

105TH CONGRESS
1ST SESSION

S. 214

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to combat fraud and price-gouging committed in connection with the provision of consumer goods and services for the cleanup, repair, and recovery from the effects of a major disaster declared by the President, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JANUARY 28, 1997

Mr. AKAKA (for himself, Mr. INOUE, and Mr. GLENN) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

A BILL

To amend the Robert T. Stafford Disaster Relief and Emergency Assistance Act to combat fraud and price-gouging committed in connection with the provision of consumer goods and services for the cleanup, repair, and recovery from the effects of a major disaster declared by the President, 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 “Disaster Victims Crime
5 Prevention Act of 1997”.

1 **SEC. 2. PREVENTION OF FRAUD FOLLOWING MAJOR DISAS-**
 2 **TERS.**

3 (a) IN GENERAL.—Title III of the Robert T. Stafford
 4 Disaster Relief and Emergency Assistance Act (42 U.S.C.
 5 5141 et seq.) is amended—

6 (1) by redesignating sections 315 through 321
 7 as sections 316 through 322, respectively; and

8 (2) by inserting after section 314 the following:

9 **“SEC. 315. PREVENTION OF FRAUD FOLLOWING MAJOR DIS-**
 10 **ASTERS.**

11 “(a) DEFINITIONS.—In this section:

12 “(1) AGREEMENT.—The term ‘agreement’, with
 13 respect to the provision of a consumer good or serv-
 14 ice, includes an offer or undertaking to provide or
 15 arrange for the provision of the consumer good or
 16 service without regard to whether an enforceable
 17 contract is entered into.

18 “(2) CONSUMER GOOD OR SERVICE.—The term
 19 ‘consumer good or service’ means a good, piece of
 20 equipment, or service provided primarily for per-
 21 sonal, family, or household purposes, including food,
 22 water, ice, a chemical, a building supply, a tool, a
 23 petroleum product, a residential lease property, a
 24 residential construction, reconstruction, or repair
 25 service, or a service for the removal of debris (in-
 26 cluding a damaged tree) and garbage.

1 “(3) PROVIDE.—The term ‘provide’, with re-
 2 spect to a consumer good or service, means to sell,
 3 lease, or otherwise provide in exchange for consider-
 4 ation, the good or service.

5 “(4) SUPPLIER.—The term ‘supplier’ includes a
 6 seller, reseller, wholesaler, distributor, retailer, les-
 7 sor, provider, or licensed or unlicensed contractor,
 8 subcontractor, or laborer, involved in the provision
 9 or distribution of a consumer good or service.

10 “(b) ESTABLISHMENT OF ANTI-FRAUD STRIKE
 11 FORCES.—Following the declaration of the existence of a
 12 major disaster by the President, the Attorney General
 13 shall—

14 “(1) consult with the United States Attorney
 15 for the district in which the disaster occurred and
 16 with State and local law enforcement officials to de-
 17 termine the extent to which victims of the disaster
 18 are being further victimized by fraudulent or other-
 19 wise unscrupulous activities of suppliers offering
 20 consumer goods and services for the cleanup, repair,
 21 and other recovery from the effects of the disaster;
 22 and

23 “(2) if it appears that the extent of the activi-
 24 ties referred to in paragraph (1) is such that the re-
 25 sources of the officials are not sufficient to quickly

1 and adequately investigate and prosecute the activi-
2 ties, establish an anti-fraud task force of investiga-
3 tors and prosecutors to combat the activities in the
4 area affected by the disaster.

5 “(c) FRAUD INVOLVING DISASTER VICTIMS.—

6 “(1) SUPPLIERS OF CONSUMER GOODS AND
7 SERVICES.—

8 “(A) OFFENSE.—During the period begin-
9 ning on the date the existence of a major disas-
10 ter is declared by the President and ending 180
11 days after that date, and within the area to
12 which the declaration applies, a supplier who by
13 false pretenses, by the making of a representa-
14 tion that the supplier knows, or has reason to
15 know, is false or misleading, or through fraudu-
16 lent conduct, obtains money or any other thing
17 of value in connection with an agreement to
18 provide a consumer good or service for the
19 cleanup, repair, or other recovery from the ef-
20 fects of a major disaster shall be punished as
21 provided in subparagraph (B).

