

ASSEMBLY BILL

No. 1919

Introduced by Assembly Member Wood
(Principal coauthor: Senator McGuire)
(Coauthors: Assembly Members Aguiar-Curry and Levine)
(Coauthor: Senator Dodd)

January 24, 2018

An act to amend Section 396 of the Penal Code, relating to price gouging.

LEGISLATIVE COUNSEL'S DIGEST

AB 1919, as introduced, Wood. Price gouging: state of emergency.

Under existing law, upon the proclamation of a state of emergency, as defined, declared by the President of the United States or the Governor, or upon the declaration of a local emergency, as defined, by the executive officer of any county, city, city and county, and for a period of 30 days following that declaration, it is a misdemeanor with specified penalties for a person, contractor, business, or other entity to sell or offer to sell certain goods and services, including housing, for a price that exceeds by 10% the price charged by that person immediately prior to the proclamation of emergency, except as specified.

This bill would additionally, upon the proclamation or declaration of an emergency as described above, make it a misdemeanor for a person, business, or other entity to increase the monthly rental price advertised, offered or charged for residential housing to an existing or prospective tenant by more than 10% greater than the rental price advertised, offered, or charged by that person, business, or entity within 30 days immediately prior to the date of the proclamation or disaster. The bill would extend the prohibition with regards to housing for any period that the

proclamation or declaration is extended. The bill would additionally make it a misdemeanor for a person, business, or entity to evict a housing tenant after the proclamation of a state of emergency for the purpose of renting the housing out in violation of the above provisions, as specified. By creating a new crime, this bill would create a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.

State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 396 of the Penal Code is amended to
2 read:

3 396. (a) The Legislature hereby finds that during a state of
4 emergency or local emergency, including, but not limited to, an
5 earthquake, flood, fire, riot, storm, drought, plant or animal
6 infestation or disease, or other natural or manmade disaster, some
7 merchants have taken unfair advantage of consumers by greatly
8 increasing prices for essential consumer goods and services. While
9 the pricing of consumer goods and services is generally best left
10 to the marketplace under ordinary conditions, when a declared
11 state of emergency or local emergency results in abnormal
12 disruptions of the market, the public interest requires that excessive
13 and unjustified increases in the prices of essential consumer goods
14 and services be prohibited. It is the intent of the Legislature in
15 enacting this act to protect citizens from excessive and unjustified
16 increases in the prices charged during or shortly after a declared
17 state of emergency or local emergency for goods and services that
18 are vital and necessary for the health, safety, and welfare of
19 consumers. Further, it is the intent of the Legislature that this
20 section be liberally construed so that its beneficial purposes may
21 be served.

22 (b) Upon the proclamation of a state of emergency declared by
23 the President of the United States or the Governor, or upon the
24 declaration of a local emergency by an official, board, or other

1 governing body vested with authority to make such a declaration
2 in any county, city, or city and county, and for a period of 30 days
3 following that proclamation or declaration, it is unlawful for a
4 person, contractor, business, or other entity to sell or offer to sell
5 any consumer food items or goods, goods or services used for
6 emergency cleanup, emergency supplies, medical supplies, home
7 heating oil, building materials, housing, transportation, freight,
8 and storage services, or gasoline or other motor fuels for a price
9 of more than 10 percent ~~above~~ *greater than* the price charged by
10 that person for those goods or services immediately prior to the
11 proclamation or declaration of emergency. However, a greater
12 price increase is not unlawful if that person can prove that the
13 increase in price was directly attributable to additional costs
14 imposed on it by the supplier of the goods, or directly attributable
15 to additional costs for labor or materials used to provide the
16 services, ~~provided that in those situations where the increase in~~
17 ~~price is attributable to additional costs imposed by the seller's~~
18 ~~supplier or additional costs of providing the good or service during~~
19 ~~the state of emergency or local emergency, emergency, and the~~
20 ~~price represents~~ *is* no more than 10 percent ~~above~~ *greater than* the
21 total of the cost to the seller plus the markup customarily applied
22 by the seller for that good or service in the usual course of business
23 immediately prior to the onset of the state of emergency or local
24 emergency.

