To protect the welfare of consumers by prohibiting price gouging with respect
to gasoline and petroleum distillates during natural disasters and abnor-
mal market disruptions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2007

Ms. CANTWELL (for herself, Mr. SMITH, Mr. KERRY, Mrs. BOXER, Mr. NEL-
SON of Florida, Mrs. MCCASKILL, Mr. ROCKEFELLER, Mrs. MURRAY,
Mrs. FEINSTEIN, Mr. BIDEN, Mrs. STABENOW, Mr. WYDEN, Mr. REED,
Mr. DORGAN, Mr. DURBIN, and Mr. HARKIN) introduced the following
bill; which was read twice and referred to the Committee on Commerce,
Science, and Transportation

A BILL

To protect the welfare of consumers by prohibiting price
gouging with respect to gasoline and petroleum distillates
during natural disasters and abnormal market disruptions, and for other purposes.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the

“Petroleum Consumer Price Gouging Protection Act”. 
(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Prohibition on price gouging during energy emergencies.
Sec. 4. Prohibition on market manipulation.
Sec. 5. Prohibition on false information.
Sec. 6. Presidential declaration of energy emergency.
Sec. 7. Enforcement by the Federal Trade Commission.
Sec. 8. Enforcement by State Attorneys General.
Sec. 9. Penalties.
Sec. 10. Effect on other laws.

SEC. 2. DEFINITIONS.

In this Act:

(1) AFFECTED AREA.—The term “affected area” means an area covered by a Presidential declaration of energy emergency.

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

(3) PRICE GOUGING.—The term “price gouging” means the charging of an unconscionably excessive price by a supplier in an affected area.

(4) UNCONSCIONABLY EXCESSIVE PRICE.—The term “unconscionably excessive price” means a price charged in an affected area for crude oil, gasoline, or petroleum distillates that—

(A)(i) represents a gross disparity between the price at which it was offered for sale in the
usual course of the supplier’s business immediately prior to the President’s declaration of an energy emergency;

(ii) grossly exceeds the price at which the same or similar crude oil, gasoline, or petroleum distillate was readily obtainable by other purchasers in the affected area; or

(iii) represents an exercise of unfair leverage or unconscionable means on the part of the supplier, during a period of declared energy emergency; and

(B) is not attributable to increased wholesale or operational costs outside the control of the supplier, incurred in connection with the sale of crude oil, gasoline, or petroleum distillates.

(5) COMMISSION.—The term “Commission” means the Federal Trade Commission.

SEC. 3. PROHIBITION ON PRICE GOUGING DURING ENERGY EMERGENCIES.

(a) IN GENERAL.—During any energy emergency declared by the President under section 6 of this Act, it is unlawful for any supplier to sell, or offer to sell, crude oil, gasoline, or petroleum distillates in, or for use in, the
area to which that declaration applies at an unconscionably excessive price.

(b) **FACTORS CONSIDERED.**—In determining whether a violation of subsection (a) has occurred, there shall be taken into account, among other factors, the price that would reasonably equate supply and demand in a competitive and freely functioning market.

**SEC. 4. PROHIBITION ON MARKET MANIPULATION.**

It is unlawful for any person, directly or indirectly, to use or employ, in connection with the purchase or sale of crude oil, gasoline, or petroleum distillates at wholesale, any manipulative or deceptive device or contrivance, in contravention of such rules and regulations as the Commission may prescribe as necessary or appropriate in the public interest or for the protection of United States citizens.

**SEC. 5. PROHIBITION ON FALSE INFORMATION.**

(a) **IN GENERAL.**—It is unlawful for any person to report information related to the wholesale price of crude oil, gasoline, or petroleum distillates to the Commission if—

(1) that person knew, or reasonably should have known, the information to be false or misleading;

(2) the information was required by law to be reported; and
(3) the person intended the false or misleading data to affect data compiled by the Commission for statistical or analytical purposes with respect to the market for crude oil, gasoline, or petroleum distillates.

SEC. 6. PRESIDENTIAL DECLARATION OF ENERGY EMERGENCY.

(a) In General.—If the President finds that the health, safety, welfare, or economic well-being of the citizens of the United States is at risk because of a shortage or imminent shortage of adequate supplies of crude oil, gasoline, or petroleum distillates due to a disruption in the national distribution system for crude oil, gasoline, or petroleum distillates (including such a shortage related to a major disaster (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))), or significant pricing anomalies in national energy markets for crude oil, gasoline, or petroleum distillates, the President may declare that a Federal energy emergency exists.

