

COVID-19 Update: Price Gouging and Pennsylvania

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By Carl W. Hittinger, Ann O'Brien and Jeanne-Michele Mariani

At the beginning of this pandemic, [we reported](#) on the growing number of price-gouging cases in the United States due to the COVID-19 health crisis. Back in March, President Donald Trump signed [an executive order](#) that aimed to prevent price gouging and hoarding of crucial medical and health supplies needed to fight COVID-19. The executive order invoked the Defense Production Act and for certain items designated by the U.S. Department of Health and Human Services, [such as personal protective equipment](#) (PPE) and ventilators, only made it a misdemeanor for individuals and companies to accumulate these items either (1) in excess of reasonable needs or (2) for the purpose of selling them in excess of prevailing market prices.

While the executive provided some level of authority to government enforcers to prosecute cases at the federal level, the bulk of price-gouging laws exist at the state level. Approximately 38 states and the District of Columbia have price-gouging laws, and there is additional legislation pending in several other states in reaction to COVID-19. Senate Bill 6699 was introduced in Washington state March 6. It would prohibit selling most consumer goods and medical supplies at prices of more than [10% greater than the price charged](#) immediately prior to an emergency proclamation. The Ohio attorney general announced that he was working with [Ohio lawmakers](#) on a price-gouging law.

Once triggered, typically by a state-of-emergency declaration, state laws prohibit price increases for certain essential products. The category of products may change given the nature of the emergency. For example, water, fuel and food are usually essential products after hurricanes, but PPE, ventilators and hand sanitizers [are now essential in the fight against COVID-19](#). State price-gouging laws vary, though there are a few common threads seen among many of them. Almost all are limited in time to a period following a declaration of an emergency. Many include some sort of price ceiling that is set at a certain percentage above the average price that the relevant good sold for during a time period immediately preceding the emergency.

Reflecting the vigor and leadership with which some states have moved to enforce price-gouging laws, Pennsylvania Attorney

General Josh Shapiro set up a [dedicated hotline for price-gouging reports](#) in response to COVID-19 at the beginning of the pandemic. The Pennsylvania Attorney General's Office has reported receiving more than [5,000 tips](#) from the public since the hotline's creation. After reviewing the complaints, the office already has sent out more than 466 cease-and-desist letters and nearly 200 subpoenas regarding price-gouging behavior.

Some state attorneys general have also urged large online retailers to help enforcers crack down on price gouging during the COVID-19 outbreak. The [Pennsylvania attorney general issued a letter](#) bluntly stating that "ripping off consumers by jacking up prices in the middle of a public emergency is against the law and online resellers ... must join in this fight."

The attorney general also stated that companies forming "the backbone of online retail" have "an obligation to stop illegal price gouging now," and the attorney general called on these companies to "put strong practices into place to stop it from happening in the future."

Most recently, Shapiro announced that his office stopped illegal price gouging by an Amazon.com third-party seller called Goods and More Inc., based in [Scranton](#). Under Pennsylvania's Price Gouging Act, a price increase of more than 20% on a product declared to be PPE during a declared state of emergency is considered price gouging. The Office of the Attorney General received tips alleging that the online seller was selling hand sanitizer for unlawful prices through Amazon.com. The office learned that Goods and More sold 24-packs of two-ounce bottles of Assured hand sanitizer for as much as \$109.99 per package. Goods and More also sold single 12-ounce bottles of Purell hand sanitizer for as much as \$39.00 each. As recompense for the violations, Goods and More entered into an Assurance of Voluntary Compliance Agreement with the Pennsylvania Attorney General's Office, which requires it to pay \$1,900 in civil penalties and \$192.50 in court costs, in addition to restitution of \$13,901.48 for consumers who purchased the hand sanitizers. Goods and More also agreed to fully comply with all provisions of the Pennsylvania Price Gouging Act moving forward.

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This, of course, has not been the only instance of recent price gouging enforcement by the Pennsylvania attorney general. As part of a similar Assurance of Voluntary Compliance Agreement, Quick Stop Mini Mart in Allentown agreed to pay \$1,421 to settle allegations that they had sold 16.9-ounce bottles of “Chinese Letter Hand Sanitizer” for [\\$20 apiece](#).

As time goes on and the pandemic continues to rage, there is no doubt that we will see more prosecutions from both Pennsylvania and other states looking to crack down on those they deem profiteers interested in taking advantage of the captive public during this time of crisis. And where price gouging by different competitors extends across similar product lines, price fixing suspicions can easily arise. Stay tuned.

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