



1-1-1995

Consumer Protection

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Recommended Citation

University of the Pacific; McGeorge School of Law, *Consumer Protection*, 26 PAC. L. J. 215 (1995).

Available at: <https://scholarlycommons.pacific.edu/mlr/vol26/iss2/11>

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Consumer Protection

Consumer Protection; emergencies—protection against price gouging

Civil Code § 1689.14 (new), §§ 1689.5, 1689.6, 1689.7, 1689.13 (amended).
ABX 57 (Archie-Hudson); 1994 STAT. Ch. 51X

Business and Professions Code § 7123.5 (new); Penal Code § 396 (new).
ABX 36 (Katz); 1994 STAT. Ch. 52X

Existing law delineates emergency powers to the Governor and certain state agencies during times of natural or man-made emergencies.¹

Chapter 52X will make it a misdemeanor to sell certain consumer products, necessary supplies, and construction or repair services for more than ten percent over the price prior to an emergency.² Following the emergency proclamation, Chapter 52X dictates that the price restriction on sales of consumer commodities will be in effect for thirty days,³ that the price restriction on contractors will be in effect for 180 days,⁴ and that each time period will be subject to additional

1. CAL. GOV'T CODE § 8550 (West 1992); *see id.* (enumerating the powers and authority of the Governor and establishing the Office of Emergency Services through the California Emergency Services Act); *id.* § 8557(b) (West 1992) (defining state agencies as any department, division, independent establishment, or agency of the state's executive branch); *see also* *Martin v. Municipal Court*, 148 Cal. App. 3d 693, 696, 196 Cal. Rptr. 218, 220 (1983) (stating that the Emergency Services Act was designed to protect the health, property, and safety of the citizenry during times of emergency); SENATE FLOOR, COMMITTEE ANALYSIS OF ABX 57, at 1 (Aug. 23, 1994) (stating that existing law already addresses natural, man-made, and war-caused emergencies through provisions listed in the California Emergency Services Act).

2. CAL. PENAL CODE § 396 (enacted by Chapter 52X); *see id.* § 396(g)(1) (enacted by Chapter 52X) (defining state of emergency as a natural or man-made emergency or disaster, including that which results from earthquakes, fires, floods, or riots); *id.* § 396(g)(3) (enacted by Chapter 52X) (defining consumer food items as those articles used by humans or animals for food or drink); *id.* § 396(g)(4) (enacted by Chapter 52X) (listing reconstruction services as those services provided by a contractor licensed pursuant to the California Business and Professions Code); *id.* § 396(g)(5), (6) (enacted by Chapter 52X) (describing necessary supplies, such as emergency and medical products); *cf.* CONN. GEN. STAT. ANN. § 42-231 (West Supp. 1994) (granting authority to the Governor to declare price restrictions on products and services deemed to be in short supply due to abnormal or emergency circumstances); FLA. STAT. ANN. § 501.160 (West Supp. 1994) (prohibiting unconscionable prices during a time of disaster or emergency); LA. REV. STAT. ANN. § 14:329.6(A)(9) (West Supp. 1994) (prescribing the Governor's authority to regulate prices during states of emergency to prevent price-gouging); N.Y. GEN. BUS. LAW § 396-r(2) (McKinney 1984) (preventing merchants during unanticipated market disruptions from selling goods necessary for the health and welfare of consumers at an unconscionably excessive price); N.C. GEN. STAT. § 166A-6(c)(2) (Supp. 1993) (permitting the Governor to control prices during a declared state of emergency); *People v. Two Wheels Corp.*, 525 N.E.2d 692, 695 (N.Y. 1988) (holding that an increased price may be unconscionably excessive due to the amount of increase or the fact that the price was increased in an unconscionable manner); *id.* at 696 (stating that a defendant may escape liability by showing that costs imposed justify the price increase).

3. *See* CAL. PENAL CODE § 396(b) (enacted by Chapter 52X) (stating that the 30-day restriction will commence after the proclamation of a state of emergency).

4. *See id.* § 396(c) (enacted by Chapter 52X) (providing separate restrictions for contractors and the services associated with their businesses).

thirty day extensions.⁵ Contractors found to be in violation of the pricing regulation are subject to possible revocation of their contracting licenses.⁶ Exceptions to the price limits will be granted upon proof that the increase is necessary to account for additional costs of the item or service incurred by the person seeking the price inflation.⁷

Existing law regulates home solicitation contracts and establishes specific definitions for services that are provided for alterations, improvements, or repairs of a residence.⁸ Chapter 51X includes restoration among the services defined and establishes that any home solicitation sales contract signed by a buyer for the purpose of repairing or restoring a residential premise after a disaster⁹ will be void, except as otherwise provided.¹⁰

Additionally, Chapter 51X permits a buyer to cancel a home solicitation contract relating to a residence damaged by a disaster, as specified.¹¹

5. *Id.* § 396(b)-(d) (enacted by Chapter 52X); *see id.* § 396(d) (enacted by Chapter 52X) (noting the 30-day extension of the provisions contained within California Penal Code § 396).

