

Date of Hearing: June 28, 2022

Chief Counsel: Sandy Uribe

ASSEMBLY COMMITTEE ON PUBLIC SAFETY

Reginald Byron Jones-Sawyer, Sr., Chair

SB 1133 (Archuleta) – As Amended June 15, 2022

**As Proposed to be Amended in Committee**

**SUMMARY:** Requires the California Office of Emergency Services (CalOES) to post an emergency order on its website before criminal penalties under the price gouging statute are enforceable. Makes the price gouging prohibition on rental price increases during a state of emergency or a local emergency that has lasted a year or more contingent upon a finding that the emergency has caused, or will continue to cause, abnormal disruptions of the housing market such that regulation is necessary to prevent excessive and unjustified increases in rental prices.

Specifically, **this bill:**

- 1) Eliminates “housing” from the goods and services that may not be sold or offered for a price of more than 10% greater than the price charged prior to a proclamation of a state of emergency or a declaration of a local emergency.
- 2) Requires the California Office of Emergency Services (CalOES) to post on its website all applicable proclamations of a state of emergency and declaration of a local emergency, including any extensions of the protections related thereto.
- 3) Provides that criminal penalties for price gouging shall not be enforceable until CalOES posts the proclamation or declaration of the underlying emergency on its website.
- 4) Provides that if a proclamation of a state of emergency or a declaration of a local emergency has been in effect for a year or longer, the prohibition on rental price increases will only continue to apply when an extension of the proclamation or declaration includes specific findings that the emergency has caused, or will continue to cause, abnormal disruptions of the housing market such that regulation is necessary to prevent excessive and unjustified increases in rental prices.
- 5) Provides that the price gouging statute does not apply to the initial rental price charged for any newly-constructed housing that is issued its first certificate of occupancy for residential use within the three months prior to a proclamation of a state of emergency or declaration of local emergency, or during any time that the prohibition against rental price increases is in effect as a result of such a proclamation or declaration.

**EXISTING LAW:**

- 1) States legislative intent 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. (Pen. Code, §

396, subd. (a).)

- 2) Provides that upon the proclamation of a state of emergency by the President or the Governor, or upon the declaration of a local emergency by a local official, board or other governing body, and for a period of 30 days following that proclamation or declaration, it is unlawful to sell, or offer to sell specified goods and services for a price of more than 10% greater than the price charged immediately prior to the proclamation or declaration of emergency, except as specified. (Pen. Code, § 396, subd. (b).)
- 3) States that upon the proclamation of a state of emergency or a declaration of a local emergency and for a period of 180 days following that proclamation or 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% above the price charged by that person for those services immediately prior to the proclamation or declaration of emergency, except as specified. (Pen. Code, § 396, subd. (c).)
- 4) Makes it unlawful for a hotel or motel owner or operator to increase the regularly-advertised rates by more than 10% upon the proclamation of a state of emergency, or upon the declaration of a local emergency, and for a period of 30 days following that proclamation or declaration, except as specified. (Pen. Code, § 396, subd. (d).)
- 5) Makes it unlawful for any person, business, or other entity, to increase the rental price advertised, offered, or charged for housing, to an existing or prospective tenant, by more than 10% upon the proclamation of a state of emergency, or upon the declaration of a local emergency, and for a period of 30 days following that proclamation or declaration, or any period the proclamation or declaration is extended by the applicable authority. (Pen. Code, § 396, subd. (e).)
- 6) Provides that a greater rental price increase is not unlawful if that person or entity 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 more than 10% or that an increase was contractually agreed to by the tenant before the proclamation or declaration. (Pen. Code, § 396, subd. (e).)
- 7) States that it is not a defense to a prosecution for rental price gouging that an increase was based on length of the rental term, the inclusion of additional goods or services, except as specified, or that the rent was offered or paid for by an insurance company or other third party. (Pen. Code, § 396, subd. (e).)
- 8) Makes it unlawful for a person, business, or other entity to evict any residential tenant of residential housing after the proclamation of a state of emergency or declaration of a local emergency, and for a period of 30 days following the proclamation or declaration, or any period that the proclamation or declaration is extended, and to rent or offer to rent to another person at a rental price greater than the evicted tenant could be charged. (Pen. Code, § 396, subd. (f).)
- 9) Allows for extensions of the prohibitions, as needed, if deemed necessary to protect the lives, property, or welfare of citizens; but limits each extension by a local body or official to a maximum of 30 days. An extension may authorized specified price increases. (Pen. Code, §

396, subd. (g).)

