

Does the Anti-Price-Gouging Law Apply to Your Business?

Although there is no federal anti-price-gouging law, most states, including New Jersey and New York, have enacted their own statutes to prevent the unconscionable act of profiteering during an emergency or natural disaster. In response to the COVID-19 pandemic, Governors Cuomo and Murphy, on March 7 and March 9, 2020, respectively, declared states of emergency, and were soon followed by other states. Those declarations prevent the charging of exorbitant prices on certain goods and services during the pandemic. Although most people assume price-gouging is limited to consumer goods like water, food, and gasoline, many statutes are not that limiting. Due to a lack of a federal law, there is little uniformity in the statutes. The intent is generally the same, but the interpretation of the applicability can vary. For example, in Connecticut the statutes can apply to certain retail sales and also certain products that the Governor declares are in short supply. In Pennsylvania, the law applies to items used for personal, family, or household purposes. California is more expansive, and the statute applies to food, emergency supplies, construction materials, gasoline, and heating oil, and also to services such as hotel, motel, freight, storage, transportation, repair, and construction services.

In New York, the statute is limited to consumer goods and services vital and necessary for the health, safety, and welfare of consumers. Interestingly, because the Centers for Disease Control and the Surgeon General do not recommend wearing surgical masks for the general public, surgical masks wouldn't be included within the statute. Therefore, the New York City Department of Consumer Affairs adopted an emergency rule making it illegal to increase the price of certain items and services "needed to prevent or limit the spread of or treat the new coronavirus (COVID-19)" including cleaning products, diagnostic products and services, disinfectants (wipes, liquids, sprays), face masks, gloves, hand sanitizer, and medicines.

In New Jersey, the statute prohibits a price increase greater than 10% on consumer goods or services that are "consumed or used as a direct result of an emergency or which is consumed or used to preserve, protect, or sustain the life, health, safety or comfort of persons or their property." After the COVID-19 emergency, the New Jersey Division of Consumer Affairs received about 1,500 consumer complaints about approximately 1,000 business locations, including complaints regarding surgical masks, hand sanitizer, disinfectant sprays and wipes, food, and bottled water. The Division and county consumer protection offices have so far conducted about 400 inspections, and issued 167 cease-and-desist letters. The penalty for violating the law in New Jersey is \$10,000 for the first violation and \$20,000 for the second and subsequent violation. (A Duke University employee recently complained to its own attorney general in North Carolina that a New Jersey company increased the price of N95 masks with a 1,650% markup.) Although the New Jersey statute does not specifically list services such as freight, transportation, hotels, construction, etc., as in California, the language of the New Jersey statute is so broad that it could be interpreted to include such services. The statute was likely drafted broadly to allow for an interpretation based upon the nature of the emergency, whether a hurricane, earthquake or pandemic.

Moreover, some retailers find themselves victimized by wholesalers who have increased the cost of goods and services, whereby the retailer has no choice but to increase its own costs. In New Jersey, an exemption exists for business who must increase their prices due to supply chain or operating costs. Those business should maintain records and be prepared to justify those increases.

Many businesses have stepped up during this national emergency, and offered discounts and services to ease the burden on consumers and their families. Unfortunately, others have chosen to further victimize the most vulnerable segment of our population. As the pandemic continues and services beyond food and fuel become scarce, the applicability of the price-gouging laws will likely increase.

The federal government has created a task force to investigate reports of COVID-19-related price gouging headed by Craig Carpenito, U.S. Attorney for the District of New Jersey. A hotline has been set up at 866-720-5721.