To protect the welfare of consumers by prohibiting price gouging by merchants with respect to gasoline or petroleum distillates during certain abnormal market disruptions.

IN THE SENATE OF THE UNITED STATES

JANUARY 4, 2007

Mr. STEVENS 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 by merchants with respect to gasoline or petroleum distillates 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; TABLE OF CONTENTS.

(a) Short Title.—This Act may be cited as the “Gasoline Consumer Anti-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. Protection of consumers against price gouging.
Sec. 3. Justifiable price increases.
Sec. 2. Protection of consumers against price gouging.

It is unlawful for any supplier to increase the price at which that supplier sells, or offers to sell, gasoline or petroleum distillates in, or for use in—

(1) 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; or

(2) an area covered by a Federal Trade Commission emergency order issued under section 4(a)(2) by an unconscionable amount during the period beginning on the date the order is issued and ending on the date specified in the order.

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 gasoline or petroleum distillate is substantially attributable to—

(1) an increase in the wholesale cost of gasoline and petroleum distillates to a retail seller or reseller;
(2) an increase in the replacement costs for 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 gasoline or petroleum distillate was sold reasonably reflects 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) In General.—

(1) Presidential Emergency Proclamations.—The President may issue an emergency proclamation when an abnormal market disruption has occurred or is reasonably expected to occur.

(2) FTC Emergency Orders.—In the absence of a Presidential proclamation under paragraph (1), the Federal Trade Commission, by majority vote, may—
(A) determine that an abnormal market
disruption affecting more than 1 State has oc-
curred or is reasonably expected to occur; and

(B) issue an emergency order if it makes
such a determination.

(b) Scope and Duration.—

(1) In general.—The emergency proclamation
or order—

(A) shall specify with particularity—

(i) the period for which the proclama-
tion or order applies; and

(ii) the event, circumstance, or condi-
tion that is the reason such a proclamation
or order is determined to be necessary; and

(B) may specify the area or region to
which it applies, which, for the 48 contiguous
States, may not be limited to a single State.

(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 nece-
sary.

SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.

(a) Violation Is Unfair or Deceptive Act or Practice.—Section 2 of this Act shall be enforced by the Federal Trade Commission as if the violation of section 2 were an unfair or deceptive act or practice proscribed under a rule issued 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 Com-
mission shall prescribe such regulations as may be nec-
essary 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 gas-

oline (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 sec-


(3) Multiple offenses; mitigating fac-
tors.—In assessing the penalty provided by sub-

section (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 supplier committing the violation to remedy the harm caused by the violation in a timely manner.

(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, or any attorney specially appointed by the Attorney General of the United States, in accordance with section 515 of title 28, United States Code.

SEC. 7. 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 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 gasoline or petroleum distillates.

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

(3) **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 gasoline or petroleum distillates are sold or offered for sale by that supplier that increases the price, for the same grade of gasoline or petroleum distillate, to an amount that—

(A) substantially exceeds the average price at which gasoline or petroleum distillates were sold or offered for sale by that supplier during the 30-day period immediately preceding the sale or offer;

(B) substantially exceeds the average price at which gasoline or petroleum distillates were
sold or offered for sale by that person’s com-
petitors during the period for which the emer-
gency proclamation applies; and

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

SEC. 8. 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(e) is published in the Federal Register.