
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair

2017 - 2018 Regular

Bill No: AB 1919 **Hearing Date:** June 19, 2018
Author: Wood
Version: June 12, 2018
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Price Gouging: State of Emergency*

HISTORY

Source: Sonoma County District Attorney's Office

Prior Legislation: AB 2820 (Chiu), Ch. 671, Stats. 2016
AB 457 (Nunez), 2005, failed passage in the Senate
SB 1363 (Ducheny), Ch. 492, Stats. 2004
ABX1 36 (Katz), Ch. 52, Stats. 1994

Support: California District Attorney's Office; California Housing Alliance; California Police Chiefs Association; Golden State Manufactured-Home Owners League (GSMOL); GSMOL Superchapter 0018/0018A; Los Angeles County District Attorney's Office; Rural County Representatives of California; Sonoma County Board of Supervisors

Opposition: None known

Assembly Floor Vote: 65 - 5

PURPOSE

The purpose of this bill is to expand the scope of criminal price gouging by including rental housing that was not on the market at the time of the proclamation or declaration of emergency and by creating a definition of "rental price" for housing.

Existing law states the Legislature finding that during emergencies and major disasters, including, but not limited to, earthquakes, fires, floods, or civil disturbances, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. (Pen. Code, § 396, subd. (a).)

Existing law states that it is the intent of the Legislature to protect citizens from excessive and unjustified increases in the prices charged during or shortly after a declared state of emergency for goods and services that are vital and necessary for the health, safety, and welfare of consumers. (*Ibid.*)

Existing law provides that upon the declaration of a state of emergency or local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster, and for a period of 30 days following that declaration, it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer food items or goods, goods or services used for

emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight, and storage services, or gasoline or other motor fuels for a price of more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation of emergency. (Pen. Code, § 396, subd. (b).)

Existing law states that upon the declaration of a state of emergency, as specified, and for a period of 180 days following that declaration, it is unlawful for a contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup for a price of more than 10 percent above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency. (Pen. Code, § 396, subd. (c).)

Existing law provides that a greater price increase is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods, or directly attributable to additional costs for labor or materials used to provide the services, provided that in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service during the state of emergency or local emergency, the price represents no more than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency. (Pen. Code, § 396, subd. (c).)

Existing law specifies that upon the proclamation of a state of emergency or local emergency, and for a period of 30 days following that proclamation or declaration, it is unlawful for an owner or operator of a hotel or motel to increase the hotel or motel's regular rates, as advertised immediately prior to the proclamation or declaration of emergency, by more than 10 percent. However, a greater price increase is not unlawful if the owner or operator can prove that the increase in price is directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates. (Pen. Code, § 396, subd. (d).)

Existing law specifies that, a greater price increase is not unlawful if the owner or operator of a hotel or motel can prove that the increase in price was directly attributable to additional costs imposed on it for goods or labor used in its business, to seasonal adjustments in rates that are regularly scheduled, or to previously contracted rates. (*Ibid.*)

Existing law provides that time frame prohibiting specified price increases may be extended for additional 30-day periods by a local legislative body or the California Legislature, if deemed necessary to protect the lives, property, or welfare of the citizens. (Pen. Code, § 396, subd. (e).)

Existing law states that the conduct described above is a misdemeanor punishable by imprisonment in a county jail for a period not exceeding one year, or by a fine of not more than \$10,000, or by both that fine and imprisonment. (Pen. Code, § 396 subd. (f).)

Existing law specifies that the conduct described above shall constitute an unlawful business practice and an act of unfair competition. (Pen. Code, § 396 subd. (g).)

Existing law defines "state of emergency" as "a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a state of emergency has been declared by the President of the United States or the Governor of California." (Pen. Code, § 396, subd. (h)(1).)

Existing law defines "local emergency" as "a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, or other natural or manmade disaster for which a local emergency has been declared by an official, board, or other governing body vested with authority to make such a declaration in any county, city, or city and county in California.." (Pen. Code, § 396, subd. (h)(2).)

Existing law defines "housing," for purposes of criminal price gouging, as "any rental housing with an initial lease term of no longer than one year." (Pen. Code, § 396, subd. (g)(2).)

This bill amends the definition of housing to include a space rented in a mobilehome park or campground.