25 (c) Upon the proclamation of a state of emergency declared by
26 the President of the United States or the Governor, or upon the
27 declaration of a local emergency by an official, board, or other
28 governing body vested with authority to make such a declaration
29 in any county, city, or city and county, and for a period of 180
30 days following that proclamation or declaration, it is unlawful for
31 a contractor to sell or offer to sell any repair or reconstruction
32 services or any services used in emergency cleanup for a price of
33 more than 10 percent above the price charged by that person for
34 those services immediately prior to the proclamation or declaration
35 of emergency. However, a greater price increase is not unlawful
36 if that person can prove that the increase in price was directly
37 attributable to additional costs imposed on it by the supplier of the
38 goods, or directly attributable to additional costs for labor or
39 materials used to provide the services, ~~provided that in those~~
40 ~~situations where the increase in price is attributable to the additional~~

1 ~~costs imposed by the contractor's supplier or additional costs of~~
 2 ~~providing the service during the state of emergency or local~~
 3 ~~emergency, emergency, and the price represents no more than 10~~
 4 ~~percent above greater than the total of the cost to the contractor~~
 5 plus the markup customarily applied by the contractor for that
 6 good or service in the usual course of business immediately prior
 7 to the onset of the state of emergency or local emergency.

8 (d) Upon the proclamation of a state of emergency declared by
 9 the President of the United States or the Governor, or upon the
 10 declaration of a local emergency by an official, board, or other
 11 governing body vested with authority to make such a declaration
 12 in any county, city, or city and county, and for a period of 30 days
 13 following that proclamation or declaration, it is unlawful for an
 14 owner or operator of a hotel or motel to increase the hotel or
 15 motel's regular rates, as advertised immediately prior to the
 16 proclamation or declaration of emergency, by more than 10 percent.
 17 However, a greater price increase is not unlawful if the owner or
 18 operator can prove that the increase in price is directly attributable
 19 to additional costs imposed on it for goods or labor used in its
 20 business, to seasonal adjustments in rates that are regularly
 21 scheduled, or to previously contracted rates.

22 (e) *Upon the proclamation of a state of emergency declared by*
 23 *the President of the United States or the Governor, or upon the*
 24 *declaration of a local emergency by an official, board, city, or city*
 25 *and county, and for a period of 30 days following that proclamation*
 26 *or declaration, or any period the proclamation or declaration is*
 27 *extended by the applicable authority, it is unlawful for any person,*
 28 *business, or other entity, to increase the monthly rental price*
 29 *advertised, offered, or charged for residential housing, to an*
 30 *existing or prospective tenant, by more than 10 percent greater*
 31 *than the rental price advertised, offered, or charged by that person,*
 32 *business, or other entity, within 30 days immediately prior to the*
 33 *date of the proclamation or declaration. However, a greater rental*
 34 *price increase is not unlawful if that person can prove that he or*
 35 *she incurred increased costs for repairs or additions beyond*
 36 *normal maintenance that were amortized over the rental term that*
 37 *caused the rent to be increased greater than 10 percent or that an*
 38 *increase was contractually agreed to by the tenant prior to the*
 39 *proclamation or declaration. It shall not be a defense to a*
 40 *prosecution under this subdivision that the amount of the monthly*

1 *rent was offered by, or paid by, an insurance company, or other*
2 *third party, on behalf of a tenant.*

3 *(f) A person, business, or other entity shall not evict a tenant of*
4 *residential housing after the proclamation of a state of emergency*
5 *declared by the President of the United States or the Governor;*
6 *or upon the declaration of a local emergency by an official, board,*
7 *city, or city and county, and for a period of 30 days following that*
8 *proclamation or declaration, or any period that the proclamation*
9 *or declaration is extended by the applicable authority, for the*
10 *purpose of renting the housing in violation of subdivision (e). It*
11 *shall not be a violation of this subdivision for a person, business,*
12 *or other entity to continue an eviction process that was begun prior*
13 *to the proclamation or declaration of emergency. A violation of*
14 *this subdivision is a separate punishable offense.*