- 10) Punishes price gouging as a misdemeanor punishable by imprisonment in a county jail for up to one year, or by a fine of not more than \$10,000, or by both. (Pen. Code, § 396, subd. (h).)
- 11) States that the prohibited conduct is an unlawful business practice and an act of unfair competition. (Pen. Code, § 396, subd. (i).)
- 12) 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, pandemic or epidemic disease outbreak, or other natural or manmade disaster for which a state of emergency has been declared by the President or the Governor. (Pen. Code, § 396, subd. (j)(1).)
- 13) Defines "local emergency" as a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm, drought, plant or animal infestation or disease, pandemic or epidemic disease outbreak, 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. (j)(2).)
- 14) Defines "housing" as "any rental housing with an initial lease term of no longer than one year, including, but not limited to, a space rented in a mobilehome park or campground." (Pen. Code, § 396, subd. (j)(10).)
- 15) Defines "rental house pricing" as specified. (Pen. Code, § 396, subd. (j)(11).)

#### **FISCAL EFFECT:**

#### **COMMENTS:**

- 1) **Author's Statement:** According to the author, "Penal Code section 396 prohibits many industries from increasing prices by more than 10 percent after an emergency has been declared. The penalty for violating this law include penalties and jail time. The President, the Governor, and local officials can all declare emergencies. Although the price gouging limitation was only intended to apply for 30 days, state and local officials have extended many states of emergency for months thereby making the correct 30-day period unknowable. Over the last two years, some emergencies due to COVID-19, wildfires, and drought have yet to end. Unfortunately, these extensions are not made public by state and local officials, leaving businesses confused on how to properly comply. SB 1133 fixes this problem by requiring CalOES to keep an up to date website regarding the current emergency proclamations by the President, Governor, and local governments."
- 2) **Price Gouging:** Current law makes it unlawful for retailers and service providers to price gouge after a proclamation of a state of emergency or declaration of local emergency. "Price gouging" is increasing the price of specified goods and services by more than 10% above the price of those goods and services prior to the declaration of emergency. The provisions of the price gouging statute are triggered when a state of emergency has been proclaimed by the President of the United States or the Governor, or when officials at a county or municipal

level, as specified, declare a local emergency.

Price gouging applies to the following items: lodging (including permanent or temporary rental housing, hotels, motels, and mobile homes); food and drink; emergency supplies such as water, flashlights, radios, batteries, candles, blankets, soaps, diapers, temporary shelters, tape, toiletries, plywood, nails, and hammers; and medical supplies such as prescription and nonprescription medications, bandages, gauze, isopropyl alcohol, and antibacterial products. It also applies to other goods and services including: home heating oil; building materials, including lumber, construction tools, and windows; transportation; freight; storage services; gasoline and other motor fuels; and repair and reconstruction services.

A victim of price gouging can file a complaint with their local district attorney or with the Attorney General. An [online form](#) is available on the California Attorney General's website.

- 3) **Rental Market Price Gouging:** In the past several years there have been examples of price gouging on the rental market after proclamations of a state of emergency or declarations of a local emergency.

After the 2015 methane leak in Aliso Canyon, both a local emergency and state of emergency were declared. A news story by KPCC Public Radio discussed rental price increases after the leak was discovered. KPCC quoted Allen Brodetsky, president of Boutique Realty in Tarzana, who stated “Where rental prices would normally go between \$3,000 and \$4,000, now landlords are asking six, seven, eight, nine thousand dollars— double, triple the rent of what it should be.” (J. Huang, *Reports of Price-Gouging, as Porter Ranch Families Look for Temporary Homes*, Jan. 7, 2016, <http://www.scpr.org/news/2016/01/07/56700/fears-of-price-gouging-as-porter-ranch-families-lo/>) Brodetsky also said that “The rental market around Porter Ranch has gotten so hot, that some homesellers, including a neighbor of his, have taken their houses off the market and turn them into short-term rentals.” (*Ibid.*)

