

109TH CONGRESS
1ST SESSION

S. 1973

To provide an immediate Federal income tax rebate to help taxpayers with higher fuel costs, to express the sense of the Senate regarding full funding of LIHEAP, and to provide consumer protections against fuel price gouging, and for other purposes.

IN THE SENATE OF THE UNITED STATES

NOVEMBER 8, 2005

Ms. STABENOW introduced the following bill; which was read twice and referred to the Committee on Finance

A BILL

To provide an immediate Federal income tax rebate to help taxpayers with higher fuel costs, to express the sense of the Senate regarding full funding of LIHEAP, and to provide consumer protections against fuel price gouging, 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 “Energy Tax Rebate
5 Act of 2005”.

1 **TITLE I—ENERGY TAX REBATE**

2 **SEC. 101. ENERGY TAX REBATE.**

3 (a) IN GENERAL.—Subchapter B of chapter 65 of the
4 Internal Revenue Code of 1986 (relating to rules of special
5 application in the case of abatements, credits, and re-
6 funds) is amended by adding at the end the following new
7 section:

8 **“SEC. 6430. ENERGY TAX REBATE.**

9 “(a) GENERAL RULE.—Except as otherwise provided
10 in this section, each individual shall be treated as having
11 made a payment against the tax imposed by chapter 1 for
12 the taxable year beginning in 2005 in an amount equal
13 to the lesser of—

14 “(1) the amount of the taxpayer’s liability for
15 tax for such taxpayer’s preceding taxable year, or

16 “(2) \$500.

17 “(b) LIABILITY FOR TAX.—For purposes of this sec-
18 tion, the liability for tax for any taxable year shall be the
19 excess (if any) of—

20 “(1) the sum of—

21 “(A) the taxpayer’s regular tax liability
22 (within the meaning of section 26(b)) for the
23 taxable year,

1 “(B) the tax imposed by section 55(a) with
2 respect to such taxpayer for the taxable year,
3 and

4 “(C) the taxpayer’s social security taxes
5 (within the meaning of section 24(d)(2)) for the
6 taxable year, over

7 “(2) the sum of the credits allowable under part
8 IV of subchapter A of chapter 1 (other than the
9 credits allowable under subpart C thereof, relating to
10 refundable credits) for the taxable year.

11 “(c) TAXABLE INCOME LIMITATION.—

12 “(1) IN GENERAL.—If the taxable income of the
13 taxpayer for the preceding taxable year exceeds the
14 maximum taxable income in the table under sub-
15 section (a), (b), (c), or (d) of section 1, whichever
16 is applicable, to which the 25 percent rate applies,
17 the dollar amount otherwise determined under sub-
18 section (a) for such taxpayer shall be reduced (but
19 not below zero) by the amount of the excess.

20 “(2) CHANGE IN RETURN STATUS.—In the case
21 of married individuals filing a joint return for the
22 taxable year who did not file such a joint return for
23 the preceding taxable year, paragraph (1) shall be
24 applied by reference to the taxable income of both
25 such individuals for the preceding taxable year.

1 “(d) DATE PAYMENT DEEMED MADE.—

2 “(1) IN GENERAL.—The payment provided by
3 this section shall be deemed made on the date of the
4 enactment of the Energy Tax Rebate Act of 2005.

5 “(2) REMITTANCE OF PAYMENT.—The Sec-
6 retary shall remit to each taxpayer the payment de-
7 scribed in paragraph (1) not later than the date
8 which is 30 days after the date specified in para-
9 graph (1).

10 “(e) CERTAIN PERSONS NOT ELIGIBLE.—This sec-
11 tion shall not apply to—

12 “(1) any individual with respect to whom a de-
13 duction under section 151 is allowable to another
14 taxpayer for a taxable year beginning in the cal-
15 endar year in which such individual’s taxable year
16 begins,

17 “(2) any estate or trust, or

18 “(3) any nonresident alien individual.”.

19 (b) CONFORMING AMENDMENT.—Section 1324(b)(2)
20 of title 31, United States Code, is amended by inserting
21 before the period “, or enacted by the Energy Tax Rebate
22 Act of 2005”.

23 (c) CLERICAL AMENDMENT.—The table of sections
24 for subchapter B of chapter 65 of the Internal Revenue

1 Code of 1986 is amended by adding at the end the fol-
 2 lowing new item:

“Sec. 6430. Energy tax rebate.”.

3 (d) **EFFECTIVE DATE.**—The amendments made by
 4 this section shall take effect on the date of the enactment
 5 of this Act.

