
SENATE COMMITTEE ON PUBLIC SAFETY

Senator Loni Hancock, Chair

2015 - 2016 Regular

Bill No: AB 2820 **Hearing Date:** June 14, 2016
Author: Chiu
Version: March 15, 2016
Urgency: No **Fiscal:** Yes
Consultant: ML

Subject: *Crimes: Price Gouging: States of Emergency*

HISTORY

Source: Author

Prior Legislation: ABX1 57 (Archie-Hudson) – Ch. 51, Stats. 1994
SB 1363 (Ducheny) – Ch. 492, Stats. 2004
AB 457 (Núñez) –2006, died in Senate

Support: Consumer Attorneys of California; Office of Attorney General Kamala D. Harris

Opposition: California Public Defenders Association

Assembly Floor Vote: 68 - 10

PURPOSE

The purpose of this bill is to revise the definition of state of emergency and local emergency for purposes of criminal price gouging, specifying that criminal price gouging during a declared emergency includes the rental of any housing with an initial lease of up to one year and also the transportation of persons and towing services.

Existing law finds 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. (Penal Code § 396, subd. (a).)

Existing law states that it is the intent of the Legislature in 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. (Penal Code § 396, subd. (a).)

Existing law provides that upon the declaration 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 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. (Penal Code § 396, subd. (b).)

Existing law states that upon the declaration of a state of emergency resulting from an earthquake, flood, fire, riot, or storm 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, or storm by the executive officer of any county, city, or city and county, 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 of emergency. (Penal Code § 396, subd. (c).)

Existing law specifies that upon the proclamation of a state of emergency resulting from an earthquake, flood, fire, riot, storm, or other natural 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 other natural disaster by the executive officer of any county, city, or city and county, 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. (Penal Code § 396, subd. (d).)

Existing law specifies that, a greater price increase for the goods and services, mentioned above, is not unlawful if that person can prove that the increase in price was directly attributable to additional costs imposed by specified circumstances. (Penal Code § 396, subd. (a)-(c).)

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. (Penal 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 ten thousand dollars (\$10,000), or by both that fine and imprisonment. (Penal Code § 396 subd. (f).)

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

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

Existing law defines "Local emergency" as "a natural or manmade disaster or emergency resulting from an earthquake, flood, fire, riot, or storm for which a local emergency has been declared by the executive officer or governing body of any city or county in California." (Penal Code § 396, subd. (g)(2).)

Existing law defines "housing" as "any rental housing leased on a month-to-month term" for purposes of criminal price gouging. (Penal Code § 396, subd. (g)(2).)

Existing law states that except as specified, in all leases of lands from week to week, month to month, or other period less than a month, the landlord may, upon giving notice in writing to the tenant, in the appropriate manner, change the terms of the lease to take effect, as to tenancies for less than one month, upon the expiration of a period at least as long as the term of the hiring itself, and, as to tenancies from month to month, to take effect at the expiration of not less than 30 days, but if that change takes effect within a rental term, the rent accruing from the first day of the term to the date of that change shall be computed at the rental rate obtained immediately prior to that change. (Civil Code § 827, subd. (a).)

Existing law specifies that the notice, when served upon the tenant, shall in and of itself operate and be effectual to create and establish, as a part of the lease, the terms, rents, and conditions specified in the notice, if the tenant shall continue to hold the premises after the notice takes effect.

Existing law states that all leases of a residential dwelling, or of any interest therein, from week to week, month to month, or other period less than a month, the landlord may increase the rent provided in the lease or rental agreement, upon giving written notice to the tenant, as follows, by either of the following procedures:

- a) By delivering a copy to the tenant personally; or (Civil Code § 827, subd. (b)(1)(A).)
- b) By serving a copy by mail under the procedures as specified. (Civil Code § 827, subd. (b)(1)(B).)

Existing law states that for an increase in rent greater than 10%, the minimum notice period required pursuant to that paragraph shall be increased by an additional 30 days, but does not apply to an increase in rent caused by a change in a tenant's income or family composition as determined by a recertification required by statute or regulation. (Civil Code § 827, subd. (b)(3).)

This bill revises the definition of a state of 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, 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.

This bill revises the definition 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, plant or animal infestation or disease, for which a local emergency has been declared by an official, board, or governing body vested with authority to make such a declaration in any city, county, or city and county in California.

This bill applies the definitions above, throughout the criminal price gouging statute.

This bill includes the transportation of persons and towing services in the crime of price gouging during a declared emergency.

This bill specifies that criminal price gouging during a declared emergency includes any rental housing with an initial lease term of up to one year.

RECEIVERSHIP/OVERCROWDING CRISIS AGGRAVATION

For the past several years this Committee has scrutinized legislation referred to its jurisdiction for any potential impact on prison overcrowding. Mindful of the United States Supreme Court ruling and federal court orders relating to the state's ability to provide a constitutional level of health care to its inmate population and the related issue of prison overcrowding, this Committee has applied its "ROCA" policy as a content-neutral, provisional measure necessary to ensure that the Legislature does not erode progress in reducing prison overcrowding.

On February 10, 2014, the federal court ordered California to reduce its in-state adult institution population to 137.5% of design capacity by February 28, 2016, as follows:

- 143% of design bed capacity by June 30, 2014;
- 141.5% of design bed capacity by February 28, 2015; and,
- 137.5% of design bed capacity by February 28, 2016.

