

ACTIVITY 2.1

We Can't Stop the Twisters, but We Can Stop Price Gouging

by Sonya Ziaja, Legal-Match Business Law Blog, May 5, 2011

Natural forces are blind to what they destroy. People aren't. In the past month, tornadoes and flooding in the South and Midwest left behind crippled lives, destroyed homes, and eviscerated infrastructure.

Now as the victims of the tornadoes try to rebuild, they are left vulnerable to another foe—people who use the disaster for economic gain by price gouging.

Price gouging occurs when merchants artificially raise the price of consumer goods that are in an emergency or natural disaster. For example, it's price gouging when, after Hurricane Katrina, people were forced to pay \$7 for a bottle of water.

Thankfully, there are legal protections against price gouging in many states, including those that recently declared a state of emergency: Alabama, Arkansas, Kentucky, Mississippi, Missouri, North Carolina, Oklahoma, Tennessee, and Virginia. In each of these states, the price gouging statutes allow the attorneys general to investigate and prosecute instances of price gouging once a state of emergency is declared.

The definition of price gouging is not settled in some jurisdictions. In Virginia and Tennessee, for example, price gouging is an “unconscionable” or “unreasonable” price hike. The exact definition of those terms is left to the discretion of the AG in the first instance, and then to a judge or jury if a case is tried. In other words, it's open to interpretation and litigation.

Other states have taken an approach that more clearly delineates what is or isn't price gouging. Arkansas follows a more strict approach, prohibiting price increases above 10 percent for storm recovery products (i.e., water, batteries, food, fuel, and construction materials). Meanwhile, Alabama allows for higher price hikes than Arkansas. It only prohibits raising prices above 25 percent of the average price for the previous 30 days.

The consequences in prosecuting a price-gouging crime are also different from state to state. So the same price hike in one state could carry with it a penalty of \$10,000, but in a different state it would only be \$1,000 per violation.

How does any of this help the victims of natural disaster? In theory, the threat of these consequences will deter potential price gougers from profiting excessively

from the misfortune of others. This is why attorneys general in the affected states have made public statements warning price gougers and asking citizens to report incidents of price gouging.

It may not be much of a comfort to people who are currently the victims of price gouging that state attorneys general try to prevent gouging. But there can be additional ways for victims to get help. States, like New York, are considering creating a private cause of action in these cases, allowing victims to sue to stop the price-gouging practice and to collect damages. And in other states, like Vermont, there is a right of action under consumer fraud statutes.

The availability of recovery all depends on the laws of your state. But in all of the tornado-affected areas, there are means to deter and punish price gouging. If you suspect that you are a victim of price gouging, you can check out your state's attorney general's office, or consult a knowledgeable local attorney.

Answer the following questions:

1. Why does the author believe that it is morally wrong to charge a hurricane victim \$7.00 for a bottle of water?
2. How does the definition of price gouging vary across the country?
3. What powers do state attorneys general seem to have in pursuing "price gougers" and how broad are those powers?

ACTIVITY 2.2

What's Wrong with Price Gouging?

by Jeff Jacoby, from *The Boston Globe*, May 4, 2010, Copyright 2014

There wasn't much Martha Coakley could do about the massive pipe break that left dozens of Greater Boston towns without clean drinking water over the weekend. So she kept herself busy instead lecturing vendors not to increase the price of the bottled water that tens of thousands of consumers were suddenly in a frenzy to buy.

"We have begun hearing anecdotal reports of the possible price gouging of store-bought water," Coakley announced Sunday. "Businesses and individuals cannot and should not take advantage of this public emergency to unfairly charge consumers . . . for water." Inspectors were being dispatched, "spot-checks" were being conducted, and "if we discover that businesses are engaging in price gouging," she warned, "we will take appropriate legal action."

Governor Deval Patrick got into the act, too. He ordered the state's Division of Standards to "closely monitor bottled water prices" in the area affected by the water emergency. "There is never an excuse for taking advantage of consumers," he intoned, "especially not during times like this."

It never fails. No sooner does some calamity trigger an urgent need for basic resources than self-righteous voices are raised to denounce the amazingly efficient system that stimulates suppliers to speed those resources to the people who need them. That system is the free market's price mechanism—the fluctuation of prices because of changes in supply and demand.

