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When Do Price Gouging Laws Expire?

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States around the country have activated their price gouging statutes due to the COVID 19 pandemic. These temporary restrictions typically go into effect upon the declaration of a local, state or national emergency. However, even though all the emergency declaration began at roughly the same time (the first week of March 2020), they likely will end at very different times. States are taking much different approaches to their predicted end-dates for their price gouging restrictions.

Under the majority of state laws, Governors can declare a state of emergency only for a limited time period – typically 30, 60, or 90 days. After that period, the Governors usually are required to renew the declaration. Unless renewed, when the declaration expires, so do many of the price gouging restrictions. In Louisiana, for example, "no state of disaster or emergency may continue for longer than thirty days unless renewed by the governor." La. Stat. Ann. § 29:724. Louisiana's price gouging statute tracks this language, stating that the statute "is effective for an initial period not to exceed thirty days pursuant to the initial declared state of emergency … and shall be renewed only by specific reference in any subsequent proclamations renewing the declared state of emergency by the governor." La. Stat. Ann. § 29:732(B). Louisiana's state of emergency related to COVID-19 expires on June 5, 2020, unless extended or terminated sooner.

Other states specify a set date when their price gouging restrictions expire in their declaration of emergency or another executive order. For example, under California's Proclamation of a State of Emergency, price gouging restrictions are in effect through September 4, 2020. Michigan takes a similar approach, specifically extending its price gouging restrictions through June 12, 2020, via Executive Order 2020-89.

Some states also have price gouging laws that remain in effect even after the state of emergency expires. For example, New Jersey's price gouging statute states that "[i]t shall be an unlawful practice for any person to sell or offer to sell during a state of emergency *or within 30 days of the termination of a state of emergency*." N.J. Stat. Ann. §56:8-109. New Jersey's state of emergency expires on June 5, 2020. Similarly, Pennsylvania's price gouging statute remains in effect "[d]uring and within 30 days of the termination of a state of disaster emergency declared by the Governor." Penn. P.L. 1210, No. 133 §4(a). Pennsylvania's state of emergency, which must be renewed every 90 days, expires on June 4, 2020.

There are also some states in which the statutory time period for the price gouging restrictions has run, and the Governor has extended them. Under Kentucky's price gouging statute, for instance, restrictions are only in effect for fifteen days. After the fifteen days expire, the Governor may renew the provisions up to "three additional fifteen (15) day periods [] if necessary to protect the lives, property, or welfare of the citizens. Ky. Rev. Stat. §367.374(1)(b). On April 21, 2020, the last of the fifteen-day extension periods expired. However, Governor Andy Beshear has continued to extend the price gouging provisions beyond this statutory period by executive order. The most recent executive order issued on May 21, 2020, extends the price gouging provisions "for the duration of the State of Emergency."

While the majority of price gouging restrictions continue to remain in effect, some may begin to expire in the coming weeks or months. With a wide range of expiration dates for price gouging restrictions, and renewals coming online daily, compliance on a regional or national level requires careful tracking of where the restrictions are in effect and for what period they are slated to remain in place. Finally, the importance of maintaining a good record of your compliance and compliance efforts in place now survives the current state of emergency. As some statutes allow for private causes of actions to be brought up to six years from now, plaintiffs will look retrospectively at what took place during this critical period when evaluating whether to bring claims – even months or years down the road.

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