

AMENDED IN ASSEMBLY APRIL 5, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1024

Introduced by Assembly Member Dutra

February 25, 1999

An act to add Section 396.3 to the Penal Code, relating to disasters, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1024, as amended, Dutra. Disasters: computer dates.

Under existing law, upon the proclamation 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 any person, contractor, business, or other entity to sell or offer to sell any consumer food items, or 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% above the price charged by that person for those goods or services immediately prior to the proclamation of emergency, except in limited circumstances.

This bill would provide that between ~~November~~ *October* 1, 1999, and ~~February 29~~ *April 1*, 2000, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell any consumer food items or specified goods or services for a price of more than 10% above the price charged by that

person for those goods or services immediately prior to ~~November~~ *October* 1, 1999, if those items, goods, or services have become scarce or difficult to obtain because of ~~disruptions arising from the inability of some computers to properly handle dates commencing January 1, 2000~~ *the Year 2000 Problem, as defined*. Since a violation of these provisions would be a crime, the bill would impose a state-mandated local program by creating a crime.

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.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. 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 396.3 is added to the Penal Code,
 2 to read:
 3 396.3. (a) The Legislature hereby finds that during
 4 emergencies some merchants have taken unfair
 5 advantage of consumers by greatly increasing prices for
 6 essential consumer goods and services. ~~The~~
 7 (b) *The* Legislature further finds and declares that it
 8 is a possibility that disruptions in the marketplace may
 9 arise because of ~~computer-related disruptions arising~~
 10 ~~from the inability of some computers to properly handle~~
 11 ~~dates commencing January 1, 2000, and, prior to that date,~~
 12 *the Year 2000 Problem, the potential impact of the Year*
 13 *2000 Problem prior to the real impact caused by the Year*
 14 *2000 Problem, because of the fear and unpredictable*
 15 *nature* of disruptions. While the pricing of consumer
 16 goods and services is generally best left to the
 17 marketplace under ordinary conditions, this possible
 18 disruption may result in abnormalities in the market. The
 19 public interest requires that excessive and unjustified



1 increases in the prices of essential consumer goods and
2 services, often called price gouging, be prohibited. ~~It~~

3 (c) *It* is the intent of the Legislature in enacting this
4 act to protect citizens from excessive and unjustified
5 increases in the prices charged during or shortly after
6 disruptions.

7 ~~(b)~~

8 (d) Between ~~November~~ *October* 1, 1999, and
9 ~~February 29~~ *April 1*, 2000, inclusive, it is unlawful for any
10 person, contractor, business, or other entity to sell or offer
11 to sell any consumer food items, or goods or services used
12 for emergency cleanup, emergency supplies, medical
13 supplies, home heating oil, building materials, housing,
14 transportation, freight, and storage services, or gasoline
15 or other motor fuels for a price of more than 10 percent
16 above the price charged by that person for those items,
17 goods, or services immediately prior to ~~November~~
18 *October* 1, 1999, if those items, goods, or services have
19 become scarce or difficult to obtain because of disruptions
20 or fear of disruptions arising from the ~~inability of some~~
21 ~~computers to properly handle dates commencing~~
22 ~~January 1, 2000.~~ *Year 2000 Problem* However, a greater
23 price increase shall not be unlawful if that person can
24 prove that the increase in price was directly attributable
25 to additional costs imposed on it by the supplier of the
26 items, goods, or services or directly attributable to
27 additional costs for labor or materials used to provide the
28 items, goods, or services, provided that in those situations
29 where the increase in price is attributable to additional
30 costs imposed by the seller's supplier or additional costs
31 of providing the items, goods, or services during this
32 period, the price represents no more than 10 percent
33 above the total of the cost to the seller plus the markup
34 customarily applied by the seller for that item, good, or
35 service in the usual course of business immediately prior
36 to ~~November~~ *October* 1, 1999.

37 ~~(e)~~

38 (e) A violation of this section is a misdemeanor
39 punishable by imprisonment in a county jail for a period
40 not exceeding one year, or by a fine of not more than ten



1 thousand dollars (\$10,000), or by both that fine and
2 imprisonment.

3 ~~(d)~~

4 (f) A violation of this section shall constitute an
5 unlawful business practice and an act of unfair
6 competition within the meaning of Section 17200 of the
7 Business and Professions Code. The remedies and
8 penalties provided by this section are cumulative to each
9 other, the remedies under Section 17200 of the Business
10 and Professions Code, and the remedies or penalties
11 available under all other laws of this state.

12 ~~(e)~~

13 (g) The terms used in this section have the same
14 meanings as defined in Section 396.

15 ~~(f)~~

16 (h) Nothing in this section shall preempt any local
17 ordinance prohibiting the same or similar conduct or
18 imposing a more severe penalty for the same conduct
19 prohibited by this section.

20 ~~(g)~~

21 (i) Any business offering an item for sale at a reduced
22 price immediately prior to the proclamation of the
23 emergency may use the price at which they usually sell
24 the item to calculate the price pursuant to subdivision ~~(b)~~
25 (d).

26 (j) *For purposes of this section, the following*
27 *definitions shall apply:*

28 (1) *“Year 2000 Problem” means any expected or*
29 *actual computing, physical, enterprise, or distribution*
30 *system complications that may occur in any computer*
31 *system, computer program, software application,*
32 *embedded systems, embedded chip calculations, or other*
33 *computing application as a result of the year change from*
34 *1999 to 2000. These complications are often associated*
35 *with the common programming practice of using a*
36 *two-digit field to represent a year, resulting in erroneous*
37 *date calculations, an ambiguous interpretation of the*
38 *term “00,” the failure to recognize the year 2000 as a leap*
39 *year, the use of algorithms that use the year “99” or “00”*



1 *as a flag for another function, or the use of applications,*
2 *software, or hardware that are date sensitive.*

3 (2) *“Information” means any assessment, projection,*
4 *estimate, planning document, objective, timetable, test*
5 *plan, test date, or test result related to the*
6 *implementation or verification of Year 2000 Problem*
7 *processing capabilities of a computer system, computer*
8 *program, software application, embedded systems,*
9 *embedded chip calculations, or other computing*
10 *application and intended to solve a Year 2000 Problem.*

11 (3) *“Disclosure” and “discloses” mean any*
12 *dissemination or provision of information without any*
13 *expectation or right to remuneration or fee therefor.*

14 (4) *“Person” means any individual, corporation,*
15 *partnership, business entity, joint venture, association,*
16 *the State of California or any of its subdivisions, or any*
17 *other organization or any combination thereof.*

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

28 SEC. 3. This act is an urgency statute necessary for the
29 immediate preservation of the public peace, health, or
30 safety within the meaning of Article IV of the
31 Constitution and shall go into immediate effect. The facts
32 constituting the necessity are:

33 In order to prevent excessive and unjustified increases
34 in prices as a result of the possible disruption, or the fear
35 of disruption, resulting from the ~~inability of computers to~~
36 ~~handle dates commencing January 1, 2000~~ *the Year 2000*
37 *Problem*, and the likelihood of those fears leading to price
38 increases in the weeks and months preceding ~~that date~~,



1 *January 1, 2000*, it is necessary for this act to take effect
2 immediately.

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