

## **BILL ANALYSIS**

Senate Research Center  
85R7047 CLG-F

S.B. 2064  
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Business & Commerce  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Freestanding emergency rooms (FSERs) are quickly expanding across the state. In 2010, there were about 20 FSERs in Texas. Six years later, more than 200 can be found in Texas. As these FSERs have expanded their footprint in Texas, the complaints from constituents about the charges of these facilities have also increased. Many consumers face large bills from freestanding emergency rooms. Certain facilities must be held accountable.

In current Texas law, during declared emergencies and disasters, such as large storms or flooding, some merchants have taken unfair advantage of consumers by greatly increasing prices for essential consumer goods and services. Texas has granted the Attorney General Consumer Protection Division (division) with authority to stop exorbitant or excessive pricing, commonly called price gouging, in those declared emergencies.

In personal medical emergencies the public interest requires that unconscionable prices for emergency care provided in FSERs be prohibited. Unconscionability means an action is shocking, extremely unjust, or overwhelmingly one-sided. Texans need protection from unconscionable prices when they are faced with a personal medical emergency, cannot shop for care, and are vulnerable to questionable FSER business practices.

S.B. 2064 grants the division authority to protect Texans from financially devastating FSER charges when they seek help in a personal emergency.

S.B. 2064 adds language to the Business and Commerce Code declaring free standing emergency room unconscionable prices for emergency care unlawful in Texas. This legislation grants authority to the division to take action under current provisions in the code to stop an FSER from engaging in unconscionable pricing, only when the price is 150 percent over the average hospital charge for a similar service.

The division may request a court to issue a temporary restraining order or permanent injunction to stop FSERs that impose unconscionable prices. Civil penalties may be imposed by courts. Also, a court may impose up to \$250,000 in civil penalties when a free standing emergency room charges an elderly Texan an unconscionable price for emergency care. The division may also request attorney fees and expenses incurred in obtaining remedies.

The legislation expressly states it does not establish a private cause of action.

As proposed, S.B. 2064 amends current law relating to unconscionable prices charged by certain health care facilities for medical care.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas attorney general in SECTION 1 (Section 17.463, Business and Commerce Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter E, Chapter 17, Business and Commerce Code, by adding Section 17.463, as follows:

Sec. 17.463. UNCONSCIONABLE PRICE FOR CARE AT EMERGENCY FACILITY.  
(a) Defines “emergency care” and “emergency facility.”

(b) Provides that, for purposes of Section 17.46(a) (relating to providing that false, misleading, or deceptive acts or practices in certain conduct are declared unlawful and are subject to certain action), the term “false, misleading, or deceptive acts or practices” includes an emergency facility taking advantage of an individual’s medical condition by providing emergency care at an unconscionable price or demanding or charging an unconscionable price for or in connection with emergency care or other care at the facility.

(c) Prohibits the consumer protection division (division) from bringing an action under Section 17.47 (Restraining Orders) for an act or practice described by Subsection (b) if the price alleged to be unconscionable is less than 150 percent of the average charge for the same or substantially similar care provided to other individuals by a hospital emergency room according to data collected by the Department of State Health Services under Chapter 108 (Health Care Data Collection), Health and Safety Code, and made available to the division, except as provided by Subsection (d).

(d) Authorizes the Texas attorney general (attorney general), if the attorney general determines that the division is unable to obtain the charge data described by Subsection (c), to adopt rules designating another source of hospital charge data for use by the division in establishing the average charge for emergency or other care provided by hospital emergency rooms for purposes of Subsection (c).

(e) Authorizes the division, in an action brought under Section 17.47 to enforce this section, to request, and the trier of fact to award, the recovery of reasonable attorney’s fees and court costs and the reasonable expenses incurred by the division in obtaining any remedy available under Section 17.47, including the cost of investigation, witness fees, and deposition expenses.

(f) Provides that this section does not create a private cause of action for a false, misleading, or deceptive act or practice described by Subsection (b).

SECTION 2. Effective date: September 1, 2017.