When the demand for bottled water goes through the roof—which is another way of saying that bottled water has become (relatively) scarce—the price of water quickly rises in response. That price spike may be annoying, but it's not nearly as annoying as being unable to find water for sale at any price. Rising prices help keep limited quantities from vanishing today, while increasing the odds of fresh supplies arriving tomorrow.

It is easy to demonize vendors who charge what the market will bear following a catastrophe. "After storm come the vultures" *USA TODAY* memorably headlined a story about the price hikes that followed Hurricane Charley in Florida in 2004. Coakley hasn't called anybody a vulture, at least not yet, but her office has dedicated a telephone hotline and is encouraging the public to drop a dime on "price gougers."

Before you drop that dime, though, consider who really serves the public interest—the merchant who boosts his price during a crisis, or the merchant who refuses to?

A thought experiment: A massive pipe ruptures, tap water grows undrinkable, and consumers rush to buy bottled water from the only two vendors who sell it. Vendor A, not wanting to annoy the governor and attorney general, leaves the price of his water unchanged at 69 cents a bottle. Vendor B, who is more interested in doing business than truckling to politicians, more than quadruples his price to \$2.99.

You don't need an economics textbook to know what happens next. Customers descend on Vendor A in droves, loading up on his 69-cent water. Within hours his entire stock has been cleaned out, and subsequent customers are turned away empty-handed. At Vendor B's, on the other hand, sales of water are slower and there is a lot of grumbling about the high price. But even late-arriving customers are able to buy the water they need—and almost no one buys more than he truly needs.

When demand intensifies, prices rise. And as prices rise, suppliers work harder to meet demand. The same *Globe* story that reported yesterday on Coakley's "price gouging" statement reported as well on the lengths to which bottlers and retailers were going to get more water into customers' hands.

"Suppliers worked overtime, pumping up production at regional bottling facilities and coordinating deliveries," reporter Erin Ailworth noted. Polar Beverages in Worcester, for example, "had emptied out its plant in the city last night and trucked in loads of water from its New York facility."

Letting prices rise freely isn't the only possible response to a sudden shortage. Government rationing is an option, and so are price controls—assuming you don't object to the inevitable corruption, long lines, and black market. Better by far to let prices rise and fall freely. That isn't "gouging," but plain good sense—and the best method yet devised for allocating goods and services among free men and women.

Answer the following questions:

1. According to the author, what is the "amazingly efficient system" Massachusetts government officials seem intent on interfering with?
2. According to the author, what is more annoying than a price spike?
3. What two benefits to society result from allowing prices to rise during a civil emergency?

ACTIVITY 2.3

Suggested Answers to Activities 2.1 and 2.2

2.1:

1. In the aftermath of a disaster, a victim's vulnerability should not be exploited for profit.
2. Some states leave it up to the attorney general to define price gouging; others define it within specific price-hike parameters.
3. In general, once an emergency has been declared, state attorneys general have sweeping powers to investigate suspected price gouging prompted by a call to the state's hotline.

2.2:

1. Rising prices create an incentive for suppliers to rush resources to where they are most needed.
2. Not being able to find what you are looking for at all.
3. Consumers are less likely to hoard and depleted supplies are more likely to be rapidly replenished.

ACTIVITY 2.4

Disaster Scenario

You live in quaint, idyllic New England and the last thing you expect is a hurricane. But, that is what just happened along the border between Vermont and New Hampshire. Hurricane Bertha, conceived off the coast of Africa, made landfall as a Category 2 storm on the southern coast of Long Island and cut a swath up the Connecticut River before fizzling out and exiting North America off the coast of New Brunswick. There were no fatalities, but the damage to property has been devastating. Torrential rain and relentless winds leveled trees, made roads impassable, left countless numbers without power, wiped out century-old bridges, and swelled the river to unprecedented levels above flood stage. Villages and hamlets, nestled in the cleft between the Green and White Mountains, find themselves isolated. Hanover, NH, and Norwich, VT, sister towns within a “stone’s throw,” are now cut off from each other because the bridge across the Connecticut River was destroyed.

Power is out in both towns and the roads leading in from the east and west have disappeared under toppled ancient maple and birch trees. At daylight, residents emerged to survey the damage and speculate on life over the coming days. Their towns are without power and no utility trucks can approach. The need for necessities for the indeterminable future becomes the top priority. Water, ice, gasoline for generators, propane for grills, diapers, batteries, and canned food are just a few of the things residents need. Retailers in both towns who had these items prior to the storm quickly set up open-air markets, because they fear for the structural integrity of their buildings. Residents begin queuing and discussing the nightmare that has just befallen both communities.

