

Price Gouging Settlements Around the Country: Non-Compliance May Cost You

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As companies continue to examine their pricing in light of the ongoing COVID-19 pandemic, state attorneys general and private plaintiffs continue to bring suits under state price gouging laws. The complaints include requests for a range of remedies, including injunctions, disgorgement, restitution, fines, or other financial penalties. With the majority of price gouging laws having now been in effect for almost a year, we have seen businesses and state attorneys general enter into a variety of settlements. These settlements are a useful tool for businesses looking to gauge their risk as it relates to price gouging enforcement and compliance.

In the main, we are seeing three types of financial damages being claimed with respect to alleged violations of state price gouging laws: restitution, penalties per transaction, and other financial penalties such as costs or treble damages.

Restitution: Under many price gouging statutes, companies may be required to refund customers for the amount charged in excess of the permissible amount allowed under the statute.

Penalties per Transaction: In many states, civil penalties are imposed on a “per violation” basis. In these cases, every sale could count as a separate violation subject to penalty. Penalties range from a minimum of \$1,000 to \$40,000 maximum. For example, North Carolina, South Carolina, and West Virginia provide for up to \$5,000 per violation with no upper limit on the total exposure. Other states provide for a daily cap on penalties, such as Alabama with up \$1,000 per violation with a daily maximum of \$25,000.

Other Financial Penalties: In addition to restitution or penalties, other financial penalties could include fees and costs associated with the investigation, or treble damages.

Since the uptick in price gouging enforcement actions, several cases have concluded with settlement agreements. These settlements illustrate the variety of damages and financial liabilities companies face in price gouging suits. For example, the North Carolina Attorney General recently [settled a case](#) against a PPE seller for allegedly marking up prices by over 100%. While not admitting wrong-doing, the company agreed to a \$150,000 settlement including costs.

- Similarly, a Colorado company [agreed to pay \\$70,000](#) in restitution and fees to settle a suit alleging price gouging in the sale of face masks. The Colorado Attorney General's complaint alleged that the company increased prices, in some cases in excess of 250% of the cost to acquire the PPE.
- The Idaho Attorney General agreed to a sales credit system [to recover restitution](#) from three gas retailers who were accused of violating the state's price gouging statute. According to the settlement agreement, the companies will provide \$1.5 million in restitution through sales credits to consumers over the next year. The companies did not admit to any wrongdoing.
- In Vermont, a surgical mask seller [settled a suit](#) brought by the state Attorney General alleging the company had engaged in price gouging with respect to sales to a medical center. The terms of the settlement agreement require the company to supply 80,000 units of PPE to the medical center and an additional 10,000 units of PPE to the state as restitution.

Enforcement actions and private lawsuits pending in state and federal courts around the country include claims for damages such as restitution, and attorneys' fees. For example, in a class action lawsuit filed against a gourmet grocer in California, the plaintiffs seek actual damages, restitution, and attorneys' fees. The suit alleges that "Defendants willfully increased their prices [of food items and other consumer goods] beyond permissible limits after the March 4, 2020 declaration of a state of emergency in California in violation of Penal Code § 396, Executive Order N-44-20, and Executive Order N-78-20."

In November, the DC Attorney General [brought a suit](#) against a local gas retailer for alleged price gouging beginning in March. Fines for violating D.C.'s price gouging laws are up to \$5,000 per violation. The Attorney General's complaint seeks an injunction, damages and restitution, civil penalties, and attorneys' fees.

Price gouging suits can be triggered by even a small price increase, bringing the risk of significant financial penalties. However, numerous [justifications and exceptions](#) may permit companies to increase prices in some cases. As an essential part of managing risk, companies should examine their [compliance practices](#) and prepare their own internal documentation of costs and justifications.

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