

HOW TO COMPLY: NORTH CAROLINA'S PRICE GOUGING LAW

Background

In the wake of several natural disasters in 2003, the North Carolina General Assembly enacted legislation to address price gouging during disasters. Then, in 2005, some of the effects of Hurricane Katrina resulted in what was perceived to be excessive prices in North Carolina and subsequently led to legislation being introduced in the 2006 Short Session. During storms that have hit North Carolina and in the aftermath of Hurricane Katrina, some merchants sold items such as gasoline, generators, water, ice, or batteries at what was perceived to be exorbitant prices. Similarly, prices for hotel rooms, roofing and tree-cutting increased dramatically. In general terms, this legislation seeks to prevent merchants and others from preying on the public at a time of disaster by selling goods or services at unreasonably excessive prices.

While this law is only in effect in certain instances, it is important to know how to comply with the law if a Disaster or State of Emergency is declared.

Frequently Asked Questions

What is price gouging?

North Carolina defines price gouging as intentionally charging an unreasonably excessive price under the circumstances for goods or services that are used by North Carolinians during an emergency to preserve, protect or sustain life, health, safety or economic well-being. This prohibition against charging excessive prices applies to all parties in the chain of distribution including the manufacturer, supplier, wholesaler, distributor and the merchant. When determining whether or not a price is "unreasonably excessive," the Attorney General will look at a merchant's price before the disaster and compare it with the merchant's price after the disaster.

Will I be charged with price gouging if I pass along my increased costs to do business due to the disaster, such as having to run a generator, increase supplier costs and employee overtime?

Increasing your price to the consumer because your cost to do business has increased is one of the circumstances that will be considered if you are accused of price gouging. For example, if you usually sell a bag of ice for \$1.00 and your supplier increases your price by %50, you are allowed to adjust your price accordingly. Similarly, if you must run a generator to keep this ice from melting, you may factor this additional cost into your price.

I placed an item on sale right before the disaster. Can I resume selling the item for its regular price once a disaster is declared or am I stuck with the "sale price" until the disaster is over?

The Attorney General's Office will take into account whether you have sold an item below its average price for the 60 days prior to the declaration of disaster. For example, if a case of bottled water normally

sells for \$4.00 and your weekly special the week before the disaster is two cases for \$4.00, you are free to raise the price back to \$4.00 per case without fear of being charged with price gouging.

The Attorney General's Office will also take into account whether the price you are charging is the result of fluctuations in a regional, national or international commodity market for the product you are selling. For example, if the national commodity market price on chicken increases dramatically and this increase is passed down from the manufacturer to the wholesaler to your store, you are permitted to pass along this increase that is the result of the nationwide increase on the price of chicken.

Where does the price gouging law apply?

The price gouging law only applies in the area where the State of Disaster or Emergency has been declared or the abnormal market condition has been found. For example, if a disaster is declared for New Hanover County (Wilmington) and Brunswick County (Ocean Isle Beach), the law would apply in these counties but would not apply, for instance, in Wake County (Raleigh), Guilford County (Greensboro) or Buncombe County (Asheville), or the remainder of the state, for that matter.

When is the price gouging law triggered and how long does it stay in effect?

The law prohibiting price gouging is not always in effect. In order for the price gouging law to become effective, a triggering event must occur. A triggering event comes about in one of three ways-1) a declaration of a State of Emergency; 2) a declaration of a State of Disaster or 3) a finding by the Governor of an "abnormal market condition."

A State of Emergency is usually declared just before an impending disaster occurs to warn North Carolinians of a pending disaster so they can prepare in advance of a storm. A State of Disaster is usually declared after a storm hits. The "abnormal market condition" qualification is the result of Hurricane Katrina and requires a finding of the Governor that there has been a significant disruption to the production, distribution or sale of good or services necessary to preserve or sustain the life, health, safety or economic well-being of North Carolina citizens. An abnormal market condition can only be declared by the Governor when the President has declared a State of Emergency or State of Disaster or the United States Department of Homeland Security has declared a Code Red/Severe Risk of Attack. The abnormal market condition does not have to be the result of an event that directly affects North Carolina. As an example, Hurricane Katrina did not actually cause damage within the borders of North Carolina, but the effects of the storm to the Gulf Coast was thought to have significantly altered the economic well-being of North Carolina citizens due to the shortage of gasoline.

The price gouging law remains in effect for 45 days or the termination of the triggering event, whichever is earlier. The Governor has the authority to specifically extend the prohibition against price gouging.

How will I know when and where the price gouging law applies?

While we hope this law is never needed, in the event that a triggering event occurs, watch your local media for information about disaster areas. Additionally, NCRMA has been placed on the Governor's distribution list for all disaster-related declarations so that it can promptly inform you when and where a disaster is declared and when it ends. NCRMA also has a seat at the table with NC Emergency Management, allowing various resources to be at hand. In addition, NCRMA has created a twitter account for up-to-the-minute Emergency Management updates. We encourage members to follow @NCRMA_EmPrep for timely updates from NC Emergency Management, NC DOT, Ferry Divisions, Interstate conditions, etc.

While we often are keenly aware of a disaster, sometimes this is not the case. For example, even though a severe ice storm hit Western North Carolina in December 2005, a declaration of disaster was not declared until July 2006 so that federal disaster funds could help with the clean-up.

Does this law apply to a person that comes in from out-of-town and sets up shop during a disaster?

Yes, the North Carolina General Assembly specifically sought to protect its citizens from out-of-town people like tree-cutting services, roofers, and generators salesmen who set up shop during disaster. If an out-of-town company is charged with price gouging, the Attorney General's Office will look at what the price the service or good is generally available for in the trade area in determining whether or not a person is price gouging. For example, if a person arrives from Ohio with a truckload of generators and sells them out of a parking lot, the Attorney General will compare this person's price with the price for which a generator is normally sold in that area.

What is the penalty for price gouging?

There is a civil penalty of \$5,000 per violation. Additionally, a person who is the victim of price gouging can bring a civil action for damages (which may be tripled), attorney's fees, and court costs.

What if someone complains to the Attorney General and after the investigation they find out I just passed along my increased costs and have not committed price gouging? Do I have any recourse?

If the Attorney General investigates you and determines that price gouging has not occurred, the Attorney General must issue a signed statement to this effect upon your request.