6. CAL. BUS. & PROF. CODE § 7123.5 (enacted by Chapter 52X); *see id.* (ordering the Contractors' State License Board to take disciplinary action against any contractor guilty of violating California Penal Code § 396, or other similar city and county ordinances, for which punishment will include a minimum six-month suspension and possible revocation of the contractor's license).

7. CAL. PENAL CODE § 396(b)-(c) (enacted by Chapter 52X).

8. CAL. CIV. CODE §§ 1689.5, 1689.6 (amended by Chapter 51X); *see id.* § 1689.5(a) (amended by Chapter 51X) (defining home solicitation contract); *id.* § 1689.5(d) (amended by Chapter 51X) (listing work, labor, and services, among other functions related to work on a residential premise); *id.* § 1689.6 (amended by Chapter 51X) (permitting a buyer to cancel a home solicitation contract upon certain stipulations); *see also* *Louis Luskin & Sons, Inc. v. Samovitz*, 166 Cal. App. 3d 533, 536, 212 Cal. Rptr. 612, 613-14 (1985) (stating that a home solicitation contract made for the sale of goods or services was applicable to all contracts made outside of the contractor's place of business); *People v. Toomey*, 157 Cal. App. 3d 1, 14, 203 Cal. Rptr. 642, 650 (1984) (determining that a contract solicited over the phone was consummated at the buyer's residence, and thus, was deemed to be a home solicitation contract; and noting that the pressure on a buyer to reach an immediate decision occurred during telephone solicitations, as well as door-to-door solicitations); *Weatherall Aluminum Prod. Co. v. Scott*, 71 Cal. App. 3d 245, 248, 139 Cal. Rptr. 329, 330 (1977) (stating that the purpose of California Civil Code § 1689.5 is to protect consumers from the pressures normally applied when solicitors approach the buyer's place of residence).

9. *See* CAL. CIV. CODE § 1689.14(b) (enacted by Chapter 51X) (describing a disaster, for purposes of this section and California Civil Code § 1689.6, as an earthquake, fire, riot, storm, or other similar catastrophic incident).

10. *Id.* § 1689.14(a) (enacted by Chapter 51X); *see id.* (providing that home solicitation contracts or offers made within seven days of the date of the disaster are void unless the buyer or an agent of the buyer solicited the contract); *id.* (noting that buyer solicitation includes a phone call from the buyer to the seller's place of business). *But see id.* § 1689.13 (amended by Chapter 51X) (mandating that California Civil Code §§ 1689.5, 1689.6, 1689.7, 1689.10, 1689.11, 1689.12, and 1689.14 will not apply to contracts made upon the initiation of the buyer or his or her agent, and which are made in regard to an emergency situation that may affect the safety or property of the buyer, provided the buyer expressly describes the problem and waives his or her right to cancel the sale in a written statement to the seller).

11. *Id.* § 1689.6(c) (amended by Chapter 51X); *see id.* (asserting that the right to cancel a home solicitation contract which was not otherwise voided by California Civil Code § 1689.14 extends until midnight of the seventh business day after execution of the contract); *id.* § 1689.6(d)-(f) (amended by Chapter 51X) (listing how cancellation of such a home solicitation contract may occur, the effect given upon mailing, and the proper form of the cancellation).

INTERPRETIVE COMMENT

Chapters 51X and 52X were enacted in response to the reported profiteering that took place during one of the latest natural disasters which rocked the state of California: the Northridge Earthquake of 1994.¹² Following the lead of some southern California cities and counties that have already passed anti-price-gouging legislation,¹³ the Legislature seeks, through the enactment of Chapter 51X and 52X, to curtail future incidents of price-gouging similar to that which took place in and around affected counties during the aftermath of the earthquake.¹⁴

However, prosecuting merchants who violate California Penal Code section 396 may be burdensome because previous charges of gouging have proven to be difficult to substantiate from an evidentiary standpoint.¹⁵ Furthermore, depending

12. SENATE FLOOR, COMMITTEE ANALYSIS OF ABX 36, at 2 (Aug. 19, 1994); *see id.* (stating that the purpose of Chapter 52X is to prohibit unethical price alterations after a catastrophic occurrence); SENATE FLOOR, COMMITTEE ANALYSIS OF ABX 57, at 2-3 (Aug. 23, 1994) (noting that double-joining Chapter 51X with Chapter 52X was appropriate, considering that previously there were no statewide provisions protecting consumers from price-gougers); *see also* ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF ABX 36, at 2 (June 13, 1994) (citing the author's comments that a disposal company charged almost \$200 over pre-earthquake prices for one bin, another person paid \$8 for a gallon of milk, and a piece of plywood was sold to a person for \$200).