15 ~~(e)~~

16 *(g) The provisions of this section may be extended for additional*
17 *30-day periods, as needed, by a local legislative body, local official,*
18 *the Governor, or the California Legislature, if deemed necessary*
19 *to protect the lives, property, or welfare of the citizens.*

20 ~~(f)~~

21 *(h) A violation of this section is a misdemeanor punishable by*
22 *imprisonment in a county jail for a period not exceeding one year,*
23 *or by a fine of not more than ten thousand dollars (\$10,000), or*
24 *by both that fine and imprisonment.*

25 ~~(g)~~

26 *(i) A violation of this section shall constitute an unlawful*
27 *business practice and an act of unfair competition within the*
28 *meaning of Section 17200 of the Business and Professions Code.*
29 *The remedies and penalties provided by this section are cumulative*
30 *to each other, the remedies under Section 17200 of the Business*
31 *and Professions Code, and the remedies or penalties available*
32 *under all other laws of this state.*

33 ~~(h)~~

34 *(j) For the purposes of this section, the following terms have*
35 *the following meanings:*

36 *(1) "State of emergency" means a natural or manmade*
37 *emergency resulting from an earthquake, flood, fire, riot, storm,*
38 *drought, plant or animal infestation or disease, or other natural or*
39 *manmade disaster for which a state of emergency has been declared*
40 *by the President of the United States or the Governor of California.*

1 (2) “Local emergency” means a natural or manmade emergency
2 resulting from an earthquake, flood, fire, riot, storm, drought, plant
3 or animal infestation or disease, or other natural or manmade
4 disaster for which a local emergency has been declared by an
5 official, board, or other governing body vested with authority to
6 make such a declaration in any county, city, or city and county in
7 California.

8 (3) “Consumer food item” means any article that is used or
9 intended for use for food, drink, confection, or condiment by a
10 person or animal.

11 (4) “Repair or reconstruction services” means services
12 performed by any person who is required to be licensed under the
13 Contractors’ State License Law (Chapter 9 (commencing with
14 Section 7000) of Division 3 of the Business and Professions Code),
15 for repairs to residential or commercial property of any type that
16 is damaged as a result of a disaster.

17 (5) “Emergency supplies” includes, but is not limited to, water,
18 flashlights, radios, batteries, candles, blankets, soaps, diapers,
19 temporary shelters, tape, toiletries, plywood, nails, and hammers.

20 (6) “Medical supplies” includes, but is not limited to,
21 prescription and nonprescription medications, bandages, gauze,
22 isopropyl alcohol, and antibacterial products.

23 (7) “Building materials” means lumber, construction tools,
24 windows, and anything else used in the building or rebuilding of
25 property.

26 (8) “Gasoline” means any fuel used to power any motor vehicle
27 or power tool.

28 (9) “Transportation, freight, and storage services” means any
29 service that is performed by any company that contracts to move,
30 store, or transport personal or business property or that rents
31 equipment for those purposes, including towing services.

32 (10) “Housing” means any rental housing with an initial lease
33 term of no longer than one ~~year~~ year, *including, but not limited*
34 *to, a space rented in a mobilehome park or campground.*

35 (11) “Goods” has the same meaning as defined in subdivision
36 (c) of Section 1689.5 of the Civil Code.

37 (i)

38 (k) Nothing in this section shall preempt any local ordinance
39 prohibiting the same or similar conduct or imposing a more severe
40 penalty for the same conduct prohibited by this section.

1 Ⓣ

2 (l) A business offering an item for sale at a reduced price
3 immediately prior to the proclamation or declaration of the
4 emergency may use the price at which it usually sells the item to
5 calculate the price pursuant to subdivision (b) or (c).

6 SEC. 2. No reimbursement is required by this act pursuant to
7 Section 6 of Article XIII B of the California Constitution because
8 the only costs that may be incurred by a local agency or school
9 district will be incurred because this act creates a new crime or
10 infraction, eliminates a crime or infraction, or changes the penalty
11 for a crime or infraction, within the meaning of Section 17556 of
12 the Government Code, or changes the definition of a crime within
13 the meaning of Section 6 of Article XIII B of the California
14 Constitution.

O