

State Attorneys General Vigilant on Price Gouging Following Hurricanes Harvey and Irma



IN SHORT

The Background: In the wake of hurricane season, seven U.S. states and territories have recently declared states of emergency. Many states have prohibitions on price gouging that go into effect during states of emergency.

The Impact: Although hurricanes often lead to decreased supply of fuel and other critical products, while increasing demand, companies must consider local price-gouging statutes while setting prices to avoid fines or even criminal penalty.

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With Hurricane Harvey over and Hurricane Irma looming, U.S. coastal areas are in the middle of a devastating hurricane season. In just the past few weeks, governors and President Trump have declared states of emergency in seven U.S. states and territories; others certainly will follow.

These states of emergency trigger local price-gouging statutes, which prohibit certain price increases during the emergency and impose significant civil, and sometimes criminal, penalties for violations. State attorneys general have announced their intentions to investigate and prosecute price-gouging violators. As communities and businesses prepare for these storms and the recovery that follows, it is critical to be mindful of state price-gouging prohibitions.



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Price-Gouging Laws

While there is no federal prohibition on price gouging, nearly every state has enacted its own price-gouging statute. Under the structure of a typical statute, following a triggering event (usually declaration of a state of emergency by the President or governor), businesses are prohibited from raising prices for a set period of time (usually 30 or 60 days). Violations are punishable by civil fine, although some states allow criminal punishment as well.

Unfortunately for companies operating in multiple states, there is wide disparity in the threshold for a price increase violation. Some statutes permit small (10–15 percent) price increases, while others allow none at all. Some statutes allow companies to raise prices to account for their own increased costs, while others do not. Some statutes apply only to specified goods (e.g., food, medicine, gasoline), while others apply more broadly to include all retail products. As a result, it is critical that companies with operations in states with declared states of emergency carefully consider the scope of a state's price-gouging statute before adjusting prices during the emergency.

Many states and territories will be affected this hurricane season, including Texas, Florida, Louisiana, South Carolina, Georgia, Mississippi, Alabama, Puerto Rico, and the U.S. Virgin Islands. Businesses with operations in these areas should carefully review the local price-gouging ordinances.

For more detailed information on the price-gouging statutes in Texas and Florida, [read the full version of this Commentary](#) on our website.

TWO KEY TAKEAWAYS

1. Almost all states have price-gouging statutes, but their scope varies widely. Companies must carefully consider states' price-gouging statutes before adjusting prices during a declared state of emergency.
2. State attorneys general intend to investigate and prosecute price-gouging violators.

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CONTACT



J. Bruce McDonald
Houston / Washington

Thomas D. York, an associate in the Dallas Office, assisted in the preparation of this Commentary.

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