



Elements Of A MN Price Gouging Statute

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Context

While 35 other states have a price gouging statutes, Minnesota does not. The DFL-controlled Minnesota House introduced a broad, unfavorable bill ([H.F. 4454](#)) last year and intends to pass a bill this session. Minnesota currently has a far-reaching, subjective price gouging Executive Order ([EO 20-10](#)) in place related to the pandemic that grants very broad authority to the Attorney General. The Governor [formally requested in a letter](#) that the Legislature enact a price gouging statute as one of five requests surrounding winding down his COVID peacetime emergency. MnRA has an opportunity to work with the House Commerce Chair and others to pass a reasonable and fair price gouging statute that protects consumers from dishonest practices. The Minnesota Senate may or may not have interest in a bill.

Select Issues With [H.F. 4454](#)

- Uses a definition of “abnormal market disruption” that need not be connected to an actual emergency.
- Has a much too broad definition of an emergency.
- “Essential consumer goods” lacks specific definition, is entirely too subjective, and can mean virtually anything.
- Price gouging is determined based on a market comparison, not the individual retailers normal pricing, and includes price increases of 30 percent over an seven day period.
- Unconscionably excessive price is not defined and is subject to interpretation.
- The bills does not provide clarity to consumers, retailer or an enforcer.

Guiding Statement

A price gouging statute should protect Minnesotans from unfair pricing during an emergency, with definitions that are clear for consumers, retailers and enforcers. A statute should be focused on situations that are egregious in an effort to protect the health and safety of the public related to a specific emergency.

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Priority (1-3)	Element	Explanation	Notes
1	<i>Scope:</i> Retail-consumer transactions	A price gouging measure should be limited to the consumer-retailer relationship (transaction) and not extend up the supply chain as this could adversely impact or cut off supply availability in Minnesota. The focus should be on the transaction, not the market or supply chain.	A focus on retail transactions helps avoid potential supply chain disruptions.
1	<i>Trigger:</i> Dual declaration	A price gouging law should require: <ol style="list-style-type: none"> 1. a Governor's emergency declaration; and 2. an invoking of the price gouging statute. <p>Emergency declarations by other units of government should not be included.</p>	An emergency should be substantial enough that it is recognized by Minnesota's Governor.
1	<i>Products/services impacted:</i> Specific emergency-related products & services in the geography of the emergency declaration	The products and services covered under a price gouging statute should specifically focus on essential goods and services related to the nature of the emergency as well as the geographic area of the declaration.	
1	<i>Defining price gouging – establishing the baseline:</i> Focus on the seller	Price gouging should look at an individual seller's immediate pre-emergency pricing as opposed to a comparison to the marketplace or competitors. This approach helps recognize that in Minnesota there are differing retail models.	
1	<i>Defining price gouging – establish a safe harbor:</i> Be clear about what price gouging is not	Retailers should be given clear guidance on what is <u>not</u> price gouging, such as a 30 percent change in price as compared to a period immediately before the emergency. Price increases outside the safe harbor of a 30 percent increase can occur but if challenged need to be justified based on direct and indirect cost changes. Establishing a safe harbor of 30 percent brings clarity to what price gouging is not.	
1	<i>Defining price gouging – recognizing changing costs:</i>	Costs when determining if excessive pricing exists should include direct and indirect costs to the retailer including the reasonable cost of replacing a product or service. No other state	

	Allow direct and indirect costs to be a factor in pricing changes	uses profit as a determination of if price gouging has occurred.	
1	<p><i>Penalties:</i></p> <p>In line with Minnesota's consumer protection laws</p>	<p>Penalties should align with other Minnesota consumer protection laws, such as:</p> <ol style="list-style-type: none"> 1. Injunction 2. Recovery of overcharge for the consumer 3. Financial penalty per sale, capped at \$10,00 per day. <p>Violations should not be criminalized.</p> <p>Enforcement should be vested with the Attorney General and county attorneys in line with other consumer protections laws.</p>	<p>Uniform Deceptive Trade Practices Act (UDTPA). Minn. Stat. § 325d.48</p> <p>Remedies - https://www.revisor.mn.gov/statutes/cite/325D.45</p> <p>The "Minnesota Consumer Fraud Act" is generally a reference to Minnesota Statutes section 325F.68 – 325F.695</p> <p>MN Consumer Protection Act https://www.revisor.mn.gov/statutes/cite/325F</p>
1	<p><i>Duration:</i></p> <p>Defined end point connected to the ending of the emergency</p>	The price gouging statute should have an end point aligned with the end of the emergency.	
2	<p><i>Notification:</i></p> <p>Opt-in state notification e-mail list</p>	Retailers should have access to an opt-in e-mail notification list that is activated in the event the price gouging statute is triggered.	