

## California Penal Code 396: Price Gouging During Disaster Emergencies - What Landlords Need to Know

(Updated December 2017)

### Summary

*California Penal Code (CPC) 396* makes it illegal for a person, contractor, business, or other entity to increase the price of a product or service item more than ten (10) percent for the following thirty (30) days after an Executive Order or State of Emergency has been declared – **Under the law, it also unlawful to increase rental rates more than ten (10) percent for that 30-day period.**

In light of the Aliso Canyon gas leak in the community of Porter Ranch north of Los Angeles in October 2015, AB 2820 was introduced and signed into law amending *CPC 396* in 2016. AB 2820 expanded anti-gouging rules to apply to all jurisdictions statewide for the following 30-days after a State of Emergency is declared, expanded the definition to include more types of rental housing, and expanded the number of definitions for what qualifies as a State of Emergency. **Members always should consult with their attorney if they are seeking legal advice.**

### California Penal Code 396

Under California Penal Code Section 396, for the following 30-day period after a disaster has been declared, ...**it is unlawful for a person, contractor, business, or other entity to sell or offer to sell any consumer goods or services – including rental housing – for a price more than 10 percent above the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency.**<sup>1</sup>

However, an increase greater than 10 percent is lawful if the owner or operator can prove that the increase in price is directly attributable to 1) additional costs imposed on it for goods or 3) labor used by the business, or 3) seasonal adjustments in rates that are regularly scheduled or previously contracted rates.”<sup>2</sup>

“State of emergency” means a natural or manmade emergency resulting from an earthquake, flood, fire, riot, storm. The definition was later amended to include 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

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<sup>1</sup> California Penal Code (CPC) 396, Section 1, paragraph (a), California Legislative Information [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=396](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=396)

<sup>2</sup> California Penal Code (CPC) 396, Section 1, paragraph (d), California Legislative Information, [https://leginfo.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=396](https://leginfo.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=396)

United States or the Governor of California.<sup>3</sup> But, the definition of what constitutes a “State of Emergency” and who can declare an emergency was later expanded with the enactment of AB 2820.

### AB 2820

The Aliso Canyon Gas Leak in October was the impetus for AB 2820 (Chiu) where hundreds of people were displaced for up to 112 days due to the gas leak from a pipeline. People who had to relocate from the gas leak experienced significant price increases in rent, and for towing services and other services. CPC 396 was amended when AB 2820 took effect in 2016.

Under AB 2820:

- City and county officials now have the authority to declare a “Local State of Emergency;” anti-gouging rules take effect statewide whenever authorized local, state, and federal officials declare a State of Emergency.
- Authorized officials can extend the anti-gouging rules up to 180 days after an emergency declaration if they deem it necessary. ***Please note Governor Jerry Brown exercised this right in his most recent declaration extending CPC 396 to June 7, 2018.***
- The definition of emergency was expanded to include natural and manmade disasters such as drought, or a plant or animal infestation or disease.
- The definition of rental housing was expanded so anti-gouging rules would apply to “any rental housing with an initial lease term of no longer than one year,” in addition to “any rental housing leased on a month-to-month term.”<sup>4</sup>

### If Using a Revenue Management System

Companies that use revenue management systems with an integrated revenue function that adjust rents automatically (similar to those used in the hotel industry) should carefully monitor their system or manually turn off that function for the following 30 days after an emergency declaration. (See *California Penal Code 396 (b)*)<sup>5</sup>

### Hiring Contractors for Cleanup, Repair or Reconstruction

For the following 180 days after an emergency declaration, contractors providing emergency cleanup, repair, or reconstruction services cannot increase their prices on products and services more than 10 percent of what they charged previous to the emergency declaration. (See *California Penal Code 396 (c)*)<sup>6</sup>

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<sup>3</sup> Ibid, CPC 396, Section 1 paragraph (a)

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=396](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=396)

<sup>4</sup> Bill Text AB 2820, Legislative Counsel’s Digest,

[https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill\\_id=201520160AB2820](https://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201520160AB2820)

<sup>5</sup> Ibid, California Penal Code 396,

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=396](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=396)

<sup>6</sup> Ibid, California Penal Code 396,

### **Penalties for Violations**

The California Attorney General and the California Penal Code state that businesses or other entities that fail to comply with CPC 396 can face fines of up to \$10,000 and/or one year in jail. Violators could be subject to additional civil enforcement actions including civil penalties of up to \$5,000 per violation, injunctive relief and mandatory restitution. The Attorney General, local district attorneys, and private individuals can bring actions for violations of the statute.<sup>7</sup> Anyone can file a complaint with the Attorney General's office, or consult with an attorney if they believe they are a victim of gouging.

There are limited exceptions to CPC 396. Businesses and other entities can increase the price on goods and services if the entity can prove that the increased price was the direct result of cost increases in labor or materials needed to provide the good or service.<sup>8</sup>

*Information and updates on anti-gouging rules are available on the California Attorney General's Office at:*

*(Available at <https://oag.ca.gov/consumers/pricegougingduringdisasters>) and California*

*California Penal Code Section 396:*

[https://leginfo.legislature.ca.gov/faces/codes\\_displaySection.xhtml?lawCode=PEN&sectionNum=396](https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=PEN&sectionNum=396)).

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<sup>7</sup> *What are the consequences of violating the statute?* FAQs on Price Gouging, California Attorney General, <https://oag.ca.gov/consumers/pricegougingduringdisasters#7C>

<sup>8</sup> *What if a seller increased the price of a good or service because the seller's costs of providing the good or service increased?* FAQs on Price Gouging, California Attorney General, <https://oag.ca.gov/consumers/pricegougingduringdisasters#7C>