117TH CONGRESS
2D Session

H. R. 7688

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

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 2022

Ms. SCHRIER (for herself and Ms. PORTER) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education 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 consumers from price-gouging of consumer fuels, and for other purposes.

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 “Consumer Fuel Price Gouging Prevention Act”.

SEC. 2. UNCONSCIONABLE PRICING OF CONSUMER FUELS DURING EMERGENCIES.

(a) UNCONSCIONABLE PRICING.—
(1) IN GENERAL.—It shall be unlawful for any person to sell a consumer fuel, at wholesale or retail, in an area and during a period of an energy emergency covered by a proclamation issued under paragraph (2) at a price that—

(A) is unconscionably excessive; and

(B) indicates the seller is exploiting the circumstances related to an energy emergency to increase prices unreasonably.

(2) ENERGY EMERGENCY PROCLAMATION.—

(A) IN GENERAL.—The President may issue an energy emergency proclamation for any area within the jurisdiction of the United States, during which the prohibition in paragraph (1) shall apply, that includes the geographic area covered, the consumer fuel 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 renewed for such consecutive periods, each not to exceed 30 days, as the President determines appropriate; and
(ii) may include a period of time not to exceed 1 week before a reasonably foreseeable emergency.

(3) FACTORS CONSIDERED.—

(A) IN GENERAL.—In determining whether a person has violated paragraph (1), there shall be taken into account, among other factors, the aggravating factors described in subparagraph (B) and the mitigating factor described in subparagraph (C).

(B) AGGRAVATING FACTORS.—The aggravating factors described in this subparagraph are the following:

   (i) Whether the amount charged by such person grossly exceeds the average price at which the consumer fuel was offered for sale by such person during—

      (I) the 30-day period before the date on which the proclamation was issued; or

      (II) another appropriate benchmark period, as determined by the Commission.

   (ii) Whether the amount charged by such person grossly exceeds the price at
which the same or a similar consumer fuel
was readily obtainable in the same area
from other sellers during the energy emer-
gency period.

(C) MITIGATING FACTOR.—The mitigating
factor described in this subparagraph is whether
the quantity of any consumer fuel such per-
son produced, distributed, or sold in an area
covered by the proclamation during the 30-day
period following the date on which the procla-
mation was issued increased over the quantity
such person produced, distributed, or sold dur-
ing the 30-day period before the date on which
the proclamation was issued, taking into ac-
count any usual seasonal demand variation.

(b) AFFIRMATIVE DEFENSE.—It shall be an affirma-
tive defense in any civil action or administrative action to
enforce subsection (a), with respect to the sale, at whole-
sale or retail, of a consumer fuel by a person, that the
increase in the price of such consumer fuel reasonably re-
fects additional costs that were paid, incurred, or reason-
ably anticipated by such person, or reasonably reflects ad-
ditional risks taken by such person, to produce, distribute,
obtain, or sell such consumer fuel under the cir-
cumstances.
(c) **Rule of Construction.**—This section may not be construed to cover a transaction on a futures market.

(d) **Enforcement.**—

1. **Federal Trade Commission.**—A violation of subsection (a) 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)). The Federal Trade Commission shall enforce this section 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 were incorporated into and made a part of this section. In enforcing subsection (a), the Commission shall give priority to enforcement actions concerning companies with total United States wholesale or retail sales of consumer fuels in excess of $500,000,000 per year.

2. **Enforcement at Retail Level by State Attorneys General.**—

   (A) **In General.**—If the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating subsection (a) involving a retail sale, the attor-
ney general, official, or agency of the State, in addition to any authority it may have to bring an action in State court under its laws, may bring a civil action in any appropriate United States district court or in any other court of competent jurisdiction to—

(i) enjoin further such violation by such person;

(ii) enforce compliance with such sub-
section;

(iii) obtain civil penalties; and

(iv) obtain damages, restitution, or other compensation on behalf of residents of the State.

(B) NOTICE.—The State shall serve written notice to the Commission of any civil action under subparagraph (A) before 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 in-
stituting such civil action.

(C) AUTHORITY TO INTERVENE.—Upon receipt of the notice required by subparagraph
(B), the Commission may intervene in such civil action and upon intervening—

(i) be heard on all matters arising in such civil action; and

(ii) file petitions for appeal of a decision in such civil action.

(D) CONSTRUCTION.—For purposes of bringing any civil action under subparagraph (A), nothing in this paragraph 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) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action or an administrative action for violation of subsection (a), a State attorney general, or official or agency of a State, may not bring an action under this paragraph during the pendency of that action against any defendant named in the complaint of the Commission or another agency for any violation of this Act alleged in the complaint.
(F) Rule of Construction.—This paragraph may not be construed to prohibit an authorized State official from proceeding in State court to enforce a civil or criminal statute of such State.

(e) Low Income Energy Assistance.—

1. Deposit of Funds.—Amounts collected in any penalty under subsection (d)(1) shall be deposited in a separate fund in the Treasury to be known as the Consumer Relief Trust Fund.

2. Use of Funds.—To the extent provided for in advance in appropriations Acts, the amounts deposited into the fund shall be used to provide assistance under the Low Income Home Energy Assistance Program described in section 2602 of the Low-Income Home Energy Assistance Act of 1981 (42 U.S.C. 8621) administered by the Secretary of Health and Human Services and the Weatherization Assistance Program established under part A of title IV of the Energy Conservation and Production Act (42 U.S.C. 6861 et seq.) administered by the Secretary of Energy.

(f) Effect on Other Laws.—

1. Other Authority of Commission.—Nothing in this section may be construed to limit the
authority of the Commission under the Federal
Trade Commission Act (15 U.S.C. 41 et seq.) or any
other provision of law.

(2) STATE LAW.—Nothing in this section pre-
empts any State law.

(g) DEFINITIONS.—In this section:

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

(2) CONSUMER FUEL.—The term “consumer
fuel” includes gasoline, distillate fuel oil, jet fuel, liq-
uid propane, aviation gasoline, compressed natural
gas, and biofuel (including ethanol, biomass-based
diesel, and renewable blending components) used for
transportation fuels, and home heating oil and liquid
propane used for residential heating or residential
energy generation.

(3) RETAIL.—The term “retail”, with respect
to the sale of a consumer fuel, includes all sales to
end users such as motorists as well as all direct
sales to other end users such as agriculture, indus-
try, residential, and commercial consumers.

(4) WHOLESALE.—The term “wholesale”, with
respect to the sale of a consumer fuel, means sale
to any person for resale.