Similarly, immediately following California's 2017 North Bay fires, there were stories of some landlords significantly raising rents. 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. (A. Elmahrek, *After the Flames, Allegations of Rent-Gouging Fly in Devastated Wine Country Communities*, Jan.1, 2018, <http://www.latimes.com/local/lanow/la-me-ln-wine-country-rent-gouging-20180101-story.html/> [as of June 20, 2022].) The Sonoma County District Attorney’s Office received around 120 complaints of price gouging displaced fire victims. The District Attorney’s Office charged six landlords with price gouging. The Press Democrat reported that “Court records show that four of the six landlords increased rental prices by more than 30 percent just days after fires erupted.” (N. Rahaim, *Sonoma County Prosecutors Charge Six Landlords with Price Gouging*, Dec. 7, 2017, <https://www.pressdemocrat.com/article/news/sonoma-county-prosecutors-charge-six-landlords-with-price-gouging/> [as of June 20, 2022].) Subsequently, the Attorney General filed price gouging charges in Marin County Superior Court against a Novato landlord who drastically increased the price of her rental home. (G. Klein, *Marin Landlord Charged With Price-Gouging after North Bay Wildfires*, Apr. 19, 2018, <https://www.mercurynews.com/2018/04/19/marin-landlord-charged-with-price-gouging-after-north-bay-wildfires/> [as of June 20, 2022].)

As climate change continues to plague the state, many scientists aptly predicted that the 2017 fire season was not an anomaly, and that similar wildfires are likely to continue into the future. Price gouging in affected communities will continue to be a concern.

- 4) **Violations of Price Gouging Can be Punished Both Criminally and Civilly:** Price gouging is somewhat unique in that criminal charges are not the only way to punish price gouging offenders and provide deterrence for such conduct. The price gouging statute specifically authorizes the Attorney General and district attorneys (as well as county and city attorneys, under some circumstances) to pursue civil penalties against price gougers under the unfair competition statutes. (Bus. & Prof. Code, § 17206.)

Under the unfair competition statutes each incident of unfair competition can be punished separately and cumulatively. (Bus. & Prof. Code, § 17205.) Each violation can be punished by a fine of up to \$2,500. The Attorney General or a district attorney can seek an injunction against a business engaged in price gouging. If an injunction is granted any violations of the injunction can be punished by a fine of up to \$6,000 per incident. Claims under the unfair competition statute can be pursued in addition to a criminal case. . There are additional civil penalties if the act of unfair competition involves a senior citizen or a disabled person. (Bus. & Prof. Code, § 17206.1.)

In the criminal context, price gouging is a misdemeanor, punishable by imprisonment in a county jail for up to one year, or by a fine of not more than \$10,000, or by both. (Pen. Code, § 396 subd. (h).)

- 5) **Requirements Related to CalOES:** According to the author, “It is currently very difficult for businesses to know when price-gouging limitations under Section 396 have been triggered.” The author states that while CalOES maintains a list of counties currently under price gouging protections, that information “is regularly out of date and does not include price gouging restrictions triggered by proclamations of local governments. This leaves the citizens with no official list of applicable states of emergency, making compliance with Section 396 a challenge.”

This bill requires CalOES to post on its website all applicable proclamations and declarations of a state of emergency and declarations of local emergency, including information on any extensions. Additionally, as proposed to be amended in committee, this bill provides that the criminal penalties against price gouging are not enforceable until the proclamation or declaration of the underlying emergency is posted on the CalOES website.

- 6) **Argument in Support:** According to the *California Apartment Association*, the sponsor of this bill, “Over the years, state and local officials have declared hundreds of emergencies based on fires, floods, health hazards (COVID-19), droughts, earthquakes, oil spills, and the like. Each of these proclamations also triggers the price-gouging limitations in Penal Code Section 396 regardless of whether the emergency has, or is likely to cause, abnormal disruptions in the market. Although the price gouging limitations were only intended to apply for 30 days, state and local officials have extended many states of emergency for years, making the correct 30-day period unknown. Over the last four years, some state of emergency declarations, such as oil spills and drought, have yet to end.

“Furthermore, these extensions are not always made public by state and local officials, leaving businesses with little to no information about what emergency proclamations are in effect. SB 1133 fixes this problem by clarifying existing law for when a state of emergency is declared to ensure better marketplace compliance, which will result in more robust consumer protections.”

