

AMENDED IN ASSEMBLY MARCH 12, 2020

AMENDED IN ASSEMBLY MARCH 5, 2020

CALIFORNIA LEGISLATURE—2019–20 REGULAR SESSION

ASSEMBLY BILL

No. 1936

Introduced by Assembly Member Rodriguez

January 16, 2020

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

LEGISLATIVE COUNSEL'S DIGEST

AB 1936, as amended, Rodriguez. Price gouging: public safety power shutoffs.

Under existing law, upon the proclamation of a state of emergency, as defined, 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, or city and county, and for 30 days following the proclamation or declaration of emergency, 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 for a price that exceeds by 10% the price charged by that person immediately prior to the proclamation or declaration of emergency, except as specified.

This bill would specify that, for a proclamation or declaration of emergency made because of a public safety power shutoff or because of an announcement that a public safety power shutoff will occur, the restrictions on increased pricing apply, only as specified, for a period lasting until 72 hours after the restoration of power. By changing the elements of an existing crime, this bill would create a state-mandated local program. The bill would also clarify that durable medical devices,

generators, and generator fuel are included as goods to which these provisions are applicable.

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 man-made disaster, and
 7 during a public safety power shutoff, some merchants have taken
 8 unfair advantage of consumers by greatly increasing prices for
 9 essential consumer goods and services. While the pricing of
 10 consumer goods and services is generally best left to the
 11 marketplace under ordinary conditions, when a declared state of
 12 emergency or local emergency or a public safety power shutoff
 13 results in abnormal disruptions of the market, the public interest
 14 requires that excessive and unjustified increases in the prices of
 15 essential consumer goods and services be prohibited. It is the intent
 16 of the Legislature in enacting this act to protect citizens from
 17 excessive and unjustified increases in the prices charged during
 18 or shortly after a declared state of emergency or local emergency
 19 or a public safety power shutoff for goods and services that are
 20 vital and necessary for the health, safety, and welfare of consumers.
 21 Further, it is the intent of the Legislature that this section be
 22 liberally construed so that its beneficial purposes may be served.

23 (b) (1) Except as provided in paragraph (2), upon the
 24 proclamation of a state of emergency declared by the President of
 25 the United States or the Governor, or upon the declaration of a
 26 local emergency by an official, board, or other governing body
 27 vested with authority to make that declaration in any county, city,
 28 or city and county, and for a period of 30 days following that

1 proclamation or declaration, it is unlawful for a person, contractor,
2 business, or other entity to sell or offer to sell any consumer food
3 items or goods, goods or services used for emergency cleanup,
4 emergency supplies, medical supplies, home heating oil, building
5 materials, housing, transportation, freight, and storage services,
6 or gasoline or other motor fuels for a price of more than 10 percent
7 greater than the price charged by that person for those goods or
8 services immediately prior to the proclamation or declaration of
9 emergency.

10 (2) Upon the proclamation of a state of emergency declared by
11 the President of the United States or the Governor, or upon the
12 declaration of a local emergency by an official, board, or other
13 governing body vested with authority to make that declaration in
14 any county, city, or city and county, because of a public safety
15 power shutoff or because of an announcement that a public safety
16 power shutoff will occur, and for that period of time until 72 hours
17 after the conclusion of the public safety power shutoff, it is
18 unlawful for a person, contractor, business, or other entity to sell
19 or offer to sell any consumer food items or goods, goods or services
20 used for emergency cleanup, emergency supplies, medical supplies,
21 home heating oil, building materials, housing, transportation,
22 freight, and storage services, or gasoline or other motor fuels for
23 a price of more than 10 percent greater than the price charged by
24 that person for those goods or services immediately prior to the
25 proclamation or declaration of emergency. If a proclamation or
26 declaration is made because of an announcement that a public
27 safety power shutoff will occur, and that shutoff does not occur
28 within 72 hours after the proclamation or declaration, this section
29 shall only apply for the 72 hours immediately following the
30 proclamation or declaration.

