

COVID-19 Prompts Florida Price Gouging Statute Affecting the Sale of Commodities

ANTITRUST AND TRADE REGULATION | CORONAVIRUS | MARCH 12, 2020



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Usually, Florida Gov. Ron DeSantis has no need to sign an executive order until an impending hurricane takes aim at the state of Florida. But the coronavirus changed all that.

On March 9, 2020, DeSantis issued an executive order (20-52) declaring a state of emergency throughout the entire state of Florida for the next 60 days or until May 8, 2020, unless extended.

When the order issued and was filed with the secretary of state at 5:52 p.m. on March 9, 2020, Florida's price gouging statute activated to prohibit price gouging concerning essential commodities, as follows: "Upon a declaration of a state of emergency by the Governor, it is unlawful and a violation of s. 501.204 for a person or her or his agent or employee to rent or sell or offer to rent or sell at an unconscionable price within the area for which the state of emergency is declared, any essential commodity including, but not limited to, supplies, services, provisions, or equipment that is necessary for consumption or use as a direct result of the emergency." Florida Statutes section 501.160(1)(a) defines "commodity" as "any goods, services, materials, merchandise, supplies, equipment, resources, or other article of commerce, and includes, without limitation, food, water, ice, chemicals, petroleum products, and lumber necessary for consumption or use as a direct result of the emergency."

After DeSantis signed the executive order on March 9, Florida Attorney General Ashley Moody posted on the attorney general's website its "commodities covered under the COVID-19 state of emergency" information sheet. That document provides that a "commodity must be essential - meaning its consumption or use is critical to the maintenance of the public health, safety or welfare during the declared emergency" and announced that protective masks, sanitizing and disinfecting supplies, such as hand sanitizer, gel, wipes, cleaning supplies for surface cleaning, and all commercial cleaning supplies are commodities under Florida's price gouging statute. While Moody's information sheet about masks and sanitizing and disinfecting supplies helps distributors, consumers, and others understand the scope of what commodities are covered by Florida's price gouging statute during a state of emergency, it's important to note that Florida's price gouging statute also reaches "any goods, services, materials, merchandise, [and] supplies."

Because most executive orders deal with states of emergencies arising out of hurricanes or other problems such as in executive order 17-120, issued April 11, 2017, which dealt with wildfires, the focus for price gouging purposes is typically on traditional commodities such as water, gasoline, generators, hotel rooms, and the like. But DeSantis' most recent executive order is an example of the far-reaching nature of Florida's price gouging statute, which covers masks and sanitizing and disinfecting supplies. Despite the reach of Florida's price gouging statute, it's still possible for a distributor to increase the price for a commodity during a state of emergency as long as the price is not unconscionable and is not grossly disparate from the average price for that commodity during the 30 days before the declaration of the state of emergency.

No one wants to prompt a price gouging complaint and the scrutiny of the Florida attorney general's office, so it's important to understand Florida's price gouging statute and its exceptions before the sale of a commodity, online or otherwise, during a state of emergency.