(b) Scope and Duration.—The emergency declaration shall specify—

(1) the period, not to exceed 30 days, for which the declaration applies;
(2) the circumstance or condition necessitating
the declaration; and
(3) the area or region to which it applies,
which, for the 48 contiguous states may not be lim-
ited to a single State.

(c) EXTENSIONS.—The President may—

(1) extend a declaration under subsection (a)
for a period of not more than 30 days; and

(2) extend such a declaration more than once.

SEC. 7. ENFORCEMENT BY THE FEDERAL TRADE COMMISS-
SION.

(a) ENFORCEMENT.—This Act shall be enforced by
the Federal Trade Commission. In enforcing section 3 of
this Act, the Commission shall give priority to enforcement
actions concerning companies with total United States
wholesale or retail sales of crude oil, gasoline, and petro-
leum distillates in excess of $500,000,000 per year but
shall not exclude enforcement actions against companies
with total United States wholesale sales of $500,000,000
or less per year.

(b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
PRACTICE.—The violation of any provision of this Act
shall be treated as an unfair or deceptive act or practice
proscribed under a rule issued under section 18(a)(1)(B)

(c) COMMISSION ACTIONS.—Following the declaration of an energy emergency by the President under section 6 of this Act, the Commission shall—

(1) establish within the Commission—

(A) a toll-free hotline that a consumer may call to report an incident of price gouging in the affected area; and

(B) a program to develop and distribute to the public informational materials to assist residents of the affected area in detecting and avoiding price gouging;

(2) consult with the Attorney General, the United States Attorney for the districts in which a disaster occurred (if the declaration is related to a major disaster), and State and local law enforcement officials to determine whether any supplier in the affected area is charging or has charged an unconscionably excessive price for crude oil, gasoline, or petroleum distillates in the affected area; and

(3) conduct an investigation to determine whether any supplier in the affected area has violated section 3 of this Act, and upon such finding,
take any action the Commission determines to be appropriate to remedy the violation.

SEC. 8. ENFORCEMENT 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 3 of this Act, or to impose the civil penalties authorized by section 9 for violations of section 3, 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 supplier engaged in the sale or resale, at retail or wholesale, or distribution of crude oil, gasoline, or petroleum distillates in violation of section 3 of this Act.

(b) Notice.—The State shall serve written notice to the Commission of any civil action under subsection (a) prior to initiating the action. The notice shall include a copy of the complaint to be filed to initiate the 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 the civil action.

(c) Authority to Intervene.—Upon receiving the notice required by subsection (b), the Commission may intervene in the civil action and, upon intervening—
(1) may be heard on all matters arising in such civil action; and

(2) may 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) where 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 Commission has instituted a civil action or an administrative action for violation of this Act, a State attorney general, or official or agency of a State, may not bring an action under this section during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this Act alleged in the Commission’s civil or administrative action.

(g) No Preemption.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a civil or criminal statute of that State.

Sec. 9. Penalties.

(a) Civil Penalty.—

(1) In general.—In addition to any penalty applicable under the Federal Trade Commission Act, any supplier—

(A) that violates section 4 or section 5 of this Act is punishable by a civil penalty of not more than $1,000,000; and
(B) that violates section 3 of this Act is punishable by a civil penalty of—

   (i) 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

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

(2) METHOD OF ASSESSMENT.—The penalties 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) each day of a continuing violation shall be considered a separate violation; and

   (B) the Commission shall take into consideration 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.
1 (b) CRIMINAL PENALTY.—Violation of section 3 of
2 this Act is punishable by a fine of not more than
3 $5,000,000, imprisonment for not more than 5 years, or
4 both.

5 SEC. 10. EFFECT ON OTHER LAWS.
6
7 (a) OTHER AUTHORITY OF THE COMMISSION.—
8 Nothing in this Act shall be construed to limit or affect
9 in any way the Commission’s authority to bring enforce-
10 ment actions or take any other measure under the Federal
11 Trade Commission Act (15 U.S.C. 41 et seq.) or any other
12 provision of law.
13
14 (b) STATE LAW.—Nothing in this Act preempts any
15 State law.