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Price Gouging Laws and Overlapping States of Emergency

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Most price gouging laws have been in effect throughout the country since early March due to the pandemic. As hurricane season gets underway, businesses should be aware that new states of emergency may be declared, overlapping with current pandemic states of emergency. New states of emergency may trigger price gouging laws that cover a variety of goods not currently covered under those related to COVID-19.

While some price gouging laws cover a wide range of goods and services, many laws are narrower, focusing on the type of emergency. For example, Florida's price gouging law states that it is unlawful "to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is *necessary for consumption or use as a direct result of the emergency.*" Fla. Stat. § 501.160 (emphasis added). Florida has been under a state of emergency related to the pandemic since March 9, 2020, but on July 31, 2020, Governor Ron DeSantis declared another state of emergency for multiple east coast counties due to Hurricane Isaias.

The effect of an overlapping state of emergency means that new goods and services may be covered under Florida's price gouging laws, separate and apart from commodities related to the health crisis. According to Florida Attorney General Ashley Moody, "[e]ssential commodities for each event may differ." While some essential commodities are already covered under the pandemic related state of emergency, additional goods and services related to preparing and recovering from the storm will be covered under the July 31, 2020, emergency declaration.

Similarly, North Carolina declared a state of emergency on July 31, 2020, due to Hurricane Isaias. According to North Carolina Attorney General Josh Stein "North Carolina's price gouging law is already in effect because of the coronavirus, but it applies to hurricanes as well." North Carolina's price gouging law prohibits any person from selling or renting goods or services which are "consumed or used *as a direct result of an emergency* or which are consumed or used to preserve, protect, or sustain life, health, safety, or economic well-being of persons or their property with the knowledge and intent to charge a price that is unreasonably excessive under the circumstances." N.C. Gen. Stat. §75-38 (emphasis added). Like Florida, North Carolina's law may cover additional goods or services specifically related to preparing and recovering from the hurricane.

There have also been a variety of states of emergency in effect throughout the pandemic completely unrelated to COVID-19. For example, some West Virginia counties were under a state of emergency in mid-June due to flooding. West Virginia's price gouging law, among other items, covers "goods for emergency cleanup" and "emergency supplies," which likely differ from the goods covered under the pandemic state of emergency. One Tennessee county was similarly under a state of emergency for flooding in July. Tennessee's price gouging law, among other items, covers "emergency supplies," which again, likely differ in the event of a flood.

Price gouging related to the public health crisis has been the focus of Attorneys General enforcement actions and private litigation in recent months, but a variety of natural disasters can lead to increased scrutiny around price gouging as well. Businesses should keep these short term emergencies in mind when pricing products that may be covered by a state price gouging law. Further, businesses should also be aware that with a new state of emergency unrelated to the pandemic potentially comes a new baseline price for certain products. See our blog post on How to Calculate a Baseline Reference Price for Price Gouging Compliance for more details.

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