

A Deeper Dive: Definitions and Consequences of "Price Gouging" During COVID-19 in NJ and the Greater Tri-State Area

Client Alert

3.31.20

New Jersey Governor Phil Murphy's Executive Order 103 of March 9, 2020 declared both a Public Health Emergency and a State of Emergency in New Jersey in response to the COVID-19 pandemic. With this action, the Governor triggered the often discussed but seldom detailed price gouging law contained in the New Jersey Consumer Fraud Act.

Simultaneously, New Jersey Attorney General Gurbir Grewal warned business owners that his office would aggressively investigate and prosecute any business engaged in price gouging and took the added measure of establishing a hotline to expedite the investigation of price gouging complaints. In the two weeks that followed the emergency declaration, the Division of Consumer Affairs received more than 1,400 complaints, conducted 350 inspections, sent nearly 160 cease-and-desist letters and issued nearly 30 subpoenas. These figures represent an unprecedented number of investigations in such a short period of time.

As much as price gouging has been discussed in the media and during press conferences, little specific information has been provided to alert commercial businesses as to what actions are explicitly prohibited.

Under the New Jersey Consumer Fraud Act, an "excessive price increase" is prohibited during a declared State of Emergency:

- An excessive price increase is defined in the statute as a price "that exceeds by more than 10% the price at which the good or service was sold or offered for sale ... in the usual course of business immediately prior to the state of emergency."
- There are very limited exceptions to the 10% increase and there are very strict penalties for violations. Civil penalties of up to \$10,000 for the first offense and \$20,000 for the second and subsequent offenses are authorized by the statute.
- Each individual sale of merchandise is considered a separate and distinct violation for purposes of the civil penalty, so the amount of the fine can escalate quickly for a business owner.

- These restrictions on price increases do not merely come to an end at the conclusion of the emergency period, but instead remain in effect for 30 days after the termination of the emergency declaration.

New York, Pennsylvania and Connecticut, among many other states, have similar restrictions on price increases during emergencies. Connecticut law requires that no percentage price increase can be imposed during the coronavirus outbreak and establishes fines of up to \$1,000 for each instance. Pennsylvania defines an excessive price as at least 20% higher than the normal price range immediately prior to the declaration and punishes violators with a fine of up to \$10,000 each. New York does not define what markup is permitted during a declaration but imposes a civil penalty of \$25,000 per offense, and has also introduced new legislation that would not only define "excessive price" similar to New Jersey's definition at 10%, but would additionally empower District Attorneys to file criminal charges against violators.