

106TH CONGRESS
1ST SESSION

S. 221

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 19, 1999

Mr. AKAKA (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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 1999”.

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) or 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 engaged in the provision or
9 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 on which the existence of a
10 major disaster is declared by the President and
11 ending 180 days after that date, and within the
12 area to which the declaration applies, a supplier
13 that, by false pretenses, by the making of a rep-
14 resentation that the supplier knows, or has rea-
15 son to know, is false or misleading, or through
16 fraudulent conduct, obtains money or any other
17 thing of value in connection with an agreement
18 to 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 that commits
23 an offense described in subparagraph (A) shall
24 be imprisoned not more than 10 years, fined
25 under title 18, United States Code, or both.

“(C) PRESUMPTIONS.—For the purposes of subparagraph (A), a supplier shall be considered to obtain money or another thing of value by false pretenses if—

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

“(aa) purchase material to be used in carrying out the agreement;

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

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

“(II) the person with which the agreement was made has not authorized, in writing, the use of the money or other thing of value for a purpose other than a purpose described in item (aa), (bb), or (cc) of subclause (I); or

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

of debris (including a damaged tree) or
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 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 which 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 that, 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 that commits
11 an offense described in subparagraph (A) shall
12 be imprisoned not more than 10 years, 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 on which the existence of
18 a major disaster is declared by the President
19 and ending 180 days after that date, and within
20 the area to which the declaration applies, it
21 shall be unlawful for a supplier to provide, or
22 to offer to provide, any consumer good or serv-
23 ice at an unconscionably excessive price (as de-
24 termined 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 before the declaration of the
 20 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 before
 2 the declaration of the existence of the
 3 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 that know-
 22 ingly violates paragraph (1) shall be imprisoned
 23 not more than 1 year, fined not more than
 24 \$10,000, or both. In addition, a court may re-

1 require disgorgement of any gain unlawfully ac-
2 quired and restitution to any injured party.

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

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

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

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

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

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

20 (b) COMMISSION OF OFFENSE FOLLOWING A MAJOR
21 DISASTER TO BE CONSIDERED AN AGGRAVATING FAC-
22 TOR.—The United States Sentencing Commission, in the
23 exercise of the authority of the Commission under section
24 994 of title 28, United States Code, shall review and, if
25 necessary, amend the sentencing guidelines promulgated

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

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