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PUBLIC CITIZEN GUIDE TO FIGHTING PRICE GOUGING DURING THE COVID-19 PANDEMIC EMERGENCY

The COVID-19 pandemic is devastating communities' health and leaving millions of people to struggle in the face of record unemployment and shortages of essential products. As scientists and health professionals tackle fighting the virus, Public Citizen is fighting to protect consumers from other threats as well. That means ensuring businesses do not take advantage of consumers by unreasonably raising prices during this difficult time—also known as price gouging.

Public Citizen is fighting against price gouging by advocating for uniform federal protections such as encouraging Congress to ban the practice and we are pushing for strong state safeguards as well. We are also empowering consumers to fight against price gouging by giving them the tools to know when a product's price is too high and where to file a report when they've been a victim of price gouging. For more information on how you can get involved in this fight, please see the "Take Action" section on page 4 of this document.

WHAT IS PRICE GOUGING?

As members of Congress and other government officials work to stop price gouging, a key problem is that it is not well defined. There is a wide variance between definitions where state laws and regulations prohibiting price gouging exist. However, looking across protections that do exist, generally, price gouging laws include three factors:

- There must be a declared emergency (hurricanes, earthquakes, flooding, or pandemics);
- Prices must be increased on specific products that are deemed necessary; and
- The price increase must be substantial.

Looking generally at the protections currently in place, it is not a violation of price gouging laws when increased supply or delivery costs incurred by the seller are passed along to consumers.

THE NEED FOR A FEDERAL PRICE GOUGING LAW

There is currently no federal price gouging law. We at Public Citizen are fighting for a uniform, federal protection against price gouging that would serve as a floor, while allowing states to have greater protections.

Specifically, we support legislation that would:

- Create a clear and understandable definition of price gouging:
 - Such as a 10% increase in prices; and
 - A very broad list of products, goods, and services that would be covered;
- Establish significant civil penalties enforceable by the Federal Trade Commission (FTC) and State Attorneys General (AGs); and
- Be applicable during any disaster or health emergency now and in the future.

Several price gouging bills have been introduced in the House and Senate in response to the COVID-19 pandemic. They generally seek to prohibit price gouging during emergencies through civil enforcement by the FTC and state AGs and all appear to be good faith efforts to combat this problem. However, the approaches taken in the proposed bills vary in important ways. For example, several proposals define price gouging as an “unconscionable increase” which is vague and difficult to determine. Only one bill we reviewed meets our criteria above, as such, we encourage passage of [H.R.6450](#) – the “Price Gouging Prevention Act” introduced by Rep. Joe Neguse (D-Colo.) and Senator Elizabeth Warren (D-Mass.).

PRICE GOUGING UNDER THE TRUMP ADMINISTRATION

The Federal Trade Commission (FTC) has not previously taken enforcement action against price gouging, and has been [largely silent](#) on what authority it may have to take action. Because the FTC has not taken action, on March 17, 2020, Chairman Pallone (D-N.J.) and Rep. Schakowsky (D-Ill.) of the House Energy and Commerce Committee, and Chairmen Nadler (D-N.Y.) and Rep. Cicilline (D-R.I.) of the House Judiciary Committee sent a [letter](#) to the Chair of the FTC urging him to “take immediate action to protect consumers from price gouging during this declared public health emergency.”

The Department of Justice (DOJ), in response to a March 23, 2020 Trump [Executive Order](#), created a [task force](#) charged with addressing hoarding and price gouging associated with COVID-19. Attorney General Barr directed each U.S. Attorney’s Office to designate an experienced attorney to serve as a member of the task force. According to the [DOJ](#), the COVID-19 Hoarding and Price Gouging Task Force “will develop effective enforcement measures, best practices, work closely with the Department of Health and Human Services (HHS) as they designate particular items and equipment, and coordinate nationwide investigation and federal prosecution of these illicit activities.”

In response, HHS announced a [list](#) of designated health and medical resources necessary to respond to the spread of COVID-19 that are scarce and would be subject to these hoarding prevention measures. They include products like respirators, ventilators and accessories, medicines like Chloroquine phosphate or hydroxychloroquine HCl, surgical gowns and personal protective equipment (PPE).

United States Attorneys

Despite the current lack of a federal price gouging statute, under the authority of the March 23 Executive Order, DOJ has empowered U.S. Attorneys to investigate and prosecute these cases, though so far only a few cases have resulted in arrest. While there have not been any task force specific [announcements](#) related to price gouging since its creation, some U.S. Attorneys do seem to be taking action:

- U.S. Attorney Richard P. Donoghue of the Eastern District of New York (Brooklyn) has brought several high profile and creative cases. His office used the Defense Production Act to [charge](#) two Arizona men with attempting to engage in price gouging of a million N95 masks, and a Long Island man with [hoarding and price gouging](#) personal protective equipment (PPE). His office also [charged](#) two California men with wire fraud for attempting to sell PPE they did not have for [\\$4 million](#).
- The U.S. Attorney for New Jersey, Craig Carpenito, [formed](#) a joint federal-state task force to “investigate and prosecute a wide range of misconduct arising from the COVID-19 pandemic, including...price gouging” and then announced the arrest of a Brooklyn man for [assaulting](#) FBI agents by coughing on them after stating he had the Coronavirus, and for making [false statements](#) about his possession and sale of PPE.

PRICE GOUGING IN THE STATES

State laws vary widely. Most [states](#) have a law against price gouging during a declared emergency. In states where there is no explicit prohibition on price gouging they typically have a consumer protection law which [prohibits](#) unfair or deceptive trade practice which likely covers price gouging. There are a handful of states with no prohibition where legislation has been [proposed](#) or [recommended](#).

