals to prevent coronavirus' spread, suggestions to provide PPE protection for hospitals and front-line workers, efforts to improve testing and tracing infrastructure, and steps to support local jobs, businesses, and consumers. One of the prongs of this plan is "protecting consumers from price gouging," by, among other things, passing the Senator's Ending Price-Gouging During Emergencies Act, which would "increase penalties for price gougers during a national emergency." Without mincing words, Senator Tillis writes that he introduced the bill to make "low-life price gougers who try to rip-off their fellow Americans and our medical professionals … think twice before they try to price gouge Americans during an emergency[.]".

## Price Gouging Allegations from 2018 Still Under Investigation

According to Florida Attorney General Ashley Moody's office, there is still an ongoing investigation into price gouging after Hurricane Michael in 2018. After Hurricane Michael, Floridians saw the price of everything from water to rent increase. AG Moody stated in a 2019 interview regarding price gouging that "[o]ne of the things that's difficult is investigating, hearing about, or people talking about something without having a specific complaint or the details that would correlate with that." "We keep asking people to provide that to us and the information so that we can investigate it." Sellers should take this as a lesson that even years from now, allegations related to COVID-19 price gouging may still be under investigation. A state of emergency being turned off does not mean you're in the clear for conduct that occurred during the emergency, as many state statutes of limitations for price gouging run for 3 to 5 years, and even up to 10 years in some cases. For more information on Florida's price gouging law, read our blog post.According to Florida Attorney General Ashley Moody's office, there is still an ongoing investigation into price gouging after Hurricane Michael in 2018. After Hurricane Michael, Floridians saw the price of everything from water to rent increase. AG Moody stated in a 2019 interview regarding price gouging that "[o]ne of the things that's difficult is investigating, hearing about, or people talking about something without having a specific complaint or the details that would correlate with that." "We keep asking people to provide that to us and the information so that we can investigate it." Sellers should take this as a lesson that even years from now, allegations related to COVID-19 price gouging may still be under investigation. A state of emergency being turned off does not mean you're in the clear for conduct that occurred during the emergency, as many state statutes of limitations for price gouging run for 3 to 5 years, and even up to 10 years in some cases. For more information on Florida's price gouging law, read our blog post.

## Attorney General Comments on Colorado's New Price Gouging Law

Up until recently, Colorado was among the minority of states without a price gouging law. But, on July 14, 2020, Colorado Governor Jared Polis signed into law a COVID-19 related bill meant to provide citizens additional protection from price gouging during a disaster period. An exception is built into the law, allowing for businesses to justify price increases by showing they were implemented due to higher prices from suppliers. For price increases that are not justified, the new law gives the attorney general enforcement authority to respond to the unprecedented levels of price gouging complaints that have been reported across a wide range of items and services, including consumer food items, emergency supplies, fuel, medical supplies, and transportation services. According to Colorado Attorney General Phil Weiser, his office has seen “historic” levels of price gouging complaints. While AG Weiser stated that his office is not going to take action on every complaint, multiple complaints about the same company will be more likely to prompt an investigation.

**Related Professionals**

- **Christopher E. Ondeck**
  Partner
- **John R. Ingrassia**
  Partner
- **Kelly Landers Hawthorne**
  Associate