In December of 2015 the administration reported that as "of December 9, 2015, 112,510 inmates were housed in the State's 34 adult institutions, which amounts to 136.0% of design bed capacity, and 5,264 inmates were housed in out-of-state facilities. The current population is 1,212 inmates below the final court-ordered population benchmark of 137.5% of design bed capacity, and has been under that benchmark since February 2015." (Defendants' December 2015 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).) One year ago, 115,826 inmates were housed in the State's 34 adult institutions, which amounted to 140.0% of design bed capacity, and 8,864 inmates were housed in out-of-state facilities. (Defendants' December 2014 Status Report in Response to February 10, 2014 Order, 2:90-cv-00520 KJM DAD PC, 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (fn. omitted).)

While significant gains have been made in reducing the prison population, the state must stabilize these advances and demonstrate to the federal court that California has in place the "durable solution" to prison overcrowding "consistently demanded" by the court. (Opinion Re: Order Granting in Part and Denying in Part Defendants' Request For Extension of December 31, 2013 Deadline, NO. 2:90-cv-0520 LKK DAD (PC), 3-Judge Court, *Coleman v. Brown, Plata v. Brown* (2-10-14).) The Committee's consideration of bills that may impact the prison population therefore will be informed by the following questions:

- Whether a proposal erodes a measure which has contributed to reducing the prison population;
- Whether a proposal addresses a major area of public safety or criminal activity for which there is no other reasonable, appropriate remedy;
- Whether a proposal addresses a crime which is directly dangerous to the physical safety of others for which there is no other reasonably appropriate sanction;
- Whether a proposal corrects a constitutional problem or legislative drafting error; and
- Whether a proposal proposes penalties which are proportionate, and cannot be achieved through any other reasonably appropriate remedy.

COMMENTS

1. Stated Need for This Bill

The author states:

Following the devastating Aliso Canyon gas leak, unscrupulous individuals took advantage of a loophole in current law and raised the prices of short-term rentals. Current law protects those with month-to-month leases, but does not apply if the initial lease is longer than 30 days. It also does not apply to hotel and motel operators if the disaster is man-made rather than natural, leaving families vulnerable to exploitation. Current law also does not explicitly apply to towing service or personal transport providers.

AB 2820 refines short-term housing as any housing with a lease term of no longer than one year. It also prohibits towing and transportation service providers from raising rates more than 10 percent when a state of emergency is declared. Since current law has been limited and inconsistent depending on the type of disaster, AB 2820 also ensures that whether the disaster prompting the declaration of a state of emergency is natural or manmade, familiar or unprecedented, consumers across the state will be protected from excessive price increases. Disaster victims should not be victimized twice.

2. What This Bill Would Do

This bill clarifies the definition of State of Emergency and Local Emergency. This bill applies the definitions consistently within the existing statute prohibiting price gouging during a declared emergency. The existing statute prohibits raising prices above a specified amount, for a variety of goods and services, once an emergency has been declared. The existing statute has different definitions of what constitutes a triggering emergency depending on the type of goods or services being sold. For example, the prohibition against increasing hotel or motel prices more than 10% does not apply if the emergency is a result of a manmade disaster. In contrast, the prohibition on price increases for goods such as food, medical supplies, housing, or gasoline includes both natural and manmade disasters. This bill provides a consistent definition of emergency throughout the statute, including both natural and manmade disasters.

3. Background – Aliso Canyon Disaster

In October of 2015, a large leak was discovered at the Aliso Canyon natural gas storage facility. The methane leak forced more than 4,600 households into temporary housing and took 112 days to plug.¹ The Los Angeles Board of Supervisors declared a state of emergency in December of 2015. Governor Brown declared a state of emergency in January of 2016.

A news story by KPCC in January of 2016 discussed the extent to which rental prices increased 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.”² Brodetsky also said that “The rental market around Porter Ranch has gotten so hot, that some home sellers, including a neighbor of his, have taken their houses off the market and

¹ <http://thinkprogress.org/climate/2016/02/12/3749190/aliso-canyon-methane-leak-stopped/>

² <http://www.scpr.org/news/2016/01/07/56700/fears-of-price-gouging-as-porter-ranch-families-lo/>

turn them into short-term rentals.”³

To the extent that the rent increases described above were for month-to-month leases and the leases were entered into after the declaration of a state of emergency, the conduct would be prohibited under the current price gouging law. However, there was concern that existing law was not providing sufficient protection to individuals and families displaced by the Aliso Canyon disaster when landlords were demanding a year lease in conjunction with the high monthly rental prices. Current law does not cover rental contracts entered during a declared emergency if the rental contracts were for any period longer than month to month. This bill expands the scope of the leases that would be covered under criminal price gouging to include leases with an initial term of up to one year.

4. Argument in Support

According to the Consumer Attorneys of California:

AB 2820 will prevent prices for short-term housing units and towing services from being raised more than 10% without justification when a state of emergency has been declared. AB 2820 further provides that all consumer price gouging protections in current law apply during a state of emergency whether the disaster was natural or manmade.

The need for this bill is highlighted by the aftermath of the Aliso Canyon gas leak. Following the devastating leak, unscrupulous individuals took advantage of a traffic loophole in current law and raised the prices of short-term rentals. Landlords in nearby Woodland Hills and Northridge jacked up rents after the gas leak was discovered. Rental prices in the area were typically between \$3,000 and \$4,000 per month, during the gas leak, landlords were commonly asking for \$6000 to \$9000 per month – double or triple the amount of normal rents. Current law protects those with month-to-month leases, but does not apply if the initial lease is longer than 30 days. It also does not apply to hotel and motel operators if the disaster is man-made rather than natural, leaving families vulnerable to exploitation.

During some disasters residents have had no choice but to abandon their vehicles as they fled to safety. Towing companies have taken advantage of the crisis by charging exorbitant rates. AB 2820 will specifically prohibit towing service providers from raising rates more than 10% when a state of emergency is declared.

-- END --

³ *ibid.*