22 “(B) PENALTY.—A supplier who commits
23 an offense described in subparagraph (A) shall
24 be imprisoned not more than 10 years or fined
25 under title 18, United States Code, or both.

1 “(C) PRESUMPTIONS.—For the purposes
2 of subparagraph (A), a supplier shall be consid-
3 ered to obtain money or another thing of value
4 by false pretenses if—

5 “(i)(I) the supplier uses the money or
6 other thing of value for any purpose other
7 than to—

8 “(aa) purchase materials to be
9 used in carrying out the agreement;

10 “(bb) pay for work performed or
11 other expenses incurred in connection
12 with the agreement; or

13 “(cc) pay for a proportionate
14 share of the overhead and profit of
15 the supplier; and

16 “(II) the person with whom the agree-
17 ment was made has not authorized, in
18 writing, the use of the money or other
19 thing of value for a purpose other than a
20 purpose described in item (aa), (bb), or
21 (cc) of subclause (I); or

22 “(ii) in the case of an agreement to
23 provide or arrange for the provision of a
24 residential construction, reconstruction, or
25 repair service, or a service for the removal

of debris (including a damaged tree) and
garbage—

“(I) the supplier receives more
than 10 percent of the money or other
thing of value under the agreement
for the service and fails to—

“(aa) apply for each permit
necessary to carry out the agree-
ment by the date that is 30 days
after the date of the receipt of
the money or thing of value; or

“(bb) start carrying out the
construction, reconstruction, re-
pair, or removal by the date that
is 90 days after the last nec-
essary permit is obtained; and

“(II) the person with whom the
agreement was made has not author-
ized, in writing, a longer time period
than the applicable period described in
subclause (I).

“(2) BENEFICIARIES OF FEDERAL ASSIST-
ANCE.—

“(A) OFFENSE.—A person who by false
pretenses, by the making of a representation

1 that the supplier knows, or has reason to know,
2 is false or misleading, or through fraudulent
3 conduct, obtains a grant or loan of money, a
4 consumer good or service, or any other form of
5 assistance, directly or indirectly, from the Fed-
6 eral Government for use in connection with the
7 cleanup, repair, or other recovery from the ef-
8 fects of a major disaster shall be punished as
9 provided in subparagraph (B).

10 “(B) PENALTY.—A person who commits
11 an offense described in subparagraph (A) shall
12 be imprisoned not more than 10 years or fined
13 under title 18, United States Code, or both.

14 “(d) PRICE-GOUGING OF DISASTER VICTIMS.—

15 “(1) OFFENSE.—

16 “(A) IN GENERAL.—During the period be-
17 ginning on the date the existence of a major
18 disaster is declared by the President and ending
19 180 days after that date, and within the area
20 to which the declaration applies, it shall be un-
21 lawful for a supplier to provide, or to offer to
22 provide, any consumer good or service at an un-
23 conscionably excessive price (as determined
24 under subparagraph (B)).

1 “(B) DETERMINATION OF UNCONSCION-
2 ABLY EXCESSIVE PRICE.—

3 “(i) IN GENERAL.—For the purpose
4 of subparagraph (A), whether a price is
5 unconscionably excessive shall be a ques-
6 tion of law for a court to determine. There
7 shall be considered to be prima facie evi-
8 dence that a price is unconscionably exces-
9 sive if—

10 “(I)(aa) the amount charged rep-
11 resents a gross disparity between the
12 price of the consumer good or service
13 that is the subject of the transaction
14 and the average price at which the
15 consumer good or service was pro-
16 vided, or offered to be provided, by
17 the supplier in the ordinary course of
18 business during the 30-day period im-
19 mediately prior to the declaration of
20 the existence of the disaster; or

21 “(bb) the amount charged grossly
22 exceeds the average price at which the
23 same or similar consumer goods or
24 services were readily obtainable by
25 consumers in the trade area during

1 the 30-day period immediately prior
 2 to the declaration of the existence of
 3 the disaster; and

4 “(II) subject to clause (ii), the
 5 amount by which the amount charged
 6 exceeds the average price referred to
 7 in subclause (I) is not attributable to
 8 increased costs incurred by the sup-
 9 plier in connection with the provision
 10 of the consumer good or service.

