To protect the welfare of consumers by prohibiting price gouging by mer-
chants with respect to gasoline and other fuels during certain abnormal
market disruptions.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2007

Mr. Fossella (for himself, Mr. Hayes, Mr. Moran of Kansas, and Mr.
Issa) introduced the following bill; which was referred to the Committee
on Energy and Commerce, and in addition to the Committee on Edu-
cation and Labor, for a period to be subsequently determined by the
Speaker, in each case for consideration of such provisions as fall within
the jurisdiction of the committee concerned

A BILL

To protect the welfare of consumers by prohibiting price
gouging by merchants with respect to gasoline and other
fuels during certain abnormal market disruptions.

Be it enacted by the Senate and House of Representa-
tives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the “Federal Energy Price
Protection Act”.

SEC. 2. PROTECTION OF CONSUMERS AGAINST PRICE GOUGING.

It shall be unlawful for any supplier to increase the price at which that supplier sells, or offers to sell, crude oil, gasoline, or petroleum distillates in an area covered by a Presidential proclamation issued under section 4(a)(1) by an unconscionable amount during the period beginning on the date the proclamation is issued and ending on the date specified in the proclamation.

SEC. 3. JUSTIFIABLE PRICE INCREASES.

(a) In General.—The prohibition in section 2 does not apply to the extent that the increase in the price of the crude oil, gasoline, or petroleum distillate is substantially attributable to—

(1) an increase in the wholesale cost of crude oil, gasoline, or petroleum distillates to a supplier;

(2) an increase in the replacement costs for crude oil, gasoline, or petroleum distillate sold;

(3) an increase in operational costs; or

(4) local, regional, national, or international market conditions.

(b) Other Mitigating Factors.—In determining whether a violation of section 2 has occurred, there also shall be taken into account, among other factors, the price that would reasonably equate supply and demand in a competitive and freely functioning market and whether the
price at which the crude oil, gasoline, or petroleum dis-
tillate was sold reasonably reflects other additional costs
or risks, not within the control of the seller, that were
paid or incurred by the seller.

SEC. 4. EMERGENCY PROCLAMATIONS AND ORDERS.

(a) PRESIDENTIAL EMERGENCY PROCLAMATIONS.—
The President may issue an emergency proclamation when
an abnormal market disruption has occurred or is reason-
ably expected to occur.

(b) SCOPE AND DURATION.—

(1) IN GENERAL.—The emergency proclamation
or order shall specify with particularity—

(A) the period for which the proclamation
or order applies;

(B) the event, circumstance, or condition
that is the reason such a proclamation or order
is determined to be necessary; and

(C) the geographic area or region to which
it applies.

(2) LIMITATIONS.—An emergency proclamation
or an order under subsection (a)—

(A) may not apply for a period of more
than 30 consecutive days (renewable for a con-
secutive period of not more than 30 days); and
(B) may apply to a period of not more than 7 days preceding the occurrence of an event, circumstance, or condition that is the reason such a proclamation or order is necessary.

SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Section 2 of this Act 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)).

(b) ACTIONS BY THE COMMISSION.—The Commission shall prevent any supplier from violating this Act in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this Act. Any entity that violates any provision of this Act is subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act in the same manner, by the same means, and with the same jurisdiction, power, and duties as though all applicable terms and provisions of the Federal Trade Commission Act were incorporated into and made a part of this Act.
(c) Regulations.—Not later than 180 days after the date of enactment of this Act, the Federal Trade Commission shall prescribe such regulations as may be necessary or appropriate to implement this Act.

SEC. 6. PENALTIES.

(a) Civil Penalty.—

(1) In general.—In addition to any penalty applicable under the Federal Trade Commission Act any supplier who violates this Act is punishable by a civil penalty of—

(A) not more than $500,000, in the case of an independent small business marketer of gasoline (within the meaning of section 324(c) of the Clean Air Act (42 U.S.C. 7625(c)); and

(B) not more than $5,000,000 in the case of any other supplier.

(2) Method of assessment.—The penalty provided by paragraph (1) shall be assessed in the same manner as civil penalties imposed 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) the Commission shall take into consideration the seriousness of the violation and the efforts of the supplier committing the violation to remedy the harm caused by the violation in a timely manner; and

(B) each determination that the price at which crude oil, gasoline, or other petroleum distillate has been sold or offered for sale in an area and during a period covered by a proclamation or order issued under section 4 was increased by an unconscionable amount shall be treated as a single violation.

(b) CRIMINAL PENALTY.—

(1) IN GENERAL.—In addition to any penalty applicable under the Federal Trade Commission Act, the violation of this Act is punishable by a fine of not more than $1,000,000, imprisonment for not more than 2 years, or both.

(2) ENFORCEMENT.—The criminal penalty provided by paragraph (1) may be imposed only pursuant to a criminal action brought by the Attorney General or other officer of the Department of Justice.
SEC. 7. LOW INCOME ENERGY ASSISTANCE.

Amounts collected in fines and penalties under section 6 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 appropriations Acts fund shall be used to provide assistance under the Low Income Home Energy Assistance Program administered by the Secretary of Health and Human Services.

SEC. 8. DEFINITIONS.

In this Act:

(1) ABNORMAL MARKET DISRUPTION.—The term “abnormal market disruption” means there is a reasonable likelihood that, in the absence of a proclamation under section 4(a), there will be an increase in the average price of crude oil, gasoline, or petroleum distillates as a result of a change in the market, whether actual or imminently threatened, resulting from extreme weather, a natural disaster, strike, civil disorder, war, military action, a national or local emergency, or other similar cause, that adversely affects the availability or delivery of crude oil, gasoline, or petroleum distillates.

(2) SUPPLIER.—The term “supplier” means any person engaged in the trade or business of sell-
ing, reselling, at retail or wholesale, or distributing crude oil, gasoline, or petroleum distillates.

(3) REPLACEMENT COSTS.—The term “replacement costs” means, with respect to a supplier to whom sections 2 and 3 apply, costs to that supplier determined by referencing either—

(A) the actual or reasonably anticipated replacement cost as evidenced by bills of sale, invoices, or other appropriate documentation; or

(B) the cost for crude oil, gasoline, or other petroleum distillates in the relevant market at the time of the sale or offer for sale that is the subject of a violation of section 2, plus actual storage, transportation, and delivery costs.

(4) UNCONSCIONABLE AMOUNT.—The term “unconscionable amount” means, with respect to any supplier to whom section 2 applies, a significant increase in the price at which crude oil, gasoline, or petroleum distillates are sold or offered for sale by that supplier that increases the price, for the same grade of crude oil, gasoline, or petroleum distillate, to an amount that—

(A) substantially exceeds the average price at which crude oil, gasoline, or petroleum dis-
tillates were sold or offered for sale by that sup-
plier during the 30-day period immediately pre-
ceding the sale or offer;

(B) substantially exceeds the average price
at which crude oil, gasoline, or petroleum dis-
tillates were sold or offered for sale by that per-
son’s competitors in the area and during the pe-
riod for which the emergency proclamation ap-
plies; and

(C) cannot be justified by taking into ac-
count the factors described in section 3.

SEC. 9. EFFECTIVE DATE.

This Act shall take effect on the date on which a final
rule issued by the Federal Trade Commission under sec-
tion 5(c) is published in the Federal Register.