

Alleged Price Gouging in the District of Columbia? Attorney General Racine Sets Sights on Local Business

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On November 12, 2020, D.C. Attorney General Karl Racine filed a [lawsuit](#) against Capitol Petroleum Group, LLC (“CPG”), a retailer and distributor of gasoline in the District. According to Attorney General Racine, CPG overcharged its customers for gasoline in violation of the Natural Disaster Consumer Protection Act (“NDCPA”). This is the latest example of aggressive attorneys general investigating price gouging allegations that go well beyond personal protective equipment and other staples.

The complaint alleges that CPG violated the law by engaging in price gouging during an emergency, as well as unfairly increasing profits on gas distribution. In its investigation, the OAG obtained data that during the three months preceding the March 11, 2020, declaration of emergency, CPG’s average profits per gallon on regular gasoline and premium gas were \$0.44 and \$0.88, respectively. In the complaint, the Attorney General alleges that CPG’s average profit per gallon in the weeks following the pandemic increased to \$0.88 per gallon of regular gas, and \$1.23 per gallon of premium gas that it sold. Attorney General Racine is seeking injunctive relief, restitution, civil penalties, and attorney’s fees.

D.C.’s price gouging law prohibits sellers from charging “more than the normal average retail price for any merchandise or service sold during a public health emergency.” D.C. Code § 28-4102(a). The “normal average retail price” under the NDCPA is “the price equal to the wholesale cost plus a retail mark-up that is the same percentage over wholesale cost as the retail mark-up for similar merchandise sold in the Washington Metropolitan Area during the 90-day period that immediately preceded an emergency.” *Id.* at § 28-4101(2)(B). A violation of the law can result in penalties of up to \$5,000 per violation. A key issue in the case is likely to be whether the defendant’s prices or mark-up exceeded the “normal average retail price”, as there are numerous questions of fact that must be determined, and defenses may be available.

Attorney General Racine’s lawsuit is not the first of its kind. In the early months of the pandemic, Attorney General Racine brought a [lawsuit](#) against a D.C. convenience store for allegedly charging \$12.99 for 121-oz. bottles of bleach. This, Attorney General Racine said, was 200 percent higher than the price offered by other retailers in the District. The lawsuit followed a cease and desist letter ordering the store to reduce its price. Attorney General Racine stated that the “Office of the Attorney General will enforce the law against stores like [this] that flatly refuse to adhere to a cease and desist letter that it received from my office.”

This lawsuit reflects a further reach by attorneys general against a broad range of companies, accusing them of price gouging goods and services beyond personal protective equipment. Like the District’s price gouging law, many state laws are broad in scope, and potentially may be applied to a variety of goods and services that arguably should be outside the scope of price gouging laws. To mitigate this risk, businesses should be familiar with the variety of goods and services that state laws may cover and implement compliance practices as necessary. For more compliance practice tips, read our previous [blog post](#).

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