

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

EXECUTIVE ORDER N-10-22

WHEREAS on March 4, 2020, I proclaimed a State of Emergency to exist in California due to the threat of COVID-19; and

WHEREAS the Legislature has declared its intent to protect individuals from price gouging during states of emergency, and has enacted statutes consistent with that purpose, including by enacting legislation during the State of Emergency proclaimed in response to COVID-19 that strengthened statutory protections against price gouging; and

WHEREAS consistent with these statutory enactments and Legislative intent, the March 4, 2020 Proclamation of a State of Emergency triggered certain protections against price gouging set forth in Penal Code section 396, and I issued Executive Orders (including Executive Orders N-44-20, N-78-20, N-03-21, and N-2-22) that further implemented protections against price gouging during the State of Emergency; and

WHEREAS due to the effective actions of Californians, the successful and ongoing distribution of COVID-19 vaccines, and the decisive, meaningful actions taken by the State to reduce the spread and mitigate the impacts of COVID-19, rates of newly reported cases of COVID-19 diminished greatly in the spring and summer of 2021, and Executive Order N-08-21, issued on June 11, 2021, rolled back certain previously implemented protections against price gouging in light of the then-current state of the pandemic; and

WHEREAS I reimposed price-gouging protections on January 8, 2022, regarding COVID-19 At-Home Test Kits to protect public health and safety and to enable the continued operation of California schools, businesses, and other institutions in as safe a manner as possible; and

WHEREAS the COVID-19 pandemic has disrupted the global supply chain of materials needed by infant formula manufacturers, leading to a shortage in infant formula supplies that worsened when, on February 17, 2022, Abbott Nutrition, the largest manufacturer of infant formula in the United States, recalled certain infant formulas produced at its manufacturing facility in Sturgis, Michigan, and the Food and Drug Administration subsequently shut down the facility; and

WHEREAS the COVID-19 pandemic's impact on supply chains, compounded by the 2022 Abbott Nutrition recall and shutdown, has caused an acute shortage of infant formula across the country, resulting in parents and caretakers in California reporting ongoing difficulties in obtaining infant formula at retailers and pharmacies, and retailers and pharmacies struggling to obtain infant formula from their suppliers; and

WHEREAS notwithstanding ongoing efforts by the Biden Administration to bolster the production and supply of infant formula available in the United States, including by reaching an agreement with Abbott Nutrition on May 16, 2022 to safely restart formula production in its Sturgis, Michigan facility, which is anticipated to mitigate the supply shortage on store shelves within eight weeks, the COVID-19-caused supply chain disruptions continue to impact infant formula supply across the United States and in California; and

WHEREAS a shortage in infant formula poses a direct threat to the health and safety of infants in the State, as infant formula is a critical—and often essential—source of infant nutrition and sustenance; and

WHEREAS the State is prepared to take strong action against price gouging, profiteering, and other unscrupulous business practices that threaten the health and safety of infants in California.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes of the State of California, and in particular, Government Code sections 8567, 8627, and 8665, do hereby issue the following Order to become effective immediately:

IT IS HEREBY ORDERED THAT:

1. For the purposes of this Order, “infant formula” shall mean a food that purports to be or is represented for special dietary use solely as a food for infants by reason of its simulation of human milk or its suitability as a complete or partial substitute for human milk.
2. Similar to the restrictions set forth in Penal Code section 396, a person or other entity (including, but not limited to, any business enterprise of any kind) shall not—until August 31, 2022, and except as set forth below—sell or offer to sell any infant formula for a price that is more than 10 percent greater than the highest price charged by that person or entity for that infant formula on February 17, 2022.

A price increase greater than the 10 percent increase specified above shall not be unlawful if the seller can prove either of the following:

- a) The increase was directly attributable to additional costs imposed on the seller by its supplier(s) of infant formula, and the price is no more than 10 percent greater than the total of the cost to the seller plus the markup customarily applied by the seller for that item in the usual course of business on February 17, 2022; or
- b) The seller was offering infant formula for sale at a reduced price on February 17, 2022, and the increased price is not more than 10 percent greater than the price at which the seller ordinarily sold the infant formula.

Additionally, and notwithstanding the foregoing, it shall not be a violation of this Paragraph 2 to sell or offer to sell any infant formula to the State (including, but not limited to, any agency, department, board, commission, or office of the State), or to any political subdivision of the State, on terms acceptable to the State or to the relevant political subdivision of the State, as determined by the Governor's Office of Emergency Services (as to sales or offers of sale to the State) or by the officer or entity within the political subdivision that is responsible for procuring such infant formula (as to sales or offers of sale to that subdivision).

3. If a person or other entity (including, but not limited to, any business enterprise of any kind) did not offer any infant formula for sale on February 17, 2022, that person or entity shall not—until August 31, 2022, and except as set forth below—sell or offer to sell such items for an unconscionably excessive price.

For purposes of this Paragraph 3, a price of infant formula is unconscionably excessive if that price is more than 50 percent greater than whichever of the following applies:

- a. The amount that the person or entity paid for infant formula; or
- b. If the person or entity did not purchase infant formula, the total cost, to the person or entity, of producing and selling infant formula.

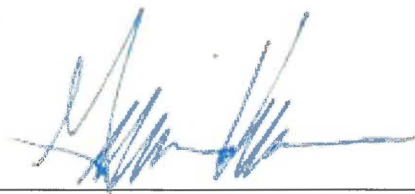
Notwithstanding the foregoing, it shall not be a violation of this Paragraph 3 to sell or offer to sell any infant formula to the State (including, but not limited to, any agency, department, board, commission, or office of the State), or to any political subdivision of the State, on terms acceptable to the State or to the relevant political subdivision of the State, as determined by the Governor's Office of Emergency Services (as to sales or offers of sale to the State) or by the officer or entity within the political subdivision that is responsible for procuring such infant formula (as to sales or offers of sale to that subdivision).

4. Each instance in which infant formula is sold or offered for sale in a manner prohibited by Paragraph 2 or Paragraph 3 above shall constitute a separate violation of this Order. Each violation of this Order shall be a misdemeanor punishable as set forth in Government Code section 8665. Each such violation shall also be redressable in the same manner as any other unlawful business practice under the Unfair Competition Law, Business and Professions Code section 17200 *et seq.*, and as otherwise provided by the laws of the State. These remedies are cumulative.

IT IS FURTHER ORDERED that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given of this Order.

This Order is not intended to, and does not, create any rights or benefits, substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 7th day of June 2022.



GAVIN NEWSOM
Governor of California

ATTEST:

SHIRLEY WEBER, PH.D.
Secretary of State