
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Nancy Skinner, Chair
2019 - 2020 Regular

Bill No: SB 1196 **Hearing Date:** May 27, 2020
Author: Umberg
Version: April 29, 2020
Urgency: No **Fiscal:** Yes
Consultant: SC

Subject: *Price Gouging*

HISTORY

Source: San Diego County District Attorney's Office
Orange County District Attorney's Office

Prior Legislation: AB 1919 (Wood), Ch. 631, Stats. 2018
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: Alameda County District Attorney's Office; California Association for Health Services at Home; California Attorney General, Xavier Becerra; California District Attorneys Association; California Law Enforcement Association of Records Supervisors; California Low-Income Consumer Coalition; California Public Interest Research Group; Consumeraction; Consumer Attorneys California; Consumer Reports; Consumers for Auto Reliability and Safety; Contra Costa County District Attorney's Office; Helping Others Prosper Economically; Housing and Economic Rights Advocates; Los Angeles County District Attorney's Office; New Economics for Women; Riverside Sheriffs' Association; Sonoma County District Attorney's Office; University of San Diego Center for Public interest Law; UFCW, Western States Council; The Utility reform Network

Opposition: None known

AS PROPOSED TO BE AMENDED IN COMMITTEE

PURPOSE

The purpose of this bill is to 1) expand the scope of price gouging by making it a violation of its provisions for a person, contractor, business, or other entity to charge a price that is more than 50% greater than either the amount the seller paid for the goods or the seller's costs in selling or providing the goods or services; 2) allow the violation to be punished as an alternate felony-misdemeanor when the aggregate amount charged unlawfully is \$10,000 or more; and 3) expand search warrant authority for violations of price gouging.

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 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, during the state of emergency or local emergency, and the price is no more than 10 percent greater than the total cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business immediately prior to the onset of the state of emergency or local emergency. (*Ibid.*)

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. (*Ibid.*)

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).)

This bill includes pandemic or epidemic disease outbreak to the circumstances that may lead to a declaration of a state of emergency or local emergency.

This bill clarifies that price gouging protections apply whether the goods and services are offered or sold in person, in stores, or online.

This bill provides that the protections against price gouging may also apply to a timeframe prior to a date as set in the proclamation or declaration.

This bill provides that if the person, contractor, business, or other entity did not charge a price for the goods or services immediately prior to the proclamation or declaration of emergency, it may not charge a price that is more than 50 percent greater than either the amount that the seller paid for the goods or, if the seller did not purchase the goods, the seller’s costs in selling or providing the goods or services.

This bill increases the penalty for a violation of price gouging from a misdemeanor to an alternate felony-misdemeanor punishable by imprisonment in county jail for up to one year or a county jail-eligible felony.

COMMENTS

1. Need for This Bill

According to the author:

The COVID-19 pandemic has exposed inadequacies with state laws related to price gouging, or the criminal act in which sellers increase the cost of essential goods during an emergency. We are seeing individuals buy goods in bulk, depleting store shelves, and selling them for an extortionately high price online or outside of a traditional store. Current law prevents law enforcement from prosecuting new sellers who opportunistically enter into a market during an emergency for profit.

To help ensure that all Californians have access to essential goods during an emergency, SB 1196 would:

- Specify that a seller cannot charge 50% more than the amount they paid for a good if they had not sold the good prior to the state of emergency;
- Codify the Governor and Legislatures authority to extend price gouging protections; and,
- Update the penalty for price gouging to ensure that law enforcement has access to the necessary tools, such as search and arrest warrants, to stop price gouging.

SB 1196 would equip law enforcement with the tools it needs to stop all occurrences of price gouging.

2. Price Gouging Protections During the Ongoing Pandemic

On March 4, 2020, California's governor declared a state of emergency in response to the global COVID-19 outbreak. Prior to that date, some local governments had declared a local emergency due to the growing pandemic. As the pandemic continued to spread, people started to stock up on items such as hand sanitizer and toilet paper resulting in a shortage in supply.

On April 3, 2020, the Governor signed Executive Order N-44-20 to expand consumer protection against price gouging. The order makes it unlawful for a person or other entity (such as a business) to increase the price of food items, consumer goods, medical and emergency supplies, or any materials previously designated by the U.S. Secretary of Health and Human Services as Scarce Materials or Threatened Materials by more than 10 percent of what a seller charged for that item on February 4, 2020. Exceptions to this prohibition exist if the seller has experienced increased costs in labor, goods, or materials, or if the seller sold the item at a discount on February 4, 2020, in which case they may sell the item for no more than 10 percent greater than the price at which they ordinarily sold the item. If the seller did not offer the item for sale on

February 4, 2020, the seller may not sell the item at a price that is 50 percent greater than what they paid for it, or, if the seller produced the item, they may not sell it for a price that is 50 percent greater than the cost to produce and sell the item. The order also waived the time limitation set forth in Penal Code section 396 prohibiting price gouging in times of emergency so that the prohibitions shall be in effect through September 4, 2020. A violation of the order is punishable as a misdemeanor. (<https://www.gov.ca.gov/wp-content/uploads/2020/04/4.3.20-EO-N-44-20-text.pdf>.)

This bill adds similar provisions in Executive Order N-44-20 to the Penal Code section that prohibits price gouging to apply to new sellers. (Pen. Code, § 396.) The bill increases the penalty for a violation of price gouging to an alternate felony-misdemeanor and makes some clarifying changes. The author also plans to amend the bill in committee to include an additional provision authorizing the issuance of a search warrant for price gouging. (See note #3.)

3. Search Warrants

Both the United States and the California constitution's guarantee the right of all persons to be secure from unreasonable searches and seizures. (U.S. Const., amend. IV; Cal. Const., art. 1, sec. 13.) This protection applies to all unreasonable government intrusions into legitimate expectations of privacy. (*United States v. Chadwick* (1977) 433 U.S. 1, 7, overruled on other grounds by *California v. Acevedo* (1991) 500 U.S. 565.) In general, a search is not valid unless it is conducted pursuant to a warrant. A search warrant may not be issued without probable cause. "Reasonable and probable cause exists if a man of ordinary care and prudence would be led to conscientiously entertain an honest and strong suspicion that the accused is guilty." (*People v. Alvarado* (1967) 250 Cal.App.2d 584, 591.) The mere reasonableness of a search, assessed in light of the surrounding circumstances, is not a substitute for the warrant required by the Constitution. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 758, overruled on other grounds by *California v. Acevedo*, supra.) There are exceptions to the warrant requirement, but the burden of establishing an exception is on the party seeking one. (*Arkansas v. Sanders* (1979) 442 U.S. 753, 760, overruled on other grounds by *California v. Acevedo*, supra.)

Under California law, the statutory authority for search warrants is found in Penal Code section 1524. Generally, a warrant is allowed for felony violations, but they are also allowed for certain limited misdemeanors. (See Pen. Code, § 1524.) This bill would expand the statutory search warrant authority to include where the property or things to be seized consists of evidence that tends to show a violation of price gouging has occurred or is occurring.

If a person is arrested for any violation of law, a search warrant may be issued. (Pen. Code, § 1524, subd. (a)(6).) This expansion would affect instances where there may not be enough to arrest a person, thus it would be used as an investigatory tool. The sponsors of the bill state that a search warrant is necessary to investigate and prosecute these crimes because evidence of a price hike alone is not sufficient. Rather, they need to be able to confirm a price point prior to the increase and access information about whether the increase was caused by outside factors that may justify the increase.