This bill adds the following definition for "rental price" for housing:

- For housing rented within one year prior to the time of the proclamation or declaration of emergency, the actual rental price paid by the tenant. For housing not rented at the time of the declaration or proclamation, but rented, or offered for rent, within one year prior to the proclamation or declaration of emergency, the most recent rental price offered before the proclamation or declaration of emergency. For housing rented at the time of the proclamation or declaration of emergency but which becomes vacant while the proclamation or declaration of emergency remains in effect and which is subject to any ordinance, rule, regulation, or initiative measure adopted by any local governmental entity that establishes a maximum amount that a landlord may charge a tenant for rent, the actual rental price paid by the previous tenant or an amount that equals 160 percent of the fair market rent, whichever is greater. This amount may be increased by 5 percent if the housing was previously rented or offered for rent unfurnished, and it is now being offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.
- For housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, 160 percent of the fair market rent established by the United States Department of Housing and Urban Development. This amount may be increased by 5 percent if the housing is offered for rent fully furnished. This amount shall not be adjusted for any other good or service, including, but not limited to, gardening or utilities currently or formerly provided in connection with the lease.
- Housing advertised, offered, or charged, at a daily rate at the time of the declaration or proclamation of emergency, shall be subject to the rental price applicable to housing rented within one year prior to the proclamation or declaration of emergency, if the housing continues to be advertised, offered, or charged, at a daily rate. Housing advertised, offered, or charged, on a daily basis at the time of the declaration or proclamation of emergency, shall be subject to the rental price specified for housing not rented and not offered for rent within one year prior to the proclamation or declaration of emergency, if the housing is advertised, offered, or charged, on a periodic lease agreement after the declaration or proclamation of emergency.

Existing law provides that the statute that prohibits price gouging does not preempt any local ordinance prohibiting the same conduct or imposing a more severe penalty for the same conduct prohibited by the state law. (Pen. Code, § 396, subd. (i).)

This bill provides that that it is unlawful under the section that prohibits price gouging for any person, business, or other entity, to increase the rental price, as defined, advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10 percent.

This bill states that a greater rental price increase than the 10 percent is not unlawful if that person can prove that the increase is directly attributable to additional costs for repairs or additions beyond normal maintenance that were amortized over the rental term that caused the rent to be increased greater than 10 percent or that an increase was contractually agreed to by the tenant prior to the proclamation or declaration.

This bill provides that it shall not be defense to prosecution that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except as specified with respect to furniture, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant.

This bill states that it is unlawful under the section that prohibits price gouging for a person, business, or other entity to evict any residential tenant of residential housing and rent or offer to rent to another person at a rental price higher than the evicted tenant could be charged under that section.

This bill provides that it is not unlawful for a person, business, or other entity to continue an eviction process that was lawfully begun prior to the proclamation or declaration of emergency.

This bill states that the section that prohibits price gouging does not prohibit an owner from evicting a tenant for any lawful reason.

This bill requires the Office of Emergency Services, upon the proclamation of a state of emergency declared by the Governor, to include on an appropriate Internet Web site information about applicable laws on price gouging including information for property owners about the effect of the proclamation on rental price, as defined.

COMMENTS

1. Need for This Bill

According to the author of this bill:

Current law prevents landlords from raising rent by more than 10% within 30 days of a declared disaster.

This bill closes a loophole in current price gouging protections by including new rentals to the list of goods and services that are price controlled in the aftermath of declared disasters. According to a study by the online housing marketplace Zillow, in the seven days that followed the fires, the median rent in the county jumped over 35% and local newspapers reported anecdotal stories of homes coming onto the rental market at nearly double the price of other similar rentals in the same neighborhood.

Additionally this bill clarifies ambiguities in the definition of base rent in the current law that has led to confusion.

Unlike goods and services for which there is typically a fixed rate at any given moment (though that price may fluctuate), it is not unusual for tenants in comparable units to pay different rental rates. This could be for several reasons, including that long-term tenants are likely to pay a lower monthly rental rate because rental housing providers often avoid raising rents on existing tenants to market rates. This is particularly true in areas subject to local rent control because annual rent increases are limited by local law. However, when there is a vacancy, the rent is typically raised to the market rate for the incoming tenant. Following the declaration of the state of emergency, this normal cycle of limited rent increases during the tenancy and an increase to market upon turnover posed a problem. Namely, even if a housing provider kept their prices at exactly the same rates as they were pre-emergency, the rent charged for a vacant unit may be more than 10% above what the outgoing tenant paid despite the fact that it was exactly the same rate that was charged to incoming tenants for comparable units prior to the emergency (i.e., no increase). Without clarity as to how to determine the base price to which the 10% increase cap applies, housing providers have inadvertently exposed themselves to claims of price gouging even though this was below what incoming tenants paid prior to the emergency.

