

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.

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

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Consumer Fuel Price
5 Gouging Prevention Act”.

6 **SEC. 2. UNCONSCIONABLE PRICING OF CONSUMER FUELS**
7 **DURING EMERGENCIES.**

8 (a) UNCONSCIONABLE PRICING.—

1 (1) IN GENERAL.—It shall be unlawful for any
2 person to sell a consumer fuel, at wholesale or retail,
3 in an area and during a period of an energy emer-
4 gency covered by a proclamation issued under para-
5 graph (2) at a price that—

6 (A) is unconscionably excessive; and

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

10 (2) ENERGY EMERGENCY PROCLAMATION.—

11 (A) IN GENERAL.—The President may
12 issue an energy emergency proclamation for any
13 area within the jurisdiction of the United
14 States, during which the prohibition in para-
15 graph (1) shall apply, that includes the geo-
16 graphic area covered, the consumer fuel cov-
17 ered, and the time period that such proclama-
18 tion shall be in effect.

19 (B) DURATION.—The proclamation—

20 (i) may not apply for a period of more
21 than 30 consecutive days, but may be re-
22 newed for such consecutive periods, each
23 not to exceed 30 days, as the President de-
24 termines appropriate; and

1 (ii) may include a period of time not
2 to exceed 1 week before a reasonably fore-
3 seeable emergency.

4 (3) FACTORS CONSIDERED.—

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

11 (B) AGGRAVATING FACTORS.—The aggra-
12 vating factors described in this subparagraph
13 are the following:

14 (i) Whether the amount charged by
15 such person grossly exceeds the average
16 price at which the consumer fuel was of-
17 fered for sale by such person during—

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

21 (II) another appropriate bench-
22 mark period, as determined by the
23 Commission.

24 (ii) Whether the amount charged by
25 such person grossly exceeds the price at

1 which the same or a similar consumer fuel
2 was readily obtainable in the same area
3 from other sellers during the energy emer-
4 gency period.

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

16 (b) AFFIRMATIVE DEFENSE.—It shall be an affirma-
17 tive defense in any civil action or administrative action to
18 enforce subsection (a), with respect to the sale, at whole-
19 sale or retail, of a consumer fuel by a person, that the
20 increase in the price of such consumer fuel reasonably re-
21 flects additional costs that were paid, incurred, or reason-
22 ably anticipated by such person, or reasonably reflects ad-
23 ditional risks taken by such person, to produce, distribute,
24 obtain, or sell such consumer fuel under the cir-
25 cumstances.

1 (c) RULE OF CONSTRUCTION.—This section may not
2 be construed to cover a transaction on a futures market.

3 (d) ENFORCEMENT.—

4 (1) FEDERAL TRADE COMMISSION.—A violation
5 of subsection (a) shall be treated as a violation of a
6 rule defining an unfair or deceptive act or practice
7 prescribed under section 18(a)(1)(B) of the Federal
8 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).
9 The Federal Trade Commission shall enforce this
10 section in the same manner, by the same means, and
11 with the same jurisdiction, powers, and duties as
12 though all applicable terms and provisions of the
13 Federal Trade Commission Act were incorporated
14 into and made a part of this section. In enforcing
15 subsection (a), the Commission shall give priority to
16 enforcement actions concerning companies with total
17 United States wholesale or retail sales of consumer
18 fuels in excess of \$500,000,000 per year.

19 (2) ENFORCEMENT AT RETAIL LEVEL BY
20 STATE ATTORNEYS GENERAL.—

21 (A) IN GENERAL.—If the chief law en-
22 forcement officer of a State, or an official or
23 agency designated by a State, has reason to be-
24 lieve that any person has violated or is violating
25 subsection (a) involving a retail sale, the attor-

1 ney general, official, or agency of the State, in
2 addition to any authority it may have to bring
3 an action in State court under its laws, may
4 bring a civil action in any appropriate United
5 States district court or in any other court of
6 competent jurisdiction to—

7 (i) enjoin further such violation by
8 such person;

9 (ii) enforce compliance with such sub-
10 section;

11 (iii) obtain civil penalties; and

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

15 (B) NOTICE.—The State shall serve writ-
16 ten notice to the Commission of any civil action
17 under subparagraph (A) before initiating such
18 civil action. The notice shall include a copy of
19 the complaint to be filed to initiate such civil
20 action, except that if it is not feasible for the
21 State to provide such prior notice, the State
22 shall provide such notice immediately upon in-
23 stituting such civil action.

24 (C) AUTHORITY TO INTERVENE.—Upon
25 receipt of the notice required by subparagraph

1 (B), the Commission may intervene in such civil
2 action and upon intervening—

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

5 (ii) file petitions for appeal of a deci-
6 sion in such civil action.

7 (D) CONSTRUCTION.—For purposes of
8 bringing any civil action under subparagraph
9 (A), nothing in this paragraph shall prevent the
10 attorney general of a State from exercising the
11 powers conferred on the attorney general by the
12 laws of such State to conduct investigations or
13 to administer oaths or affirmations or to compel
14 the attendance of witnesses or the production of
15 documentary and other evidence.

16 (E) LIMITATION ON STATE ACTION WHILE
17 FEDERAL ACTION IS PENDING.—If the Commis-
18 sion has instituted a civil action or an adminis-
19 trative action for violation of subsection (a), a
20 State attorney general, or official or agency of
21 a State, may not bring an action under this
22 paragraph during the pendency of that action
23 against any defendant named in the complaint
24 of the Commission or another agency for any
25 violation of this Act alleged in the complaint.

1 (F) RULE OF CONSTRUCTION.—This para-
2 graph may not be construed to prohibit an au-
3 thorized State official from proceeding in State
4 court to enforce a civil or criminal statute of
5 such State.

6 (e) LOW INCOME ENERGY ASSISTANCE.—

7 (1) DEPOSIT OF FUNDS.—Amounts collected in
8 any penalty under subsection (d)(1) shall be depos-
9 ited in a separate fund in the Treasury to be known
10 as the Consumer Relief Trust Fund.

11 (2) USE OF FUNDS.—To the extent provided
12 for in advance in appropriations Acts, the amounts
13 deposited into the fund shall be used to provide as-
14 sistance under the Low Income Home Energy As-
15 sistance Program described in section 2602 of the
16 Low-Income Home Energy Assistance Act of 1981
17 (42 U.S.C. 8621) administered by the Secretary of
18 Health and Human Services and the Weatherization
19 Assistance Program established under part A of title
20 IV of the Energy Conservation and Production Act
21 (42 U.S.C. 6861 et seq.) administered by the Sec-
22 retary of Energy.

23 (f) EFFECT ON OTHER LAWS.—

24 (1) OTHER AUTHORITY OF COMMISSION.—
25 Nothing in this section may be construed to limit the

1 authority of the Commission under the Federal
2 Trade Commission Act (15 U.S.C. 41 et seq.) or any
3 other provision of law.

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

6 (g) DEFINITIONS.—In this section:

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

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

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

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

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