



# The New Crime Wave: State Efforts to Investigate COVID-19 Related Crimes

April 20, 2020

The unprecedented COVID-19 pandemic has brought with it an unprecedented effort by states and the federal government to prevent and counteract fraud. State Attorneys General are implementing innovative statewide initiatives to warn the public about fraudulent activity and to scrutinize businesses accused of taking advantage of their communities in this tumultuous time. Some states have increased their online presence to warn consumers about potential fraud, while others have taken aggressive measures to prosecute fraud. Additionally, several state agencies are working together with federal and local authorities to combine resources and employ proactive efforts to prevent fraud regionally. The number and type of reported fraud cases vary state by state, but tend to center on price gouging, internet and email scams, and false advertising. However, statewide initiatives will likely evolve in coming months to respond to new threats to consumers and to the integrity of government funding programs and commercial lending.

## Minnesota

On April 6, 2020, Minnesota Attorney General Keith Ellison and U.S. Attorney for the District of Minnesota Erica MacDonald announced the creation of a Minnesota COVID-19 Action Team (MCAT). The MCAT is a coordinated effort by local, state, and federal agencies in Minnesota to investigate and prosecute unlawful activity relating specifically to the COVID-19 pandemic. The MCAT and Minnesota Attorney General created "COVID-19 Complaint forms" which citizens and businesses can submit to report fraud, such as health-related scams (miracle cures, products, or treatments), government imposter scams, and cyber and financial crimes. The aggressive efforts to combat fraud in Minnesota are further illustrated by several Executive Orders signed by Minnesota Governor Tim Walz prohibiting price gouging and fraudulent activity. This is particularly noteworthy, as Minnesota was one of the few states without a price-gouging law in place before the pandemic. This unique initiative for prosecuting fraudulent activity - even activity that was not a state crime before the pandemic - demonstrates the MCAT's commitment to protect Minnesota's citizens from those who may take advantage of the crisis. Likewise, recent Minnesota enforcement efforts have focused on identifying and investigating fraudulent schemes involving economic funding programs, such as the CARES Act stimulus payments.



## California

Like Minnesota, California's local, state, and federal entities are working to combat fraud regionally during the COVID-19 pandemic. Per the mandate from Attorney General William Barr to prioritize the investigation and prosecution of coronavirus fraud schemes, the U.S. Attorneys in California urge citizens to contact the National Center for Disaster Fraud (NCDF) hotline to report suspected fraud tied to COVID-19. In addition, the California Attorney General Xavier Becerra has focused on preventing specific fraudulent activity within the state, such as donations to illegitimate "charitable" organizations and false advertising. The Attorney General advises citizens to do their research before donating to charities, to check the registration status of that charity, and to watch out for similar sounding names or other deceptive tactics. Additionally, the California Attorney General recently issued a consumer alert regarding claimed treatments or cures for the novel virus. There, the Attorney General reminds companies that California's Unfair Competition Law, False Advertising Law, and Consumer Legal Remedies Act prohibit such false claims and that investigations into such actions will be formidable. Further, the False Claims Unit - a division of the Attorney General's Office - is specifically dedicated to enforcing the state's False Claims Act, and will partner with other agencies to more efficiently investigate COVID-19 fraud. In addition, Attorney General Becerra has committed his office to prosecuting price gouging during the statewide emergency, as California law prohibits such acts, and violations can subject companies to criminal prosecution and fines of up to \$10,000. Other enforcement efforts are likely to develop soon, as California has recently implemented several financial aid packages for unemployed individuals and small businesses who may not be eligible for federal relief under the CARES Act. As is true with the federal relief, receipt of state funds will bring enhanced scrutiny over its use.

## Missouri

Missouri Attorney General Eric Schmitt has focused Missouri's COVID-19 enforcement response on price gouging and phishing scams during the pandemic. Specifically, the Attorney General's Office has implemented coronavirus scam complaint forms, which request citizens to report any illegal activity, especially fraud in connection with COVID-19. Likewise, Attorney General Schmitt warns consumers about phishing attempts such as "emails purporting to be from the CDC" which are instead scams to gain access to personal financial and health information. More recently, Attorney General Schmitt has released a consumer alert to Missourians regarding Medicaid Fraud and COVID-19. The alert warns recipients of the program to be cautious of suspicious phone calls attempting to gain their personal information, as it may be used to fraudulently bill the recipient for fraudulent services they did not receive. Additionally, the U.S. Attorneys for the Western and Eastern Districts of Missouri are "making it a priority to investigate and prosecute those who try to profit by selling bogus cures, soliciting fake donations, engaging in online or email phishing scams, or engaging in any other fraud." City and county government initiatives to prevent and address COVID-19 fraud supplement statewide initiatives with locally-focused efforts. Similarly, many private



entities in Missouri have assisted in warning businesses about financial fraud in the Kansas City and St. Louis areas, as more professionals work from home using unsecure networks, and may be increasingly vulnerable to investment scams as the economy weakens.

### **New York**

In an effort to aggressively address COVID-19 related fraud, New York Attorney General Leticia James has sent cease and desist notices to several television and radio hosts. Alex Jones, the infamous right-wing host of InfoWars.com, received such a notice, demanding he stop making misleading claims that products on his website can cure or prevent the coronavirus. Businesses should be wary of making health related claims that may reach consumers in New York, as the scrutiny of businesses is likely to become even more intense as the pandemic continues with no widely accepted treatment, vaccine, or cure. The Attorney General's forceful tactics have also been illustrated by the cease and desist letters issued to several businesses in the state for violating price gouging statutes on essential health and wellness products.

### **Conclusion**

Due to the novel COVID-19 landscape, businesses and individuals should stay up to date on initiatives, executive orders, and actions taken by their state Attorney General and local officials to prevent and prosecute COVID-19 related fraud. Business ventures that may be viewed as taking advantage of the unprecedented fear-driven environment surrounding the pandemic should be analyzed for potential civil and criminal violations.

The local initiatives developed by states are innovative and will continue to adapt to the new wave of COVID-19 fraud as it occurs. Regional coronavirus enforcement units' efforts may require compliance with novel executive orders, emergency laws, and regulatory rules that were not in place before the coronavirus. The investigative efforts states are currently championing will last long after the state of emergency is lifted. Thus, the risk of civil and criminal investigations for fraudulent activity during the pandemic is likely to increase over time and may last for years.

As businesses and individuals prepare to take advantage of government aid and relief programs, or plan to make claims, advertisements, or products during the COVID-19 pandemic it is critical to avoid fraudulent government filings or statements to the public regarding their products, prices, and services during the COVID-19 pandemic.[1] Federal and state False Claims Act investigations and lawsuits are also likely to increase, an enforcement threat that we will highlight in a future Client Alert.

If you have any questions about statewide executive orders, recent pandemic related laws, or a civil and criminal investigation relating to COVID-19, please contact Susan Gaertner, Alana McMullin, Litigation and Dispute Resolution Practice Group Chair Matthew Jacober, or your regular Lathrop GPM contact. Our White



Collar Group focuses on compliance, False Claims Act litigation, and state and federal investigations.

[1] See "More Money More Problems" for best practices in applying for and spending CARES Act funds.