31 (3) A price increase greater than that permitted by paragraphs
32 (1) and (2) is not unlawful if the person can prove that the increase
33 in price was directly attributable to additional costs imposed on it
34 by the supplier of the goods, or directly attributable to additional
35 costs for labor or materials used to provide the services, during
36 the state of emergency or local emergency, and the price is no
37 more than 10 percent greater than the total of the cost to the seller
38 plus the markup customarily applied by the seller for that good or
39 service in the usual course of business immediately prior to the
40 onset of the state of emergency or local emergency.

1 (c) Upon the proclamation of a state of emergency declared by
2 the President of the United States or the Governor, or upon the
3 declaration of a local emergency by an official, board, or other
4 governing body vested with authority to make that declaration in
5 any county, city, or city and county, and for a period of 180 days
6 following that proclamation or declaration, it is unlawful for a
7 contractor to sell or offer to sell any repair or reconstruction
8 services or any services used in emergency cleanup for a price of
9 more than 10 percent above the price charged by that person for
10 those services immediately prior to the proclamation or declaration
11 of emergency. However, a greater price increase is not unlawful
12 if that person can prove that the increase in price was directly
13 attributable to additional costs imposed on it by the supplier of the
14 goods, or directly attributable to additional costs for labor or
15 materials used to provide the services, during the state of
16 emergency or local emergency, and the price represents no more
17 than 10 percent greater than the total of the cost to the contractor
18 plus the markup customarily applied by the contractor for that
19 good or service in the usual course of business immediately prior
20 to the onset of the state of emergency or local emergency.

21 (d) ~~(1)~~ Upon the proclamation of a state of emergency declared
22 by the President of the United States or the Governor, or upon the
23 declaration of a local emergency by an official, board, or other
24 governing body vested with authority to make that declaration in
25 any county, city, or city and county, and for a period of 30 days
26 following that proclamation or declaration, it is unlawful for an
27 owner or operator of a hotel or motel to increase the hotel's or
28 motel's regular rates, as advertised immediately prior to the
29 proclamation or declaration of emergency, by more than 10 percent.
30 However, a greater price increase is not unlawful if the owner or
31 operator can prove that the increase in price is directly attributable
32 to additional costs imposed on it for goods or labor used in its
33 business, to seasonal adjustments in rates that are regularly
34 scheduled, or to previously contracted rates.

35 ~~(2) Upon the proclamation of a state of emergency declared by~~
36 ~~the President of the United States or the Governor, or upon the~~
37 ~~declaration of a local emergency by an official, board, or other~~
38 ~~governing body vested with authority to make that declaration in~~
39 ~~any county, city, or city and county, because of a public safety~~
40 ~~power shutoff or because of an announcement that a public safety~~

1 power shutoff will occur, and for that period of time until 72 hours
2 after the conclusion of the public safety power shutoff, it is
3 unlawful for an owner or operator of a hotel or motel to increase
4 the hotel's or motel's regular rates, as advertised immediately prior
5 to the proclamation or declaration of emergency, by more than 10
6 percent. However, a greater price increase is not unlawful if the
7 owner or operator can prove that the increase in price is directly
8 attributable to additional costs imposed on it for goods or labor
9 used in its business, to seasonal adjustments in rates that are
10 regularly scheduled, or to previously contracted rates.

11 (e) Upon the proclamation of a state of emergency declared by
12 the President of the United States or the Governor, or upon the
13 declaration of a local emergency by an official, board, or other
14 governing body vested with authority to make that declaration in
15 any city, county, or city and county, and for a period of 30 days
16 following that proclamation or declaration, or any period the state
17 of emergency or local emergency is extended by the applicable
18 authority, it is unlawful for any person, business, or other entity,
19 to increase the rental price, as defined in paragraph (11) of
20 subdivision (j), advertised, offered, or charged for housing, to an
21 existing or prospective tenant, by more than 10 percent. However,
22 a greater rental price increase is not unlawful if that person can
23 prove that the increase is directly attributable to additional costs
24 for repairs or additions beyond normal maintenance that were
25 amortized over the rental term that caused the rent to be increased
26 greater than 10 percent or that an increase was contractually agreed
27 to by the tenant prior to the proclamation or declaration. It shall
28 not be a defense to a prosecution under this subdivision that an
29 increase in rental price was based on the length of the rental term,
30 the inclusion of additional goods or services, except as provided
31 in paragraph (11) of subdivision (j) with respect to furniture, or
32 that the rent was offered by, or paid by, an insurance company, or
33 other third party, on behalf of a tenant. This subdivision does not
34 authorize a landlord to charge a price greater than the amount
35 authorized by a local rent control ordinance.

