

109TH CONGRESS
1ST SESSION

S. 1640

To prohibit price gouging relating to certain goods and services in areas affected by major disasters.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 8, 2005

Mr. NELSON of Florida introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit price gouging relating to certain goods and services in areas affected by major disasters.

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 “Protection From Price
5 Gouging Against Disaster Victims Act of 2005”.

6 **SEC. 2. FINDINGS AND GOALS.**

7 (a) FINDINGS.—Congress finds that—

8 (1) the United States experiences tremendous
9 generosity and goodwill in the wake of natural disas-
10 ters;

1 (2) unfortunately, some unscrupulous individ-
2 uals take advantage of those disasters in an attempt
3 to gain financially;

4 (3) the Federal Trade Commission is charged
5 with preventing unfair methods of competition and
6 unfair and deceptive acts or practices under section
7 5 of the Federal Trade Commission Act (15 U.S.C.
8 45);

9 (4) the Federal Trade Commission has exten-
10 sive experience analyzing markets and competitive
11 issues in order to determine whether market partici-
12 pants are engaging in actions that may have anti-
13 competitive effects; and

14 (5) the Committee on Commerce, Science, and
15 Transportation of the Senate and the Committee on
16 Energy and Commerce of the House of Representa-
17 tives are charged by their respective Houses with
18 consumer protection.

19 (b) GOALS.—The goals of this Act are—

20 (1) to decrease the occurrence of persons charg-
21 ing unconscionably excessive prices for consumer
22 goods and services following natural disasters;

23 (2) to require the Federal Trade Commission to
24 conduct ongoing investigations of actions intended to

1 disadvantage consumers following natural disasters;
2 and

3 (3) to ensure that sufficient enforcement au-
4 thority is available to the Commission to carry out
5 the responsibilities of the Commission under this Act
6 and the amendments made by this Act.

7 **SEC. 3. PRICE GOUGING PROHIBITION FOLLOWING MAJOR**
8 **DISASTERS.**

9 The Federal Trade Commission Act (15 U.S.C. 41
10 et seq.) is amended—

11 (1) by redesignating sections 25 and 26 as sec-
12 tions 26 and 27, respectively; and

13 (2) by inserting after section 24 the following:

14 **“SEC. 25. PROTECTION FROM PRICE GOUGING FOLLOWING**
15 **MAJOR DISASTERS.**

16 “(a) DEFINITIONS.—In this section:

17 “(1) AFFECTED AREA.—The term ‘affected
18 area’ means an area affected by a major disaster de-
19 clared by the President under Federal law in exist-
20 ence on the date of enactment of the Protection
21 From Price Gouging Against Disaster Victims Act
22 of 2005.

23 “(2) CONSUMER GOOD OR SERVICE.—

24 “(A) IN GENERAL.—The term ‘consumer
25 good or service’ means a good, piece of equip-

1 ment, or service provided primarily for personal,
2 family, or household purposes, including food,
3 water, ice, a chemical, a building supply, a tool,
4 a petroleum product, a residential construction,
5 reconstruction, or repair service, or a service for
6 the removal of debris (including a damaged
7 tree) or garbage.

8 “(B) INCLUSION.—The term ‘consumer
9 good or service’ includes a property or a facility
10 rented to a consumer for use as a residence or
11 storage facility.

12 “(3) PRICE GOUGING.—The term ‘price
13 gouging’ means the charging of an unconscionably
14 excessive price by a supplier in an affected area.

15 “(4) SUPPLIER.—The term ‘supplier’ includes a
16 seller, reseller, wholesaler, distributor, retailer, les-
17 sor, provider, or licensed or unlicensed contractor,
18 subcontractor, or laborer engaged in the provision or
19 distribution of a consumer good or service.

20 “(5) UNCONSCIONABLY EXCESSIVE PRICE.—
21 The term ‘unconscionably excessive price’ means a
22 price charged in an affected area for a consumer
23 good or service that—

24 “(A) represents a gross disparity, as deter-
25 mined by the Commission in accordance with

1 subsection (e), between the price charged for
2 the good or service and the average price of the
3 good or service charged by suppliers in the af-
4 fected area during the 30-day period imme-
5 diately before the President declares the exist-
6 ence of a major disaster; and

7 “(B) is not attributable to increased whole-
8 sale or operational costs incurred by the sup-
9 plier in connection with the provision of the
10 consumer good or service.

