To prohibit price gouging relating to gasoline and diesel fuels in areas affected by major disasters.

IN THE SENATE OF THE UNITED STATES

MAY 24, 2007
Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit price gouging relating to gasoline and diesel fuels in areas affected by major disasters.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Price Gouging Act of 2007”.

SEC. 2. FUEL PRICE GOUGING PROHIBITION FOLLOWING MAJOR DISASTERS.

(a) IN GENERAL.—The Federal Trade Commission Act (15 U.S.C. 41 et seq.) is amended by inserting after section 24 (15 U.S.C. 57b–5) the following:
“SEC. 24A. PROTECTION FROM FUEL PRICE GOUGING FOLLOWING MAJOR DISASTERS.

“(a) DEFINITIONS.—In this section:

“(1) AFFECTED AREA.—The term ‘affected area’ means an area affected by a major disaster declared by the President under Federal law in effect on the date of the enactment of this section.

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

“(3) SUPPLIER.—The term ‘supplier’ means any person that sells gasoline or diesel fuel for resale or ultimate consumption.

“(4) UNCONSCIONABLY EXCESSIVE PRICE.—The term ‘unconscionably excessive price’ means a price charged in an affected area for gasoline or diesel fuel that—

“(A) represents a gross disparity, as determined by the Commission in accordance with subsection (e), between the price charged for gasoline or diesel fuel and the average price of gasoline or diesel fuel charged by suppliers in the affected area during the 30-day period ending on the date the President declares the existence of a major disaster; and
“(B) is not attributable to increased whole-
sale or operational costs incurred by the sup-
plier in connection with the sale of gasoline or
diesel fuel.

“(b) Determination of the Commission.—As
soon as practicable after the President declares a major
disaster, the Commission shall—

“(1) consult with the Attorney General, the
United States Attorney for the district in which the
disaster occurred, and State and local law enforce-
ment officials to determine whether any supplier in
the affected area is charging or has charged an un-
conscionably excessive price for gasoline or diesel
fuel provided in the affected area; and

“(2) establish within the Commission—

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

“(B) a program to develop and distribute
to the public informational materials in English
and Spanish to consumers in the affected area
on detecting and avoiding price gouging.

“(c) Price Gouging Involving Disaster Vic-
tims.—
“(1) OFFENSE.—During the 180-day period beginning on the date on which a major disaster is declared by the President, it shall be unlawful for a supplier to sell, or offer to sell, gasoline or diesel fuel in an affected area at an unconscionably excessive price.

“(2) ACTION BY COMMISSION.—

“(A) IN GENERAL.—During the period described in paragraph (1), the Commission shall conduct investigations of complaints by consumers of price gouging by suppliers in an affected area.

“(B) POSITIVE DETERMINATION.—If the Commission determines under subparagraph (A) that a supplier is in violation of paragraph (1), the Commission shall take any action the Commission determines to be appropriate to remedy the violation.

“(3) CIVIL PENALTIES.—A supplier who commits a violation described in paragraph (1) may, in a civil action brought in a court of competent jurisdiction, be subject to—

“(A) a civil penalty of not more than $500,000;
“(B) an order to pay special and punitive damages;

“(C) an order to pay reasonable attorney’s fees;

“(D) an order to pay costs of litigation relating to the offense;

“(E) an order for disgorgement of profits earned as a result of a violation of paragraph (1); and

“(F) any other relief determined by the court to be appropriate.

“(4) CRIMINAL PENALTY.—A supplier that knowingly commits a violation described in paragraph (1) shall be imprisoned not more than 1 year.

“(5) ACTION BY VICTIMS.—A person, Federal agency, State, or local government that suffers loss or damage as a result of a violation of paragraph (1) may bring a civil action against a supplier in any court of competent jurisdiction for disgorgement, special or punitive damages, injunctive relief, reasonable attorney’s fees, costs of the litigation, and any other appropriate legal or equitable relief.

“(6) ACTION BY STATE ATTORNEYS GENERAL.—An attorney general of a State, or other authorized State official, may bring a civil action in the
name of the State, on behalf of persons residing in
the State, in any court of competent jurisdiction for
disgorgement, special or punitive damages, reason-
able attorney’s fees, costs of litigation, and any other
appropriate legal or equitable relief.

“(7) NO PREEMPTION.—Nothing in this section
preempts any State law.

“(d) REPORT.—Not later than 1 year after the date
of the enactment of this section, and annually thereafter,
the Commission shall submit to the Committee on Com-
merce, Science, and Transportation of the Senate and the
Committee on Energy and Commerce of the House of
Representatives a report describing the following:

“(1) The number of price gouging complaints
received by the Commission for each major disaster
declared by the President during the preceding year.

“(2) The number of price gouging investiga-
tions of the Commission initiated, in progress, and
completed as of the date on which the report is pre-
pared.

“(3) The number of enforcement actions of the
Commission initiated, in progress, and completed as
of the date on which the report is prepared.
“(4) An evaluation of the effectiveness of the toll-free hotline and program established under subsection (b)(2).

“(5) Recommendations for any additional action with respect to the implementation or effectiveness of this section.

“(e) DEFINITION OF GROSS DISPARITY.—Not later than 180 days after the date of the enactment of this subsection, the Commission shall promulgate regulations to define the term ‘gross disparity’ for purposes of this section.”.

(b) EFFECT OF SECTION.—Nothing in this section, or the amendment made by this section, affects the authority of the Federal Trade Commission in effect on the date of the enactment of this Act with respect to price gouging.