



March 25, 2020

DMS Notice
QC – 20 – 01
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TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Price Gouging – Emergency Response

The Division of Measurement Standards (DMS) has responded to numerous inquiries on how to handle price gouging during a state of emergency. DMS is also receiving reports of other problems, including a grocery store that removed all shelf pricing and a store that started applying a 5% surcharge on all items for sale. While none of these actions are violations of sections within Division 5 of the California Business and Professions Code, county weights and measures officials perform the bulk of price verification inspections, so it is logical that the public would contact the county sealer's office for help. Below is a list of statutes related to price gouging, item pricing, and unfair business practices and the authority that has jurisdiction to enforce them.

- Price Gouging. [Penal Code section 396](#) prohibits raising the price of many consumer goods and services by more than 10% after an emergency has been declared. Frequently asked Questions about Price Gouging in California can be found at: <https://oag.ca.gov/consumers/pricegougingduringdisasters#5C>. The Attorney General's (AG) Office accepts price gouging complaints and, in many jurisdictions, they are also handled by the local District Attorney (DA). The AG's Office accepts complaints online or by phone.
 - Online at: <https://oag.ca.gov/contact/consumer-complaint-against-business-or-company>
 - Telephone the AG's complaint line at: (800) 952-5225.
- Removal of Item Prices. The item pricing laws in [Civil Code \(CC\) Sections 7100-7106](#) are limited to retail grocery stores or grocery departments in a store, requiring at least 85% of the items priced (a shelf tag is acceptable), with certain exemptions. CC Section 7101 states that any person may bring an action to



enjoin a violation of Section 7100. That means that it is allowable for a private individual or a sealer to follow-up on violations. Enforcement of this law is through the courts, i.e., local DA.

- Questionable Surcharges. Extra fees and charges added to the cost of a good or service (beyond the initially quoted price) are cause for suspicion. Adding to the cost of a commodity creates an atmosphere of unfair competition and gives an unfair business advantage. A DA would likely apply BPC section [17200](#) to this business practice. Additionally, if a retailer omits these additional fees or surcharges from the advertised price, consumers would likely be unaware of this cost until the transaction is completed. This creates an issue with false and misleading advertising that is covered in [BPC Section 17500](#).

DMS always recommends a progressive enforcement approach, whenever possible. It may be appropriate to begin with a visit to the business to educate store management that price gouging or adding a “health care surcharge” may be construed as an unfair business practice/ and/or unfair competition. Each jurisdiction needs to choose the course of action best suited for their circumstances.

If you have any questions regarding this notice, please contact DMS by email at dms@cdfa.ca.gov or phone at (916) 229-3000.

Sincerely,



Kristin Macey
Director

cc: Hyrum Eastman, County/State Liaison, CDFA