2. Recent Fires and Reports of Price Gouging

In October of 2017, massive wildfires burned homes in counties across California. On October 9, Governor Brown declared a state of emergency for Napa, Sonoma, Butte, Lake, Mendocino, Nevada, and Yuba Counties. On October 10, Governor Brown declared a state of emergency in Solano County. On October 18, 2017, Governor Brown issued an Executive Order that extended the prohibition on price gouging in times of emergency will remained in effect until April 18, 2018 to protect the disaster survivors in the affected counties. (California Governor's Executive Order B-43-17.)

The existing price gouging law applies only to previously rented units, not to rentals that have come on the market since the fires. It does not apply to housing if a resident decides to move out of their house and make it available for rent. As a new unit it is not covered under the price gouging law. The price gouging law also doesn't apply to second homes which are vacation homes for the owners and the owners were not previously renting them out. Such homes would also be new housing units.

In addition to state law, local jurisdictions may pass ordinances to place limits on price hikes during emergencies. For example, in October 2017, the city of Santa Rosa approved an emergency law that limits rent hikes in the city to no more than 10 percent above the price charged for the housing unit before the fires. A similar 10-percent limit is placed on hotels and vacation rentals. The city also made it illegal to move out an existing tenant and then increase rent for the next renter above the average price charged for the unit during the 30 days before Oct. 9. Exemptions to the increases are allowed when an owner can prove the excess amount of rent is directly attributable to added costs from labor or materials needed for the unit. (*District Attorney: Most Sonoma County rental price gouging reports since fires are unfounded*, The Press Democrat, Nov. 11, 2017 < <http://www.pressdemocrat.com/news/7622767-181/district-attorney-most-sonoma-county>> [as of June 11, 2018].)

Both the state and city provisions applied until April 18, which was the same date specifically set by Gov. Jerry Brown. On April 17, the governor extended the order until December 4, 2018. (<<https://www.sonomacountyrecovers.org/governor-brown-extends-price-gouging-protections-through-dec-4-2018/>> [as of June 11, 2018].)

The median rent listing increased from September to October by 32% across Sonoma County, 23% in Napa County and 16% in Santa Rosa, according to Zillow Real Estate Research. Neighboring counties unaffected by the wildfires showed little change in the median rent price. (<<http://www.latimes.com/local/lanow/la-me-ln-wine-country-rent-gouging-20180101-story.html>> [as of June 11, 2018].)

3. Prohibition on Using Specified Facts as Defenses

This bill states that it shall not be a defense to criminal price gouging as pertains to residential rental property that an increase in rental price was based on the length of the rental term, the inclusion of additional goods or services, except the additional 5% allowed for fully furnished housing, or that the rent was offered by, or paid by, an insurance company, or other third party, on behalf of a tenant.

Not only is this provision inconsistent with the rest of the criminal price gouging statute which currently does not prohibit any use of specified facts as defenses, this prohibition is contrary to the general principal that a criminal defendant is entitled to present a complete defense . Putting limitations on what facts may be introduced at trial would hinder the defendant's ability to defend him or herself. Additionally, it assumes that the jury whose role is to determine the weight of those facts cannot make this decision on its own.

4. Argument in Support

According to the Sonoma County Board of Supervisors:

During this declared disaster period the majority of price gouging complaints received by the Sonoma County District Attorney involved violations of rental housing. Unfortunately, many of these cases involved housing units that were not on the rental market prior to the disaster declaration, allowing landlords to exploit a loophole in current law and charge whatever they deemed fit for the rental housing unit. As a result in the seven days that followed the fires, the median rent in the county jumped over 35% and local newspapers reported homes coming onto the rental market at nearly double the price of other similar rentals in the same neighborhood.

Current law applies the same base price definition for goods and services, to housing, creating confusion for well-meaning landlords. Following the declaration of the state of emergency, this discrepancy posed a problem. Without clarity as to how to determine the base price to which the 10% cap applies, housing providers have inadvertently exposed themselves to claims of price gouging even though this was below what incoming tenants paid prior to the emergency.