States where there is an anti-price gouging law on the books have taken different approaches. [New Jersey](#) considers price gouging to be selling goods and services at a price that is at least 10% higher than it was immediately preceding the declared [emergency](#). In [New York](#), selling "goods and services vital and necessary for the health, safety, and welfare of consumers" at an "unconscionably excessive price" during a declared [emergency](#) is considered price gouging. [Illinois](#) only covers petroleum products, though the governor has declared a [state of emergency](#) due to COVID-19 which covers other goods and services.

Some state Attorneys General are taking action to fight price gouging. States have been [inundated with complaints](#) of price gouging. Some state AGs have taken a proactive approach and are fighting back.

On March 25, 2020, 33 AGs from across the country sent a [letter](#) to the largest online marketplaces-- Amazon, Facebook, Ebay, Cragstlist, and Walmart-- indicating their shared concern about reported instances of price gouging, and made several recommendations to the companies, including: setting price gouging enforcement policies, establishing triggers to protect against price gouging when it happens regardless of an emergency declaration, and creating a place for customers to report price gouging to the companies directly.

Notable actions by State AGs:

- In Florida, Attorney General Ashley Moody's office has received 4,200 complaints on their price gouging hotline, and has [issued 70 subpoenas](#) while investigating price gouging of PPE.
- In Tennessee, one of the most high profile [cases](#) of price gouging involving a stockpile of nearly 18,000 bottles of hand sanitizer was [settled](#) by Tennessee Attorney General Herbert H. Slatery III's office after the perpetrators donated the hand sanitizer.
- Kentucky Attorney General Daniel Cameron [worked with Amazon](#) to identify third-party sellers based in Kentucky who were engaging in price gouging of essential emergency and medical supplies, including hand sanitizer and N95 masks by increasing prices by as much as 1,951%. Cameron's office then [issued](#) cease and desist orders to more than half the sellers, and issued subpoenas to six of them. In response, the [Online Merchants Guild](#) filed a [lawsuit](#) against Cameron taking the outlandish [position](#) that the Kentucky price-control statutes are unconstitutional when applied to Kentucky merchants who sell on a national marketplace like Amazon.
- Ohio Attorney General Dave Yost's office brought a [high profile case](#) against an individual who was selling N95 masks on eBay at an 1,800% markup, and subsequently forced the man to [refund customers](#) and donate the masks as part of a settlement.

Some AGs have been less interested in fighting price gouging...

- Arizona Attorney General Mark Brnovic has notably taken no action whatsoever despite an [instance](#) of a vendor charging the City of Phoenix a 600% mark-up for N95 masks for first responders. Brnovic has [insisted](#) that the lack of a price gouging law in Arizona leaves him powerless to take action. Frustrated with the lack of action, U.S. Reps. Greg Stanton and Ruben

Gallego of Arizona have sent a [letter](#) to U.S. Attorney General William Barr and FTC Chairman Joseph Simons asking that they open an investigation.

- Illinois Attorney General Kwame Raoul's office, despite receiving more than 1,120 complaints of price gouging, has brought [no enforcement](#) actions. The office has been calling businesses that have had complaints filed against them and claims that it so far has found [no evidence](#) of price gouging.

PRICE GOUGING ON ONLINE PLATFORMS

While price gouging complaints have been filed about all types of sellers, many of the highest profile cases have been related to Amazon and eBay. Amazon has [reportedly](#) removed accounts that have engaged in price gouging, and worked with multiple state AGs to [identify](#) price gouging sellers. [Amazon](#) and [eBay](#) issued policy statements and updates about what they are doing to stop price gouging on their platforms. Most recently, Amazon took the notable step to [call](#) for a federal ban on price gouging.

However, for some people these companies have not done enough to stop price gouging. Until a federal law is in place and all state AGs are able to pursue anti-price gouging enforcement actions, class action lawsuits can serve as an additional tool to fight back. A [class action](#) is a tool for consumers (and other groups of people) to band together to file a legal action against a company or organization where the government is unable or unwilling to resolve the issue and it would be inefficient for an individual consumer to file suit on their own. A class-action [lawsuit](#) has been filed alleging eBay encouraged sellers to engage in price gouging on essential products. A separate class-action suit was [filed](#) alleging Amazon has continued to engage in price gouging across multiple categories and products. A third class-action was [filed](#) against dozens of food retailers including Amazon, Walmart, Costco, Trader Joe's, and Kroger [alleging](#) that they engaged in price gouging eggs which have seen a massive price increase in California.

TAKE ACTION TO PROTECT AGAINST PRICE GOUGING

In order to stop the practice of price-gouging during the COVID-19 pandemic and other emergencies once and for all, we need as many people as possible to get engaged in the fight. Here are ways that you can personally take action to end this harmful practice.

- Encourage Congress to pass a statutory federal ban on price gouging: [H.R.6450](#) – the Price Gouging Prevention Act.
- If your state doesn't yet have a [protection](#) then contact your [state legislature](#) to tell them you want a state law passed.
- In order to determine if the price you are paying for a product is too high, you can use an online price tracker, like [CamelCamelCamel.com](#) and [Keepa.com](#), to find a product's price history.
- If you have personally experienced price gouging, file a complaint with the DOJ National Center for Disaster Fraud by calling the National Hotline at (866) 720-5721 or by submitting a price gouging complaint [here](#).
- **Also** file a complaint with your Attorney General. Find out how [here](#).
- If you experience price gouging on an online platform you can complain directly to [eBay](#) and [Amazon](#) – and follow the instructions provided.
- Consider sharing instances of price gouging that impacted you with your elected officials or local media to name and shame companies engaged in price gouging.

For additional information contact: Alex Harman, aharman@citizen.org, (202) 454-5135