AN ACT

To protect consumers from price-gouging of gasoline and other fuels, and for other purposes.

1. Be it enacted by the Senate and House of Representa-
2. tives of the United States of America in Congress assembled,
SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Price Gouging Prevention Act”.

SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE AND OTHER PETROLEUM DISTILLATES DURING EMERGENCIES.

(a) UNCONSCIONABLE PRICING.—

(1) IN GENERAL.—It shall be unlawful for any person to sell, at wholesale or at retail in an area and during a period of an energy emergency, gasoline or any other petroleum distillate covered by a proclamation issued under paragraph (2) at a price that—

(A) is unconscionably excessive; and

(B) indicates the seller is taking unfair advantage of the circumstances related to an energy emergency to increase prices unreasonably.

(2) ENERGY EMERGENCY PROCLAMATION.—

(A) IN GENERAL.—The President may issue an energy emergency proclamation for any area within the jurisdiction of the United States, during which the prohibition in paragraph (1) shall apply. The proclamation shall state the geographic area covered, the gasoline or other petroleum distillate covered, and the
time period that such proclamation shall be in effect.

(B) DURATION.—The proclamation—

(i) may not apply for a period of more than 30 consecutive days, but may be renewed for such consecutive periods, each not to exceed 30 days, as the President determines appropriate; and

(ii) may include a period of time not to exceed 1 week preceding a reasonably foreseeable emergency.

(3) FACTORS CONSIDERED.—In determining whether a person has violated paragraph (1), there shall be taken into account, among other factors—

(A) whether the amount charged by such person for the applicable gasoline or other petroleum distillate at a particular location in an area covered by a proclamation issued under paragraph (2) during the period such proclamation is in effect—

(i) grossly exceeds the average price at which the applicable gasoline or other petroleum distillate was offered for sale by that person during the 30 days prior to such proclamation;
(ii) grossly exceeds the price at which the same or similar gasoline or other petroleum distillate was readily obtainable in the same area from other competing sellers during the same period;

(iii) reasonably reflected additional costs, not within the control of that person, that were paid, incurred, or reasonably anticipated by that person, or reflected additional risks taken by that person to produce, distribute, obtain, or sell such product under the circumstances; and

(iv) was substantially attributable to local, regional, national, or international market conditions; and

(B) whether the quantity of gasoline or other petroleum distillate the person produced, distributed, or sold in an area covered by a proclamation issued under paragraph (2) during a 30-day period following the issuance of such proclamation increased over the quantity that that person produced, distributed, or sold during the 30 days prior to such proclamation, taking into account usual seasonal demand variations.
(b) False Pricing Information.—It shall be unlawful for any person to report to a Federal agency information related to the wholesale price of gasoline or other petroleum distillates with actual knowledge or knowledge fairly implied on the basis of objective circumstances that such information is false or misleading.

(c) Definitions.—As used in this section—

(1) the term “wholesale”, with respect to sales of gasoline or other petroleum distillates, means either truckload or smaller sales of gasoline or petroleum distillates where title transfers at a product terminal or a refinery, and dealer tank wagon sales of gasoline or petroleum distillates priced on a delivered basis to retail outlets; and

(2) the term “retail”, with respect to sales of gasoline or other petroleum distillates, includes all sales to end users such as motorists as well as all direct sales to other end users such as agriculture, industry, residential, and commercial consumers.

(d) Construction.—As described in this section, a sale of gasoline or other petroleum distillate does not include a transaction on a futures market.
SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.

(a) ENFORCEMENT BY FTC.—A violation of section 2 shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission shall enforce this Act in the same manner, by the same means, and with the same jurisdiction as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act. In enforcing section 2(a) of this Act, the Commission shall give priority to enforcement actions concerning companies with total United States wholesale or retail sales of gasoline and other petroleum distillates in excess of $500,000,000 per year.

