Proskauer

Proskauer on Price Gouging

Compendium

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A Unique Resource for Businesses Managing Price Gouging Compliance

The Proskauer on Price Gouging Compendium provides a detailed analysis of price gouging statutes over the 2020 to 2023 pandemic period, covering how price gouging regimes were enforced, how they evolved, how companies complied with them, and the lessons learned. Over the course of the past three years beginning with the onset of the COVID-19 pandemic, our Price Gouging Team authored over 145 articles, resource materials, tables, interactive maps, and other publications to assist businesses in managing their compliance efforts and programs. Our team also successfully litigated many of the highest-profile price gouging cases for our clients, and represented industry groups to submit amicus briefs to state Supreme Courts and to state legislatures. This Compendium provides the guidance and lessons learned based on that experience.

Historically, price gouging laws have been activated only for limited periods of time, following localized emergencies such as storms that interrupt electricity and transportation. Businesses have been able to cope with such compliance issues, particularly because the time periods are typically short, and prosecutions for non-egregious violations have been few. The COVID-19 pandemic dramatically altered the landscape for price gouging compliance. Notably, most states kept their price gouging restrictions “turned on” for two years or more. Such widespread and long-lasting price controls have not occurred in the United States since the Great Depression in the 1930s. In addition, businesses also faced highly active but inconsistent enforcement by the State Attorneys General. Businesses were forced to evaluate litigation risk in dozens of jurisdictions.

The need for compliance has not ended; State AGs are continuing to file new prosecutions arising from prices during the pandemic, made possible due to the extended statutes of limitation for many price gouging restrictions. Going forward, the price gouging statutes have become powerful tools for State AGs; they will be part of the new normal for the legal landscape. Anytime prices appear to spike, calls for investigation or prosecution using the price gouging laws may occur. Businesses will need an effective means to monitor and comply with applicable statutory restrictions on their pricing practices, determine and track whether the various price control laws are active or deactivated, and evaluate the risk for practices that arguably might be swept in by a prosecutor or private plaintiff.

The Proskauer Price Gouging Team is the leading group in the U.S. focused solely on assisting business in complying with, and defending against, price gouging laws and claims. The Compendium, available in print or online, is intended to be an essential reference for businesses to navigate dozens of price gouging statutes across the United States.

Related Professionals

- **Christopher E. Ondeck**
  Partner
- **John R. Ingrassia**
  Partner
- **Timothy E. Burroughs**
  Associate
- **Kelly Landers Hawthorne**
  Associate
- **Shannon D. McGowan**
  Associate
- **Isaiah D. Anderson**
  Associate