- 7) **Argument in Opposition:** According to the *Western Center on Law and Poverty* and a coalition of other organizations who represent low income tenants, “As the current law recognizes, the risk of price gouging is not just during the first 30 days of an emergency. When a wildfire rips through an area and destroys homes, the impact on the housing market and the risk of rent gouging from the sudden loss of units lasts for months, if not years. Similarly, housing stability has been critical to protecting the public health throughout the COVID-19 state of emergency. For that reason, Penal Code Section 396(e) currently provides that following a declared state of emergency, price gouging in rental housing is prohibited for 30 days following the proclamation, “or any period the proclamation or declaration is extended by the applicable authority.” By deleting this phrase, SB 1133 seeks to end price gouging protections after 30 days, just when they are needed the most. Namely, as the first of month comes, and displaced households search for new housing, unscrupulous landlords can capitalize by spiking rents, forcing out low-income and vulnerable households in favor of those willing to pay a premium for rent. This is precisely the activity that PC Section 396(e) was intended to prevent, and which SB 1133 would now authorize.

“Moreover, the bill narrows the critical housing protections of PC Section 396 even further by requiring public officials to make special findings to extend the protections of PC Section 396 to prevent rent gouging and displacement during an emergency. Of all the goods and services covered by PC Section 396, SB 1133 singles out housing as the only one that requires a special finding to extend price gouging protections. In addition to the burden to state and local government officials, the requirement of special findings opens to legal attack the declaration’s attempt to invoke PC Section 396(e), leading not only to unnecessary litigation but greater uncertainty about the law’s application to residents who are struggling in the aftermath of a disaster.

“Given California’s on-going housing affordability crisis and the state’s experience in recent years with disaster- and pandemic-related states of emergency, now is not the time for a policy that would weaken—rather than strengthen—housing protections during a state of emergency. The future of the recovery of the economy rests on the ability of the state to preserve housing stability for low-income tenants, especially when the costs of other goods and services increases.”

8) **Prior Legislation:**

- a) SB 1196 (Umberg), Chapter 339, Statutes of 2020, includes pandemic or epidemic disease outbreak to the circumstances that may lead to a state of emergency or local emergency, and specifies that extensions of the price gouging protections by a local official or local legislative body shall not exceed 30 days.
- b) AB 1919 (Wood), Chapter 631, Statutes of 2018, expanded the scope of the crime price gouging by including rental housing that was not on the market at the time of the proclamation or declaration of emergency, and defined and clarified the “rental price” of

housing for purposes of price gouging.

- c) AB 2820 (Chiu), Chapter 671, Statutes of 2016, revised the definition of “state of emergency” and “local emergency” for purposes of criminal price gouging. AB 2820 also specified that criminal price gouging includes rental of any housing with an initial lease of up to one year for purposes of criminal price gouging.
- d) SB 1363 (Ducheny), Chapter 492, Statutes of 2004, prohibits the owner or operator of a hotel or motel from increasing its regular advertised rates by more than 10% for 30 days following a proclamation or declaration of emergency, except as specified.

## **REGISTERED SUPPORT / OPPOSITION:**

### **Support**

California Apartment Association (Sponsor)  
 Apartment Association of Greater Los Angeles  
 California Association of Realtors  
 California Rental Housing Association  
 San Gabriel Valley Economic Partnership  
 Southern California Rental Housing Association

### **Opposition**

ACCE Action (Alliance of Californians for Community Empowerment)  
 Affordable Housing Services Pasadena  
 California Housing Partnership  
 California Latinas for Reproductive Justice  
 California Low-income Consumer Coalition  
 California Rural Legal Assistance Foundation  
 Centro Legal De LA Raza  
 Coalition for Economic Survival (CES)  
 Family Violence Appellate Project  
 Ground Game LA  
 Heart LA  
 Housing Now!  
 Leadership Counsel for Justice & Accountability  
 Legal Aid of Sonoma County  
 National Housing Law Project  
 Policy Link  
 Public Advocates  
 Sonoma Valley Housing Group  
 Tenants Together  
 Thai Community Development Center  
 Voices for Progress  
 Western Center on Law & Poverty

**Analysis Prepared by:** Sandy Uribe / PUB. S. / (916) 319-3744