

## **NAAG POLICES COVID-19 PRICE GOUGING, DEMANDS FAIR PRICING POLICIES AND ACTIONS**

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The National Association of Attorneys General (NAAG) is actively monitoring consumer product prices and working to eliminate price gouging in the U.S. during the COVID-19 pandemic. At least 33 attorneys general signed on to letters issued recently to a number of major online retailers and online sales platforms.

The letters indicate that while the AGs "appreciate reports of the efforts made by platforms and online retailers to crack down on price gouging,...we are calling on you to do more at a time that requires national unity."

Specifically, the letters ask for three concrete actions:

1. Set policies and enforce restrictions on unconscionable price gouging during emergencies.
2. Trigger price gouging protections independent of, or prior to an emergency declaration.
3. Create and maintain a 'Fair Pricing' Page/ Portal where consumers can report price gouging incidents to you directly.

In connection with these actions, the AGs are asking companies to proactively monitor consumer sales activity, to track spikes in pricing and stop or block such activity, with the goal to "prevent unconscionable and unjustified price increases."

The AGs hope to work with retailers to develop a system whereby the retailers will provide consumer's complaints of price gouging to the AGs' offices to "facilitate appropriate referrals for enforcement or prosecution."

On the NAAG consumer protection [website](#) consumers can find a link to submit a complaint to their AG. The site also highlights a number of specific enforcement actions various AGs have taken. These include:

- Missouri AG obtaining a TRO to stop sales of a product;

- Florida AG issuing more than 40 subpoenas regarding alleged seller price gouging;
- Numerous cease and desist letters being issued by four different AGs (Michigan, District of Columbia, Missouri and New York)
- Consumer alerts (for example, California AG warned wholesalers of price gouging, as well as warning consumers about fraudulent charities) For retailers and businesses, the site also may provide useful tools including a tab containing "Price Gouging Statues by State."

In conducting your on-going business operations in these challenging times, it may be beneficial to review the range of statutes and executive orders regarding pricing to make sure any increases or changes your business makes steer clear of violations. BCLP also [recently reported](#) on factors to help determine whether your business may be susceptible to allegations of price gouging.

The U.S. Department of Justice, FTC and the FDA also are tracking unconscionable practices relating to the COVID-19 pandemic. According to the site, the DOJ obtained a temporary restraining order in one action to block public access to the website associated with the marketing and sale of an alleged fraudulent product. The FTC and FDA also have issued [warning letters](#) a number of companies regarding allegedly fraudulent product claims.

In this environment, companies will want to ensure the truthfulness and fairness of product quality and performance representations. It is likely over the mid-term that the current pandemic environment will be a factor in assessing the vulnerability of consumers, especially special populations like the elderly, students or unemployed consumers. With potential interruptions in product availability or delivery time delays, companies also may want to examine how and what they currently say on their websites and in sales materials.

Price gouging is just the most egregious example of consumer fraud and unfair practices. In these uncertain times, regulators and AGs are likely to be viewing company conduct through a more stringent filter. Consumer class actions on pricing, refunds, product delivery and a variety of other issues relating to the COVID-19 pandemic already are being filed.

God willing, this pandemic too shall pass, but several questions remain

- Will your business reputation have suffered or have been burnished by your practices and your team?
- Will your customers still love you on the other side? And will the AGs and regulators acquiesce to ceasing delivery of consumer complaints from your portal for enforcement purposes?
- Will new definitions and parameters be created regarding fair business practices?

Only time will tell, but you and your business will want to be on the right side of these answers.

## RELATED PRACTICE AREAS

- Retail & Consumer Products

## MEET THE TEAM



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