



ROSE LAW FIRM

TO: Clients
FROM: Rose Law Firm, a Professional Association
DATE: March 25, 2020
RE: Price Gouging Laws

Arkansas Price Gouging Laws

On March 11, 2020, the Governor issued Executive Order 20-03 declaring a state of emergency for the entire State of Arkansas due to the COVID-19 pandemic. Among other things, that emergency declaration triggered the State’s price gouging laws.¹ These laws make it unlawful for any person, contractor, business, or other entity to sell or offer to sell certain goods or services for more than ten percent (10%) above the price charged for those goods or services immediately prior to the proclamation of emergency.² These laws are in effect for thirty (30) days following the Governor’s Declaration but they may be extended for additional thirty (30) day periods.³

The goods and services that are covered by this law are: any consumer food items or goods, goods or services used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, storage services, or gasoline or other motor fuels. This list of goods and services is notably broad. The broadest item on the list is likely consumer food items or goods as the definition of “goods” includes “any tangible property.”⁴ Given, the breadth of the goods and services covered by the price gouging laws, it is likely that most goods and services will be covered.

Exceptions

There are two important exceptions to Arkansas’s price gouging laws. The first is if the increase in cost is directly attributable to additional costs imposed by the supplier or directly attributable to additional costs for labor or materials used to provide the services.⁵ An example of this is when the supplier raises the price of

¹ See Ark. Code Ann. § 4-88-301 *et seq.*

² Ark. Code Ann. § 4-88-303(a)(1).

³ Ark. Code Ann. § 4-88-303(c).

⁴ Ark. Code Ann. § 4-88-302(e).

⁵ Ark. Code Ann. § 4-88-303(a)(2).

goods more than 10 percent. In these instances, the price still must be no more than ten percent (10%) above the total of the costs to the seller **plus** the markup customarily applied by the seller.

The second exception is if the goods or services were being sold at a reduced price immediately before the emergency declaration.⁶ This would apply if the seller were having some type of sale or discount immediately before the emergency declaration. In this situation, the ten percent (10%) cap on increases is based off of the good's or service's usual price rather than the reduced price that the good or service was being offered at.

Examples

The following examples demonstrate how Arkansas's price gouging laws customarily apply and how the exceptions might apply:

- Ex.1: Prior the Governor's Declaration, a store was selling a computer for \$500. After the Governor's Declaration, and without an increase in the costs to obtain the computer, the store raises the price to \$600. This would be a violation of Arkansas's price gouging laws.
- Ex. 2: Same example but the costs for the store to obtain the computer have increased by \$100 due to pandemic. The store could charge \$600, which represents the pre-emergency price plus the increased cost. The store could also add a 10 percent increase **plus** its customary markup on the increased cost. This would NOT be a violation of Arkansas's price gouging laws.
- Ex. 3: Same as Example 1 but the store's usual price is \$600 and it was only offering the computer at \$500 as part of a limited time sale. The store would NOT be violating Arkansas's price gouging law by returning the price to \$600.

Penalties

Violating Arkansas's price gouging laws is a Class A misdemeanor and can subject the violator to substantial civil penalties.⁷ These can include monetary penalties of up to \$10,000 and the possible suspension or forfeiture of franchises, corporate charters, or other licenses or permits or authorizations to do business in Arkansas.⁸ The violator would also likely be ordered to make restitution to the victim(s).

⁶ Ark. Code Ann. § 4-88-303(d).

⁷ Ark. Code Ann. § 4-88-304.

⁸ Ark. Code Ann. § 4-88-113.