112TH CONGRESS
1ST SESSION

H. R. 964

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

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2011

Mr. Bishop of New York (for himself, Mr. McNerney, Mr. Walz of Minnesota, Mr. McIntyre, Mr. Braley of Iowa, Mr. Yarmuth, and Mr. Chandler) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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 Representatives of the United States of America in Congress assembled,

2 SECTION 1. SHORT TITLE.

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

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

5 (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 international crisis affecting the oil markets proclaimed under paragraph (2), 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 international crisis to increase prices unreasonably.

(2) ENERGY EMERGENCY PROCLAMATION.—

(A) IN GENERAL.—The President may issue a proclamation of an international crisis affecting the oil markets and may designate any area within the jurisdiction of the United States, where 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 re-
newed for such consecutive periods, each
not to exceed 30 days, as the President de-
termines 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 pe-
troleum distillate at a particular location in an
area covered by a proclamation issued under
paragraph (2) during the period such proclama-
tion 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 pe-
troleum 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) 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 deliv-
ered 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.

SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMISS-
SION.

(a) ENFORCEMENT BY FTC.—A violation of section
2 shall be treated as a violation of a rule defining an un-
fair 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 appli-
cable terms and provisions of the Federal Trade Commis-
sion Act were incorporated into and made a part of this
Act. In enforcing section 2 of this Act, the Commission
shall give priority to enforcement actions concerning com-
panies with total United States wholesale or retail sales
of gasoline and other petroleum distillates in excess of
$10,000,000,000 per year.

(b) CIVIL PENALTIES.—
(1) IN GENERAL.—Notwithstanding the penalties set forth under the Federal Trade Commission Act, any person who violates section 2 with actual knowledge or knowledge fairly implied on the basis of objective circumstances shall be subject to—

(A) a civil penalty of not more than 3 times the amount of profits gained by such person through such violation; or

(B) a civil penalty of not more than $100,000,000.

(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, in an amount not to exceed $500,000,000.

(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. The Attorney General 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 $10,000,000,000 per year.

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 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.

(e) 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. EFFECT ON OTHER LAWS.

(a) Other Authority of Federal Trade Commission.—Nothing in this Act shall be construed to limit or affect in any way the Federal Trade Commission’s authority 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.