

AMENDED IN SENATE AUGUST 1, 2016

AMENDED IN ASSEMBLY MARCH 15, 2016

CALIFORNIA LEGISLATURE—2015–16 REGULAR SESSION

**ASSEMBLY BILL**

**No. 2820**

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**Introduced by Assembly Member Chiu**  
*(Principal coauthor: Assembly Member Wilk)*

February 19, 2016

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

LEGISLATIVE COUNSEL'S DIGEST

AB 2820, as amended, Chiu. Crimes: price gouging: states of emergency.

Under existing law, upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster declared by the President of the United States or the Governor, or upon the declaration of a local emergency resulting from an earthquake, flood, fire, riot, storm, or natural or manmade disaster by the executive officer of any county, city, or 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 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 revise the definitions of a state of emergency and a local emergency to mean a natural or manmade disaster or emergency caused by conditions such as, but not limited to, air pollution, earthquake, fire, flood, storm, epidemic, riot, drought, sudden and severe energy shortage, *or* plant or animal infestation or disease, for which a

state of emergency has been declared by the President of the United States or the Governor of California or 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 city, county, or city and county in California, respectively. The bill would include the transportation of persons and towing services in the provisions described above. The bill would also specify that housing means any rental housing with an initial lease term of no longer than one year for purposes of these provisions. The bill would make other clarifying and conforming changes and make certain additional findings by the Legislature. By expanding the scope of an existing 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 emergencies  
4 and major disasters, including, but not limited to, air pollution,  
5 earthquakes, fires, floods, civil disturbances, storms, and other  
6 natural and manmade disasters, some merchants have taken unfair  
7 advantage of consumers by greatly increasing prices for essential  
8 consumer goods and services. While the pricing of consumer goods  
9 and services is generally best left to the marketplace under ordinary  
10 conditions, when a declared state of emergency results in abnormal  
11 disruptions of the market, the public interest requires that excessive  
12 and unjustified increases in the prices of essential consumer goods  
13 and services be prohibited. It is the intent of the Legislature in  
14 enacting this act to protect citizens from excessive and unjustified  
15 increases in the prices charged during or shortly after a declared  
16 state of emergency for goods and services that are vital and  
17 necessary for the health, safety, and welfare of consumers. ~~Further~~

1 *Further*, it is the intent of the Legislature that this section be  
2 liberally construed so that its beneficial purposes may be served.

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

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

1 to additional costs for labor or materials used to provide the  
2 services, provided that in those situations where the increase in  
3 price is attributable to the additional costs imposed by the  
4 contractor's supplier or additional costs of providing the service  
5 during the state of emergency, the price represents no more than  
6 10 percent above the total of the cost to the contractor plus the  
7 markup customarily applied by the contractor for that good or  
8 service in the usual course of business immediately prior to the  
9 onset of the state of emergency.

10 (d) 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 such a declaration  
14 in any county, city, or city and county, and for a period of 30 days  
15 following that proclamation or declaration, it is unlawful for an  
16 owner or operator of a hotel or motel to increase the hotel or  
17 motel's regular rates, as advertised immediately prior to the  
18 proclamation or declaration of emergency, by more than 10 percent.  
19 However, a greater price increase is not unlawful if the owner or  
20 operator can prove that the increase in price is directly attributable  
21 to additional costs imposed on it for goods or labor used in its  
22 business, to seasonal adjustments in rates that are regularly  
23 scheduled, or to previously contracted rates.

24 (e) The provisions of this section may be extended for additional  
25 30-day periods, as needed, by a local legislative body, local official,  
26 the Governor, or the California Legislature, if deemed necessary  
27 to protect the lives, property, or welfare of the citizens.

28 (f) A violation of this section is a misdemeanor punishable by  
29 imprisonment in a county jail for a period not exceeding one year,  
30 or by a fine of not more than ten thousand dollars (\$10,000), or  
31 by both that fine and imprisonment.

32 (g) A violation of this section shall constitute an unlawful  
33 business practice and an act of unfair competition within the  
34 meaning of Section 17200 of the Business and Professions Code.  
35 The remedies and penalties provided by this section are cumulative  
36 to each other, the remedies under Section 17200 of the Business  
37 and Professions Code, and the remedies or penalties available  
38 under all other laws of this state.

39 (h) For the purposes of this section, the following terms have  
40 the following meanings:

1 (1) “State of emergency” means a natural or manmade disaster  
2 or emergency caused by conditions such as, but not limited to, air  
3 pollution, earthquake, fire, flood, storm, epidemic, riot, drought,  
4 sudden and severe energy shortage, *or* plant or animal infestation  
5 or disease for which a state of emergency has been declared by  
6 the President of the United States or the Governor of California.

7 (2) “Local emergency” means a natural or manmade disaster  
8 or emergency caused by conditions such as, but not limited to, air  
9 pollution, earthquake, fire, flood, storm, epidemic, riot, drought,  
10 sudden and severe energy shortage, *or* plant or animal infestation  
11 or disease for which a local emergency has been declared by an  
12 official, board, or other governing body vested with authority to  
13 make such a declaration in any county, city, or city and county in  
14 California.

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

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

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

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

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

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

35 (9) “Transportation, freight, and storage services” means any  
36 service that is performed by any company that contracts to move,  
37 store, or transport personal or business property or that rents  
38 equipment for those purposes, including towing services, or any  
39 service that provides transportation to persons.

1 (10) “Housing” means any rental housing with an initial lease  
2 term of no longer than one year.

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

5 (i) Nothing in this section shall preempt any local ordinance  
6 prohibiting the same or similar conduct or imposing a more severe  
7 penalty for the same conduct prohibited by this section.

8 (j) A business offering an item for sale at a reduced price  
9 immediately prior to the proclamation of the emergency may use  
10 the price at which it usually sells the item to calculate the price  
11 pursuant to subdivision (b) or (c).

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