36 (f) It is unlawful for a person, business, or other entity to evict
37 any residential tenant of residential housing after the proclamation
38 of a state of emergency declared by the President of the United
39 States or the Governor, or upon the declaration of a local
40 emergency by an official, board, or other governing body vested

1 with authority to make that declaration in any city, county, or city
 2 and county, and for a period of 30 days following that proclamation
 3 or declaration, or any period that the state of emergency or local
 4 emergency is extended by the applicable authority and rent or offer
 5 to rent to another person at a rental price greater than the evicted
 6 tenant could be charged under this section. It shall not be a
 7 violation of this subdivision for a person, business, or other entity
 8 to continue an eviction process that was lawfully begun prior to
 9 the proclamation or declaration of emergency.

10 (g) The prohibitions of this section may be extended for
 11 additional 30-day periods, as needed, by a local legislative body,
 12 local official, the Governor, or the Legislature, if deemed necessary
 13 to protect the lives, property, or welfare of the citizens.

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

18 (i) A violation of this section shall constitute an unlawful
 19 business practice and an act of unfair competition within the
 20 meaning of Section 17200 of the Business and Professions Code.
 21 The remedies and penalties provided by this section are cumulative
 22 to each other, the remedies under Section 17200 of the Business
 23 and Professions Code, and the remedies or penalties available
 24 under all other laws of this state.

25 (j) This section does not preempt any local ordinance prohibiting
 26 the same or similar conduct or imposing a more severe penalty for
 27 the same conduct prohibited by this section.

28 (k) A business offering an item for sale at a reduced price
 29 immediately prior to the proclamation or declaration of the
 30 emergency may use the price at which it usually sells the item to
 31 calculate the price pursuant to subdivision (b) or (c).

32 (l) This section does not prohibit an owner from evicting a tenant
 33 for any lawful reason, including pursuant to Section 1161 of the
 34 Code of Civil Procedure.

35 (m) ~~Subdivision (e), paragraph (1) of subdivision (d), and~~
 36 ~~subdivisions (e) (c) to (g), inclusive, shall not apply to a~~
 37 ~~proclamation or declaration of emergency made because of a public~~
 38 ~~safety power shutoff or because of an announcement that a public~~
 39 ~~safety power shutoff will occur.~~

1 (n) For the purposes of this section, the following terms have
2 the following meanings:

3 (1) “Building materials” means lumber, construction tools,
4 windows, and anything else used in the building or rebuilding of
5 property.

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

9 (3) “Emergency supplies” includes, but is not limited to, water,
10 flashlights, radios, batteries, generators, candles, blankets, soaps,
11 diapers, temporary shelters, tape, toiletries, plywood, nails, and
12 hammers.

13 (4) “Gasoline” means any fuel used to power any motor vehicle,
14 generator, or power tool.

15 (5) “Goods” has the same meaning as defined in subdivision
16 (c) of Section 1689.5 of the Civil Code.

17 (6) “Housing” means any rental housing with an initial lease
18 term of no longer than one year, including, but not limited to, a
19 space rented in a mobilehome park or campground.

20 (7) “Local emergency” means a natural or man-made emergency
21 resulting from an earthquake, flood, fire, riot, storm, drought, plant
22 or animal infestation or disease, or other natural or man-made
23 disaster for which a local emergency has been declared by an
24 official, board, or other governing body vested with authority to
25 make that declaration in any county, city, or city and county in
26 California.