11 “(b) DETERMINATION OF THE COMMISSION.—Fol-
12 lowing the declaration of a major disaster by the Presi-
13 dent, the Commission shall—

14 “(1) consult with the Attorney General of the
15 United States, the United States Attorney for the
16 district in which the disaster occurred, and State
17 and local law enforcement officials to determine
18 whether any supplier in the affected area is charging
19 or has charged an unconscionably excessive price for
20 any consumer good or service provided in the af-
21 fected area; and

22 “(2) establish within the Commission—

23 “(A) a toll-free hotline that a consumer
24 may call to report an incidence of price gouging
25 in the affected area; and

1 “(B) a program to develop and distribute
2 to the public informational materials in English
3 and Spanish to assist residents of the affected
4 area in detecting and avoiding price gouging.

5 “(c) PRICE GOUGING INVOLVING DISASTER VIC-
6 TIMS.—

7 “(1) OFFENSE.—During the 180-day period
8 after the date on which a major disaster is declared
9 by the President, no supplier shall provide, or offer
10 to provide, any consumer good or service in an af-
11 fected area at an unconscionably excessive price.

12 “(2) ACTION BY COMMISSION.—

13 “(A) IN GENERAL.—During the period de-
14 scribed in paragraph (1), the Commission shall
15 conduct investigations to determine whether any
16 supplier in an affected area is in violation of
17 paragraph (1).

18 “(B) POSITIVE DETERMINATION.—If the
19 Commission determines under subparagraph
20 (A) that a supplier is in violation of paragraph
21 (1), the Commission shall take any action the
22 Commission determines to be appropriate to
23 remedy the violation.

24 “(3) CIVIL PENALTIES.—A supplier that com-
25 mits an offense described in paragraph (1) may, in

1 a civil action brought in a court of competent juris-
2 diction, be subject to—

3 “(A) a civil penalty not more than
4 \$500,000;

5 “(B) an order to pay special and punitive
6 damages;

7 “(C) an order to pay reasonable attorney’s
8 fees;

9 “(D) an order to pay costs of litigation re-
10 lating to the offense;

11 “(E) an order for disgorgement of profits
12 earned as a result of a violation of paragraph
13 (1); and

14 “(F) any other relief determined by the
15 court to be appropriate.

16 “(4) CRIMINAL PENALTY.—A supplier that
17 knowingly commits an offense described in para-
18 graph (1) shall be imprisoned not more than 1 year.

19 “(5) ACTION BY VICTIMS.—A person, Federal
20 agency, State, or local government that suffers loss
21 or damage as a result of a violation of paragraph (1)
22 may bring a civil action against a supplier in any
23 court of competent jurisdiction for disgorgement,
24 special or punitive damages, injunctive relief, reason-

1 able attorney’s fees, costs of the litigation, and any
2 other appropriate legal or equitable relief.

3 “(6) ACTION BY STATE ATTORNEYS GEN-
4 ERAL.—An attorney general of a State, or other au-
5 thorized State official, may bring a civil action in the
6 name of the State, on behalf of persons residing in
7 the State, in any court of competent jurisdiction for
8 disgorgement, special or punitive damages, reason-
9 able attorney’s fees, costs of litigation, and any other
10 appropriate legal or equitable relief.

11 “(7) NO PREEMPTION.—Nothing in this section
12 preempts any State law.

13 “(d) REPORT.—Not later than 1 year after the date
14 of enactment of the Protection From Price Gouging
15 Against Disaster Victims Act of 2005, and annually there-
16 after, the Commission shall submit to the Committee on
17 Commerce, Science, and Transportation of the Senate and
18 the Committee on Energy and Commerce of the House
19 of Representatives a report describing—

20 “(1) the number of price gouging complaints re-
21 ceived by the Commission for each major disaster
22 declared by the President during the preceding year;

23 “(2) the number of price gouging investigations
24 of the Commission initiated, in progress, and com-

1 pleted as of the date on which the report is pre-
2 pared;

3 “(3) the number of enforcement actions of the
4 Commission initiated, in progress, and completed as
5 of the date on which the report is prepared;

6 “(4) an evaluation of the effectiveness of the
7 toll-free hotline and program established under sub-
8 section (b)(2); and

9 “(5) recommendations for any additional action
10 with respect to the implementation or effectiveness
11 of this section.

12 “(e) DEFINITION OF GROSS DISPARITY.—Not later
13 than 180 days after the date of enactment of the Protec-
14 tion From Price Gouging Against Disaster Victims Act
15 of 2005, the Commission shall promulgate regulations to
16 define the term ‘gross disparity’ for purposes of this sec-
17 tion.”.

18 **SEC. 4. EFFECT OF ACT.**

19 Nothing in this Act, or an amendment made by this
20 Act, affects any authority of the Federal Trade Commis-
21 sion in existence on the date of enactment of this Act with
22 respect to price gouging actions.

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