Just hours before the storm, residents of both towns had the foresight to withdraw some cash from ATMs. But the demand forced banks to limit each customer to \$100. That is what each person has in her or his pocket as the lines form. The residents of both communities line up single file. They are free to buy as many of each item as they wish. Each of them must maintain flashlights, generators, and coolers, and hydration is a constant concern because the water pumps to the wells are not functioning. When shopping begins, the prices of a gallon of water, a three-pack of D batteries, a gallon of gasoline, and a 10-lb. bag of ice will be prominently displayed.

ACTIVITY 2.5

Norwich, VT, Prices

1 GALLON OF BOTTLED WATER

\$2.00

1 THREE-PACK OF D BATTERIES

\$2.00

1 GALLON OF GASOLINE

\$4.00

1 10-LB. BAG OF ICE

\$2.00

ACTIVITY 2.6

Hanover, NH, Prices

1 GALLON OF BOTTLED WATER

\$5.00

1 THREE-PACK OF D BATTERIES

\$5.00

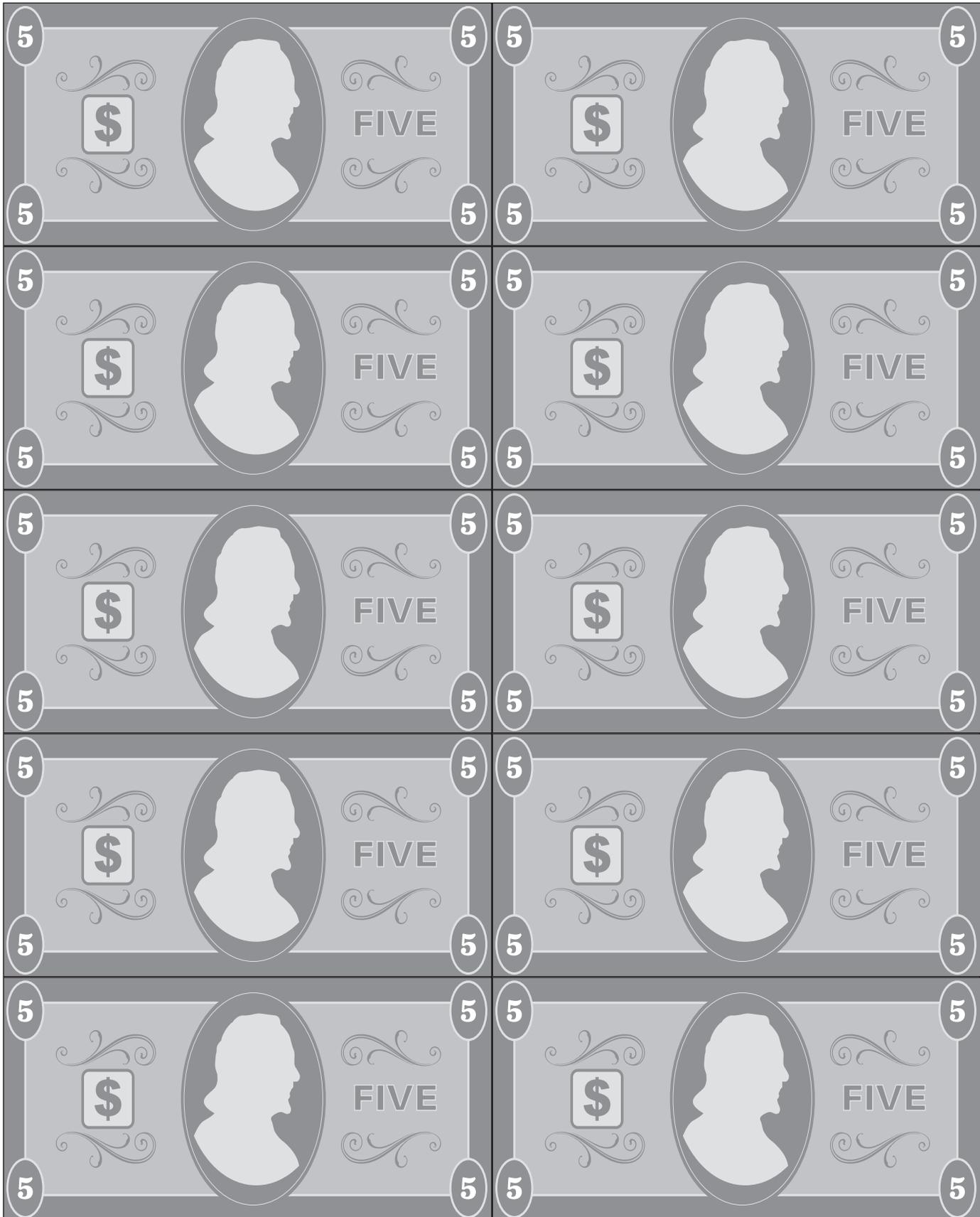
1 GALLON OF GASOLINE

\$10.00

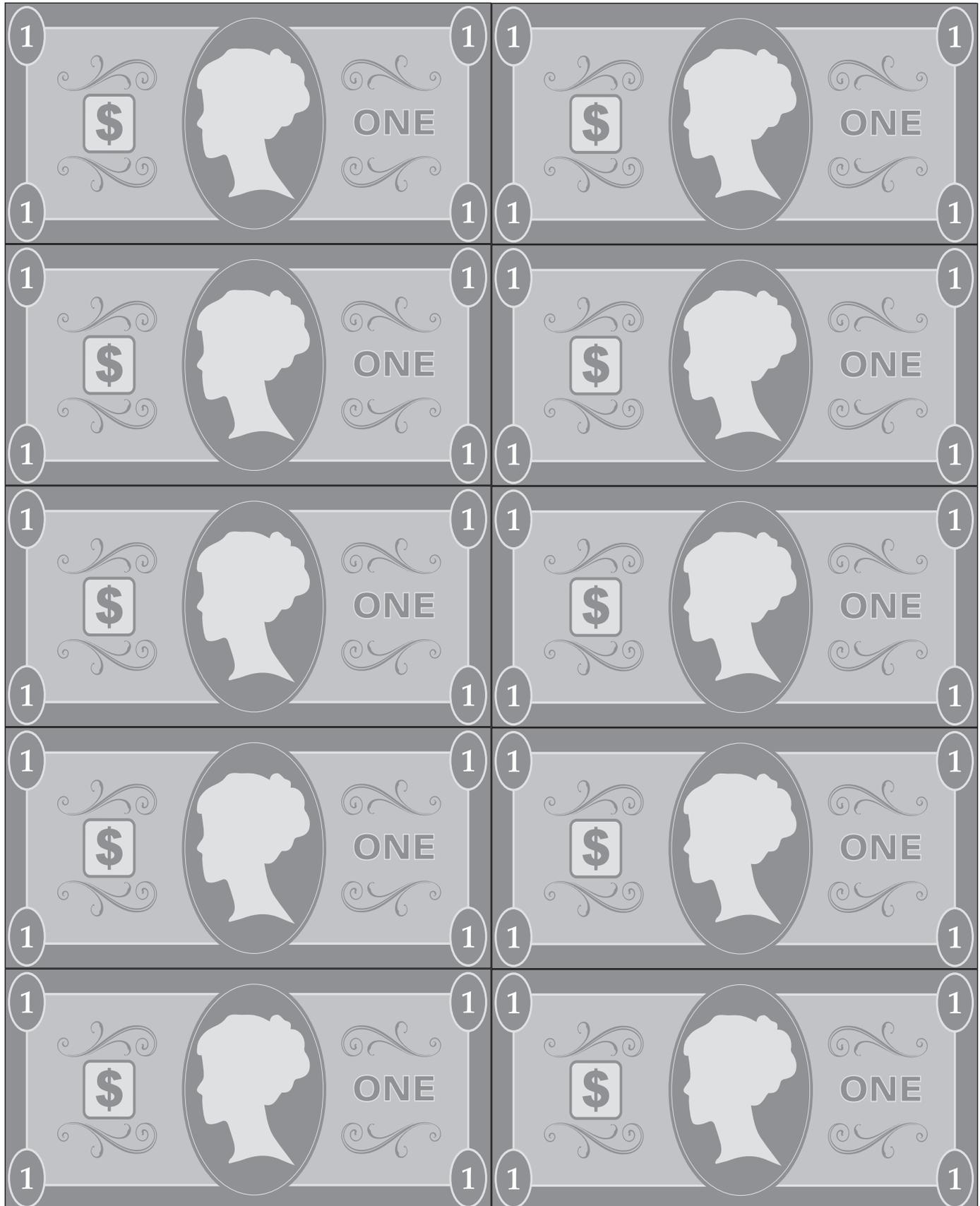
1 10-LB. BAG OF ICE

\$10.00

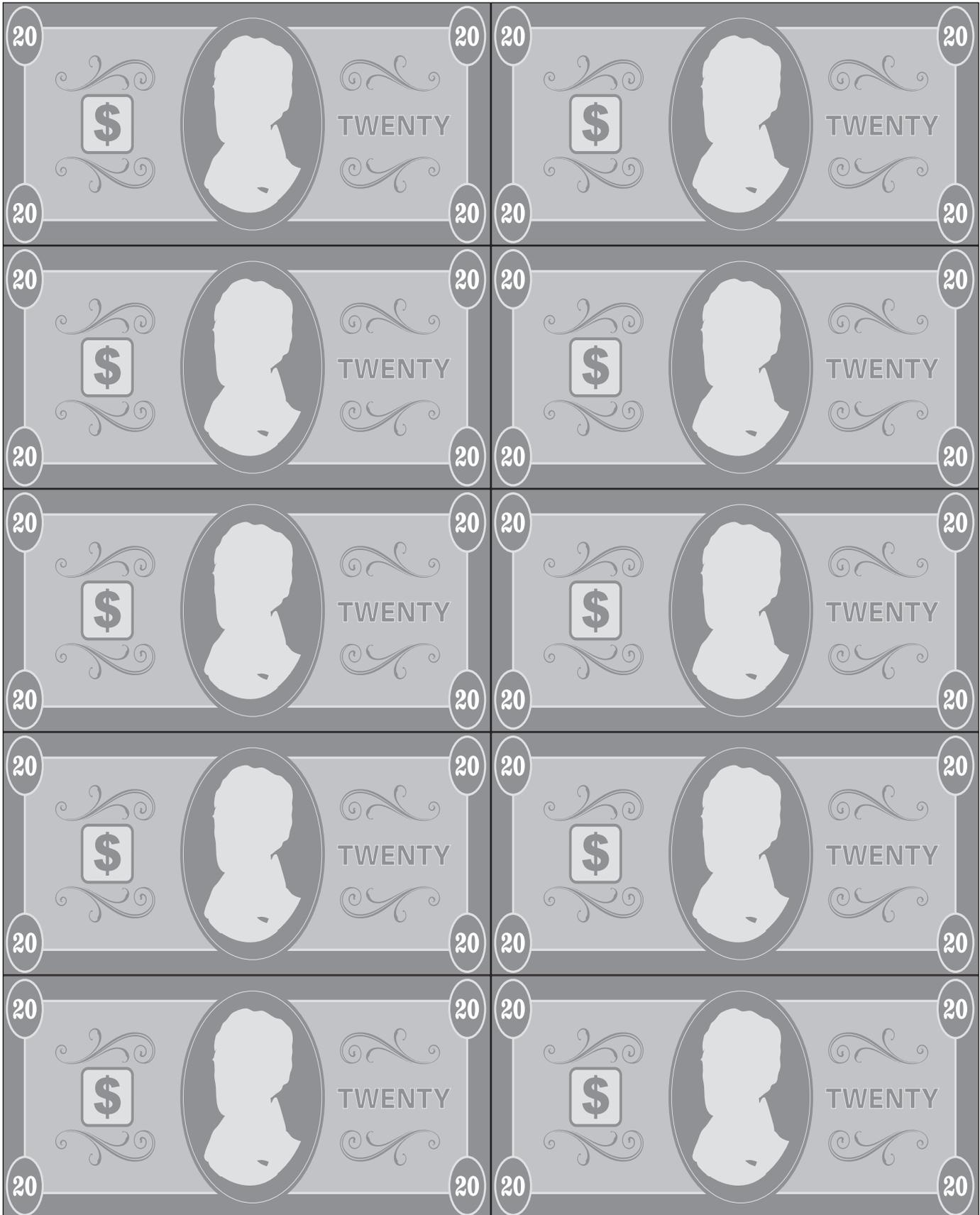
ACTIVITY 2.7A



ACTIVITY 2.7B



ACTIVITY 2.7C



ACTIVITY 2.8