6 **TITLE II—LOW-INCOME HOME**
 7 **ENERGY ASSISTANCE**

8 **SEC. 201. SENSE OF THE SENATE REGARDING FULL FUND-**
 9 **ING FOR THE LOW-INCOME HOME ENERGY**
 10 **ASSISTANCE PROGRAM.**

11 It is the sense of the Senate that Congress should
 12 appropriate \$5,100,000,000 for fiscal year 2006 and each
 13 subsequent fiscal year for the Low-Income Home Energy
 14 Assistance Program, under section 2602(b) of the Low-
 15 Income Home Energy Assistance Act of 1981.

16 **TITLE III—CONSUMER**
 17 **PROTECTIONS**

18 **SEC. 301. UNFAIR OR DECEPTIVE ACTS OR PRACTICE IN**
 19 **COMMERCE RELATED TO PRICING OF PETRO-**
 20 **LEUM PRODUCTS.**

21 (a) **SALES TO CONSUMERS AT UNCONSCIONABLE**
 22 **PRICE.**—

23 (1) **IN GENERAL.**—It is unlawful for any person
 24 to sell crude oil, gasoline, or petroleum distillates at
 25 a price that—

1 (A) is unconscionably excessive; or

2 (B) indicates the seller is taking unfair ad-
3 vantage of circumstances to increase prices un-
4 reasonably.

5 (2) FACTORS CONSIDERED.—In determining
6 whether a violation of paragraph (1) has occurred,
7 there shall be taken into account, among other fac-
8 tors, whether—

9 (A) the amount charge represents a gross
10 disparity between the price fo the crude oil, gas-
11 oline, or petroleum distillate sold and the price
12 at which it was offered for sale in the usual
13 course of the seller's business immediately prior
14 to the energy emergency; or

15 (B) the amount charged grossly exceeds
16 the price at which the same or similar crude oil,
17 gasoline, or petroleum distillate was readily ob-
18 tainable by other purchasers in the area to
19 which the declaration applies.

20 (3) MITIGATING FACTORS.—In determining
21 whether a violation of paragraph (1) has occurred,
22 there also shall be taken into account, among other
23 factors, the price that would reasonably equate sup-
24 ply and demand in a competitive and freely func-
25 tioning market and whether the price at which the

1 crude oil, gasoline, or petroleum distillate was sold
2 reasonably reflects additional costs, not within the
3 control fo the seller, that were paid or incurred by
4 the seller.

5 (b) PROHIBITION AGAINST GEOGRAPHIC PRICE-SET-
6 TING AND TERRITORIAL RESTRICTIONS.—

7 (1) IN GENERAL.—Except as provided in para-
8 graph (2), it is unlawful for any person to—

9 (A) set different prices for gasoline or pe-
10 troleum distillates for different geographic loca-
11 tions; or

12 (B) implement a territorial restriction with
13 respect to gasoline or petroleum distillates.

14 (2) EXCEPTIONS.—A person may set different
15 prices for gasoline or petroleum distillates for dif-
16 ferent geographic locations or implement territorial
17 restrictions with respect to gasoline or petroleum
18 distillates only if the price differences or restrictions
19 are sufficiently justified by—

20 (A) differences in the cost of retail space
21 where the gasoline or petroleum distillate is
22 sold;

23 (B) differences in the cost of transpor-
24 tation of gasoline or petroleum distillates from
25 the refinery to the retail location;

1 (C) differences in the cost of storage of
2 gasoline or petroleum distillates at the retail lo-
3 cation; or

4 (D) differences in the formulation of the
5 gasoline or petroleum distillates sold.

6 (c) FALSE PRICING INFORMATION.—It is unlawful
7 for any person to report information related to the whole-
8 sale price of crude oil, gasoline, or petroleum distillates
9 to the Federal Trade Commission if—

10 (1) that person knew, or reasonably should have
11 known, the information to be false or misleading;

12 (2) the information was required by law to be
13 reported; and

14 (3) the person intended the false or misleading
15 data to affect data compiled by that department or
16 agency for statistical or analytical purpose with re-
17 spect to the market for crude oil, gasoline, or petro-
18 leum distillates.

19 **SEC. 302. ENFORCEMENT UNDER FEDERAL TRADE COMMIS-**
20 **SION ACT.**

21 (a) ENFORCEMENT BY COMMISSION.—This title shall
22 be enforced by the Federal Trade Commission. In enforce-
23 ing section 301(a) of this title, the Commission shall give
24 priority to enforcement actions concerning companies with
25 total United States wholesale or retail sales of crude oil,

1 gasoline, and petroleum distillates in excess of
2 \$500,000,000 per year but shall not exclude enforcement
3 actions against companies with total United States whole-
4 sale sales of \$500,000,000 or less per year.

5 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
6 PRACTICE.—The violation of any provision of this title
7 shall be treated as an unfair or deceptive act or practice
8 proscribed under a rule issued under section 18(a)(1)(B)
9 of the Federal Trade Commission Act (15 U.S.C.
10 57a(a)(1)(B)).