13. *See* Sara Catania, *Simi Valley; Council Approves Anti-Gouging Law*, L.A. TIMES, Feb. 16, 1994, at B3 (describing a law passed by the Simi Valley City Council that set the price increase limit at 25% due to the difficulty of convicting persons who may charge less than that amount); Stephanie Simon, *Council Approves Price-Gouging Law*, L.A. TIMES, Feb. 3, 1994, at B3 (discussing the adoption of an anti-price gouging law applicable during disasters by the city of Thousand Oaks); *Price Gouging in State of Emergency Banned*, L.A. TIMES, Aug. 26, 1992, at B2 (reporting passage of a Los Angeles city ordinance prohibiting price gouging during emergencies).

14. CAL. PENAL CODE § 396(a) (enacted by Chapter 52X); *see id.* (stating a legislative finding that some merchants have taken advantage of consumers during times of disaster, and that public welfare requires that such unjustified price increases be prevented); *id.* § 396(e) (enacted by Chapter 52X) (providing that a violation of California Penal Code § 396 is a misdemeanor subject to a one-year maximum jail sentence and/or a \$10,000 fine); *see also* SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF ABX 57, at 5 (July 5, 1994) (noting that in addressing home solicitation contracts, the sponsor of Chapter 51X was concerned with unethical contractors who significantly raise their prices after an emergency, such as the Northridge earthquake); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF ABX 36, at 1-2 (June 13, 1994) (reiterating the purpose of Chapter 52X through the author's comments); *An Antidote for the Poison of Gouging; the Law is on the Side of Citizens Against Those Who Would Exploit Disasters*, L.A. TIMES, Feb. 6, 1994, at B28 (mentioning the arrest of an unlicensed contractor for attempting to charge \$1,000 for a \$50 roof repair); Cynthia H. Craft, *Assembly Passes Bill that Targets Price Gouging Following Disaster*, L.A. TIMES, June 14, 1994, at B4 (discussing examples of price inflation which included a \$1.59 pack of batteries sold for \$10, one liter of water for \$12.15, and \$850 for replacement of one foot of pipe); Marc Lacey, *Task Force on the Trail of Post-Quake Price Gougers*, L.A. TIMES, Jan. 28, 1994, at A1 (listing claims of one gallon of orange juice, water, and gas being sold for \$15, \$10, and \$1.60, respectively, in price-gouging complaints received by the Los Angeles County Department of Consumer Affairs against convenience stores, supermarkets, and gas stations); *cf.* Larry Green & Doug Jehl, *Carolina People Display Survival Skill After Storm*, L.A. TIMES, Sept. 24, 1989, at A1 (listing incidents of gouging that occurred after Hurricane Hugo struck North and South Carolina); Patrick Lee, *Turning Away From the Gas Pump*, L.A. TIMES, Oct. 18, 1990, at D1 (reporting anti-price gouging laws enacted in Massachusetts and Connecticut due to increased gas prices after the Iraqi invasion of Kuwait); *Price Gouging Continues in Florida*, THE RECORDER, Sept. 15, 1992, at 4 (discussing price-gouging that took place in the wake of Hurricane Andrew).

15. Denise Gellene, *Some Four 7-Elevens Accused of Price-Gouging Won't Lose Franchises*, L.A. TIMES, Apr. 19, 1994, at D1; *see id.* (discussing problems Southland Corp. had in attempting to terminate franchise agreements due to a lack of evidence to verify gouging allegations and noting that out of 1600 complaints after the Northridge Earthquake filed with Los Angeles city investigators, most accusations went

upon the nature of the declared emergency, some store owners may complain that they might not be able to comply with the law because of possible problems, such as electrical failure, which would prevent the operation of cash registers to disburse change and receipts.¹⁶ Additionally, Chapter 51X and Chapter 52X may be criticized for the fact that they only regulate price-gouging on the part of retailers, while suppliers will still be permitted to increase their costs and profit from the emergency.¹⁷

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unsubstantiated and no charges had been filed against any merchants); *see also* Catania, *supra* note 13, at B3 (quoting Simi Valley Mayor Greg Stratton in his explanation of the reason that the City Council adopted a measure limiting disaster-time prices to 25% above normal, rather than 10% as in surrounding communities, is due to the problems with convicting those accused of violating the lesser percentage); Gellene, *supra*, at D1 (reporting that an accused price-gouger was reluctant to open her damaged store after the earthquake, but claimed she did so to assist local customers in need of supplies); Lacey, *supra* note 14, at A1 (describing various responses given by merchants accused of price-gouging, such as providing signature lists by customers defending the merchant, cash register receipts, and advertisements showing emergency prices); Simon, *supra* note 13, at B3 (suggesting that charging excessive pricing may have been a decision on the part of some merchants to limit customers from purchasing in bulk and allowing others access to necessary products).

16. Gellene, *supra* note 15, at D1; *see id.* (reporting that a store manager was rounding off odd-priced items to the next dollar due to the lack of change and electricity); *see also* Lacey, *supra* note 14, at A1 (noting that due to the many cash registers out of operation after the Northridge Earthquake, substantial price confusion resulted).

17. *See* CAL. PENAL CODE § 396 (enacted by Chapter 52X) (providing that a seller may increase his or her price if the increase is attributed to increased costs by the seller's supplier).