

# California Strengthens Penal Code Section 396, Codifies Price Gouging Executive Order

**Minding Your Business Blog** on **October 8, 2020**

Since the beginning of the pandemic, many governors have issued executive orders targeted at combating price gouging. However, one California state senator, Senator Thomas Umberg, proposed going a step further. In April 2020, Senator Umberg introduced [Senate Bill 1196](#), which would codify many of the provisions in California Governor Gavin Newsom's [Executive Order N-44-20](#). On September 30, 2020, Governor Newsom signed the bill into law. In connection with the signing, Senator Umberg stated that "[t]his decisive action ensures that fewer of our neighbors will be victims of price gouging."

California Penal Code Section 396 prohibits price gouging during a declared state of emergency. Specifically, Section 396 states that "it is unlawful for a person, contractor, business, or other entity to sell or offer to sell . . . [a covered good] for a price of more than 10 percent greater than the price charged by that person for those goods or services immediately prior to the proclamation or declaration of emergency." Section 396, however does not address situations where a seller did not sell a product prior to the declaration of emergency. Executive Order N-44-20 closes this loophole. The Executive Orders provides:

If a person or other entity (including, but not limited to, any business enterprise of any kind) did not offer an item for sale on February 4, 2020 ... that person or entity shall not- from April 4, 2020 until September 4, 2020 ... offer to sell that item for an unconscionably excessive price. [A] price is unconscionably excessive if that price is more than 50 percent greater than whichever of the following applies: a) The amount that the person or entity paid for the item; or b) If the person or entity did not purchase the item, the total cost, to the person or entity, of producing and selling the item.

On September 3, 2020, Governor Newsom [extended](#) Executive Order N-44-20 through March 4, 2021.

Similar to Executive Order N-44-20, Senate Bill 1196 amends Section 396 to address sellers that did not offer the product at issue prior to a declared state of emergency. The bill prohibits a seller that did not sell the product prior to the declared state of emergency from charging a price that is 50% greater than the seller's existing costs. The bill also authorizes the Governor or Legislature to extend the duration of price gouging provisions for periods greater than 30 days. According to San Diego District Attorney Summer Stephan, "[t]his law will close a troubling loophole in California's price gouging law, and ensure that all sellers — brick-and-mortar stores or online business, previous sellers or new market entrants — are prohibited from preying on our state's consumers during a declared emergency like the COVID-19 pandemic."

As the pandemic drags on, and many states continue to extend their pricing restrictions put in place earlier this year, other states may take similar actions to codify executive orders to strengthen existing (or non-existing) price gouging laws. For more information on state price gouging laws and executive orders, view our [interactive price gouging map](#).

\* \* \*

Proskauer's cross-disciplinary, cross-jurisdictional Coronavirus Response Team is focused on supporting and addressing client concerns. Visit our [Coronavirus Resource Center](#) for guidance on risk management

[View Original](#)

#### [Related Professionals](#)

---

- **Christopher E. Ondeck**  
Partner
- **John R. Ingrassia**  
Partner
- **Kelly Landers Hawthorne**  
Associate