

BILL ANALYSIS

Senate Research Center
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H.B. 1152
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State Affairs
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

After Hurricane Harvey in August 2017, Texans across the state, especially in localities adjacent to the affected areas, saw prices of goods such as gasoline and water increase dramatically. Although price gouging is considered a civil crime under the Texas Deceptive Trade Practices-Consumer Protection Act, there are no safeguards in place to prevent business from selling goods at exorbitant prices during times of emergency; further, there is no framework in place to provide immediate recourse to parties affected by criminal pricing practices. Price gouging is only prosecuted if a report is made to the Texas attorney general and sufficient evidence is shown that the prices were exorbitant or excessive, otherwise the act goes unreprimanded.

Currently, 33 other states regulate price gouging, 11 of which utilize a percentage limit to define price gouging. States that use the percentage limit allow for prices of goods to increase 10–30 percent (depending on state statute) of the good's price, prior to the declaration of emergency. Under Section 17.46(b)(27)(A, B), Business & Commerce Code, Texas defines price gouging as selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity. In an effort to protect all Texans from price gouging, this bill would amend Section 17.46(b)(27)(A, B), Business & Commerce Code to define exorbitant or excessive as a price that exceeds by 15 percent or more the price at which the goods or services were sold or offered for sale by the merchant or wholesaler in the usual course of business immediately prior to or during a declaration of a state or local emergency. Additionally, this percentage limit would apply to counties directly adjacent to the effected county if a disaster proclamation is issued by the governor or this percentage limit would apply to all counties if a presidential disaster proclamation is issued. The percentage limit would last 30 days past the expiration of the proclamation.

Further, this bill would amend Section 17.46(b)(27)(A, B), Business & Commerce Code, to include building materials in the list of protected items. Building materials is to be defined as lumber, construction tools, windows, and anything else used in the building or rebuilding of property.

Additionally, H.B. 1152 seeks to provide this additional enforcement by authorizing district and county attorneys to act under the Deceptive Trade Practices-Consumer Protection Act with respect to these incidents.

H.B. 1152 amends current law relating to the deceptive trade practice of charging exorbitant or excessive prices for necessities during a declared disaster.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 17.45, Business & Commerce Code, by adding Subdivision (17) to define "building materials" for purposes of this section.

SECTION 2. Reenacts Section 17.46(b), Business & Commerce Code, as amended by Chapters 324 (S.B. 1488), 858 (H.B. 2552), and 967 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017, and amends it, as follows:

(b) Provides that the term "false, misleading, or deceptive acts or practices," except as provided in Subsection (d) (relating to a limitation on the meaning of the term with respect to a certain civil action) of this section (Deceptive Trade Practices Unlawful), includes, but is not limited to, the following acts:

(1)–(26) makes no changes to these subdivisions;

(27) subject to Section 17.4625, taking advantage of a disaster declared by the governor under Chapter 418 (Emergency Management), Government Code, or by the president of the United States by:

(A) selling or leasing fuel, food, medicine, lodging, building materials, construction tools, or another necessity at an exorbitant or excessive price, rather than selling or leasing fuel, food, medicine, or another necessity at an exorbitant or excessive price; or

(B) demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, lodging, building materials, construction tools, or another necessity, rather than demanding an exorbitant or excessive price in connection with the sale or lease of fuel, food, medicine, or another necessity;

(28)–(31) makes no changes to these subdivisions;

(32)–(33) makes nonsubstantive changes to these subdivisions; or

(34) redesignates existing text of Subdivision (33), as amended by Chapter 967 (S.B. 2065), Acts of the 85th Legislature, Regular Session, 2017, as Subdivision (34).

SECTION 3. Amends Subchapter E, Chapter 17, Business & Commerce Code, by adding Section 17.4625, as follows:

Sec. 17.4625. PRICE GOUGING DURING DECLARED DISASTER. (a) Defines "designated disaster period" for purposes of this section.

(b) Provides that, notwithstanding any other provision of this subchapter (Deceptive Trade Practices and Consumer Protection), Section 17.46(b)(27) applies only to an act described by that subdivision that occurs during a designated disaster period in this state.

SECTION 4. Provides that, to the extent of any conflict, this Act prevails over another Act of the 86th Legislature, Regular Session, 2019, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 5. Makes application of this Act prospective.

SECTION 6. Effective date: September 1, 2019.