(b) CIVIL PENALTIES.—

(1) IN GENERAL.—Notwithstanding the penalties set forth under the Federal Trade Commission Act, any person who violates this Act with actual knowledge or knowledge fairly implied on the basis of objective circumstances shall be subject to the following penalties:

(A) PRICE GOUGING; UNJUST PROFITS.—

Any person who violates section 2(a) shall be subject to—
(i) a fine of not more than 3 times the amount of profits gained by such person through such violation; or

(ii) a fine of not more than $3,000,000.

(B) FALSE INFORMATION.—Any person who violates section 2(b) shall be subject to a civil penalty of not more than $1,000,000.

(2) METHOD.—The penalties provided by paragraph (1) shall be obtained in the same manner as civil penalties obtained under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) MULTIPLE OFFENSES; MITIGATING FACTORS.—In assessing the penalty provided by subsection (a)—

(A) each day of a continuing violation shall be considered a separate violation; and

(B) the court shall take into consideration, among other factors, the seriousness of the violation and the efforts of the person committing the violation to remedy the harm caused by the violation in a timely manner.
SEC. 4. CRIMINAL PENALTIES.

(a) In General.—In addition to any penalty applicable under section 3, any person who violates section 2 shall be fined under title 18, United States Code—

(1) if a corporation, not to exceed $150,000,000; and

(2) if an individual not to exceed $2,000,000, or imprisoned for not more than 10 years, or both.

(b) Enforcement.—The criminal penalty provided by subsection (a) may be imposed only pursuant to a criminal action brought by the Attorney General or other officer of the Department of Justice.

SEC. 5. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTORNEYS GENERAL.

(a) In General.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the provisions of section 2(a) of this Act, or to impose the civil penalties authorized by section 3(b)(1)(B), whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a violation of this Act or a regulation under this Act, involving a retail sale.

(b) Notice.—The State shall serve written notice to the Federal Trade Commission of any civil action under
subsection (a) prior to initiating such civil action. The notice shall include a copy of the complaint to be filed to initiate such civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting such civil action.

(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Federal Trade Commission may intervene in such civil action and upon intervening—

(1) be heard on all matters arising in such civil action; and

(2) file petitions for appeal of a decision in such civil action.

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the attorney general by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

(e) VENUE; SERVICE OF PROCESS.—In a civil action brought under subsection (a)—
(1) the venue shall be a judicial district in which—

(A) the defendant operates;

(B) the defendant was authorized to do business; or

(C) the defendant in the civil action is found;

(2) process may be served without regard to the territorial limits of the district or of the State in which the civil action is instituted; and

(3) a person who participated with the defendant in an alleged violation that is being litigated in the civil action may be joined in the civil action without regard to the residence of the person.

(f) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Federal Trade Commission has instituted a civil action or an administrative action for violation of this Act, no State attorney general, or official or agency of a State, may bring an action under this subsection during the pendency of that action against any defendant named in the complaint of the Federal Trade Commission or the other agency for any violation of this Act alleged in the complaint.

(g) ENFORCEMENT OF STATE LAW.—Nothing contained in this section shall prohibit an authorized State
official from proceeding in State court to enforce a civil
or criminal statute of such State.

SEC. 6. LOW INCOME ENERGY ASSISTANCE.

Amounts collected in fines and penalties under sec-
tion 3 of this Act shall be deposited in a separate fund
in the treasury to be known as the Consumer Relief Trust
Fund. To the extent provided for in advance in appropra-
tions Acts, the fund shall be used to provide assistance
under the Low Income Home Energy Assistance Program
administered by the Secretary of Health and Human Serv-
ices.

SEC. 7. EFFECT ON OTHER LAWS.

(a) Other Authority of Federal Trade Com-
mission.—Nothing in this Act shall be construed to limit
or affect in any way the Federal Trade Commission’s au-
thority to bring enforcement actions or take any other
measure under the Federal Trade Commission Act (15
U.S.C. 41 et seq.) or any other provision of law.

(b) State Law.—Nothing in this Act preempts any
State law.


Attest: LORRAINE C. MILLER,
Clerk.