11 “(ii) DETERMINATION OF INCREASED
 12 COSTS OF SUPPLIER.—In determining the
 13 increased costs incurred by a supplier
 14 under clause (i)(II), an increase in the re-
 15 placement cost to the supplier of a good
 16 may not be taken into account unless the
 17 supplier has no reasonable assurance of re-
 18 coupling the increased replacement cost in
 19 a subsequent sale involving the good.

20 “(2) ENFORCEMENT.—

21 “(A) PENALTY.—A supplier who know-
 22 ingly violates paragraph (1) shall be imprisoned
 23 not more than 1 year or fined not more than

1 \$10,000, or both. In addition, a court may re-
2 quire disgorgement of any gain unlawfully ac-
3 quired and restitution to any injured party.

4 “(B) ACTIONS BY VICTIMS.—A person,
5 Federal agency, State, or local government that
6 suffers loss or damage as a result of a violation
7 of paragraph (1) may bring an action against
8 a supplier in a district court of the United
9 States for treble damages, disgorgement, special
10 or punitive damages, reasonable attorney’s fees,
11 costs and expenses of suit, and any other ap-
12 propriate legal or equitable relief, including in-
13 junctive relief.

14 “(C) ACTIONS BY STATE ATTORNEYS GEN-
15 ERAL.—An attorney general of a State, or other
16 authorized State official, may bring a civil ac-
17 tion in the name of the State, on behalf of per-
18 sons residing in the State, in a district court of
19 the United States that has jurisdiction over the
20 defendant for treble damages, disgorgement,
21 special or punitive damages, reasonable attor-
22 ney’s fees, costs and expenses of suit, and any
23 other appropriate legal or equitable relief, in-
24 cluding injunctive relief.

1 “(3) NO PREEMPTION.—Nothing in this sub-
2 section preempts State law.

3 “(e) PROVISION OF FRAUD PREVENTION INFORMA-
4 TION.—The Director of the Federal Emergency Manage-
5 ment Agency shall—

6 “(1) in consultation with the Attorney General,
7 the Administrator of the Small Business Administra-
8 tion, State attorneys general, and other State offi-
9 cials with responsibility for fraud prevention, develop
10 public information materials to assist victims of
11 major disasters in detecting and avoiding suppliers
12 who attempt to obtain money or other things of
13 value from the victims in exchange for fraudulent or
14 otherwise unscrupulous offers of consumer goods or
15 services for the cleanup, repair, and other recovery
16 from the effects of the disasters; and

17 “(2) provide for the distribution of the mate-
18 rials developed under paragraph (1) to the victims of
19 each major disaster as soon as practicable after the
20 declaration of the existence of the disaster by the
21 President.”.

22 (b) COMMISSION OF OFFENSE FOLLOWING A MAJOR
23 DISASTER TO BE CONSIDERED AN AGGRAVATING FAC-
24 TOR.—The United States Sentencing Commission, in the
25 exercise of the authority of the Commission under section

1 994 of title 28, United States Code, shall review and, if
2 necessary, amend the sentencing guidelines promulgated
3 under the section to provide that the commission of an
4 offense under section 1341, 1343, or 2314 of title 18,
5 United States Code, in connection with the provision of
6 a consumer good or service (as defined in section
7 315(a)(2) of the Robert T. Stafford Disaster Relief and
8 Emergency Assistance Act (as amended by subsection
9 (a)(2))) for the cleanup, repair, or other recovery from the
10 effects of a major disaster declared by the President under
11 the Robert T. Stafford Disaster Relief and Emergency As-
12 sistance Act (42 U.S.C. 5121 et seq.) shall be an aggravat-
13 ing factor that may result in the imposition of a sentence
14 that is twice as great as a sentence that would otherwise
15 be imposed.

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