27 (8) “Medical supplies” includes, but is not limited to,
28 prescription and nonprescription medications, durable medical
29 equipment, bandages, gauze, isopropyl alcohol, and antibacterial
30 products.

31 (9) “Public safety power shutoff” means the intentional
32 deenergization of electrical lines by an electrical corporation, as
33 defined in Section 218 of the Public Utilities Code, or a local
34 publicly owned electric utility, as defined in Section 224.3 of the
35 Public Utilities Code.

36 (10) “Rental price” for housing means any of the following:

37 (A) For housing rented within one year prior to the time of the
38 proclamation or declaration of emergency, the actual rental price
39 paid by the tenant. For housing not rented at the time of the
40 proclamation or declaration of emergency, but rented, or offered

1 for rent, within one year prior to the proclamation or declaration
2 of emergency, the most recent rental price offered before the
3 proclamation or declaration of emergency. For housing rented at
4 the time of the proclamation or declaration of emergency but that
5 becomes vacant while the state of emergency or local emergency
6 remains in effect and that is subject to any ordinance, rule,
7 regulation, or initiative measure adopted by any local governmental
8 entity that establishes a maximum amount that a landlord may
9 charge a tenant for rent, the actual rental price paid by the previous
10 tenant or the amount specified in subparagraph (B), whichever is
11 greater. This amount may be increased by 5 percent if the housing
12 was previously rented or offered for rent unfurnished, and is now
13 being offered for rent fully furnished. This amount shall not be
14 adjusted for any other good or service, including, but not limited
15 to, gardening or utilities currently or formerly provided in
16 connection with the lease.

17 (B) For housing not rented and not offered for rent within one
18 year prior to the proclamation or declaration of emergency, 160
19 percent of the fair market rent established by the United States
20 Department of Housing and Urban Development. This amount
21 may be increased by 5 percent if the housing is offered for rent
22 fully furnished. This amount shall not be adjusted for any other
23 good or service, including, but not limited to, gardening or utilities
24 currently or formerly provided in connection with the lease.

25 (C) Housing advertised, offered, or charged at a daily rate at
26 the time of the declaration or proclamation of emergency shall be
27 subject to the rental price described in subparagraph (A) if the
28 housing continues to be advertised, offered, or charged at a daily
29 rate. Housing advertised, offered, or charged on a daily basis at
30 the time of the declaration or proclamation of emergency shall be
31 subject to the rental price in subparagraph (B) if the housing is
32 advertised, offered, or charged on a periodic lease agreement after
33 the declaration or proclamation of emergency.

34 (D) For mobilehome spaces rented to existing tenants at the
35 time of the proclamation or declaration of emergency and subject
36 to a local rent control ordinance, the amount authorized under the
37 local rent control ordinance. For new tenants who enter into a
38 rental agreement for a mobilehome space that is subject to rent
39 control but not rented at the time of the proclamation or declaration
40 of emergency, the amount of rent last charged for a space in the

1 same mobilehome park. For mobilehome spaces not subject to a
2 local rent control ordinance and not rented at the time of the
3 proclamation or declaration of emergency, the amount of rent last
4 charged for the space.

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

11 (12) “State of emergency” means a natural or man-made
12 emergency resulting from an earthquake, flood, fire, riot, storm,
13 drought, plant or animal infestation or disease, or other natural or
14 man-made disaster for which a state of emergency has been
15 declared by the President of the United States or the Governor.

16 (13) “Transportation, freight, and storage services” means any
17 service that is performed by any company that contracts to move,
18 store, or transport personal or business property or that rents
19 equipment for those purposes, including towing services.

20 SEC. 2. No reimbursement is required by this act pursuant to
21 Section 6 of Article XIII B of the California Constitution because
22 the only costs that may be incurred by a local agency or school
23 district will be incurred because this act creates a new crime or
24 infraction, eliminates a crime or infraction, or changes the penalty
25 for a crime or infraction, within the meaning of Section 17556 of
26 the Government Code, or changes the definition of a crime within
27 the meaning of Section 6 of Article XIII B of the California
28 Constitution.

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