11 **SEC. 303. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

12 (a) IN GENERAL.—A State, as *parens patriae*, may
13 bring a civil action on behalf of its residents in an appro-
14 priate district court of the United States to enforce the
15 provisions of section 301(a), or to impose the civil pen-
16 alties authorized by section 304 for violations of section
17 301(a), whenever the attorney general of the State has
18 reason to believe that the interests of the residents of the
19 State have been or are being threatened by such violation.

20 (b) NOTICE.—The State shall serve written notice to
21 the Commission of any civil action under subsection (a)
22 prior to initiating such civil action. The notice shall in-
23 clude a copy of the complaint to be filed to initiate such
24 civil action, except that if it is not feasible for the State

1 to provide such prior notice, the State shall provide such
2 notice immediately upon instituting such civil action.

3 (c) AUTHORITY TO INTERVENE.—Upon receiving the
4 notice required by subsection (b), the Commission may in-
5 tervene in such civil action and upon intervening—

6 (1) be heard on all matters arising in such civil
7 action; and

8 (2) file petitions for appeal of a decision in such
9 civil action.

10 (d) CONSTRUCTION.—For purposes of bringing any
11 civil action under subsection (a), nothing in this section
12 shall prevent the attorney general of a State from exer-
13 cising the powers conferred on the attorney general by the
14 laws of such State to conduct investigations or to admin-
15 ister oaths or affirmations or to compel the attendance
16 of witnesses or the production of documentary and other
17 evidence.

18 (e) VENUE; SERVICE OF PROCESS.—In a civil action
19 brought under subsection (a)—

20 (1) the venue shall be a judicial district in
21 which—

22 (A) the defendant operates;

23 (B) the defendant was authorized to do
24 business; or

1 (C) where the defendant in the civil action
2 is found;

3 (2) process may be served without regard to the
4 territorial limits of the district or of the State in
5 which the civil action is instituted; and

6 (3) a person who participated with the defend-
7 ant in an alleged violation that is being litigated in
8 the civil action may be joined in the civil action with-
9 out regard to the residence of the person.

10 (f) **LIMITATION ON STATE ACTION WHILE FEDERAL**
11 **ACTION IS PENDING.**—If the Commission has instituted
12 a civil action or an administrative action for violation of
13 this title, no State attorney general, or official or agency
14 of a State, may bring an action under this subsection dur-
15 ing the pendency of that action against any defendant
16 named in the complain of the Commission or the other
17 agency for any violation of this title alleged in the com-
18 plaint.

19 (g) **ENFORCEMENT OF STATE LAW.**—Nothing con-
20 tained in this section shall prohibit an authorized State
21 official from proceeding in state court to enforce a civil
22 or criminal statute of such State.

23 **SEC. 304. PENALTIES.**

24 (a) **CIVIL PENALTY.**—

1 (1) IN GENERAL.—In addition to any penalty
2 applicable under the Federal Trade Commission
3 Act—

4 (A) any person who violates section 301(c)
5 of this title is punishable by a civil penalty of
6 not more than \$1,000,000; and

7 (B) any person who violates section 301(a)
8 or 301(b) of this title is punishable by a civil
9 penalty of not more than \$3,000,000.

10 (2) METHOD OF ASSESSMENT.—The penalties
11 provided by paragraph (1) shall be assessed in the
12 same manner as civil penalties imposed under sec-
13 tion 5 of the Federal Trade Commission Act (15
14 U.S.C. 45).

15 (3) MULTIPLE OFFENSES; MITIGATING FAC-
16 TORS.—In assessing the penalty provided by sub-
17 section (a)—

18 (A) each day of a continuing violation shall
19 be considered a separate violation; and

20 (B) the Commission shall take into consid-
21 eration the seriousness of the violation and the
22 efforts of the person committing the violation to
23 remedy the harm caused by the violation in a
24 timely manner.

1 (b) CRIMINAL PENALTY.—Violation of section 301(a)
2 of this title is punishable by a fine of not more than
3 \$1,000,000, imprisonment for not more than 5 years, or
4 both.

5 **SEC. 305. EFFECT ON OTHER LAWS.**

6 (a) OTHER AUTHORITY OF COMMISSION.—Nothing
7 in this title shall be construed to limit or affect in any
8 way the Commission’s authority to bring enforcement ac-
9 tions or take any other measure under the Federal Trade
10 Commission Act (15 U.S.C. 41 et seq.) or any other provi-
11 sion of law.

12 (b) STATE LAW.—Nothing in this title preempts any
13 State law.

14 **SEC. 306. MARKET TRANSPARENCY FOR CRUDE OIL, GASO-**
15 **LINE, AND PETROLEUM DISTILLATES.**

16 (a) IN GENERAL.—The Federal Trade Commission
17 shall facilitate price transparency in markets for the sale
18 of crude oil and essential petroleum products at wholesale,
19 having due regard for the public interest, the integrity of
20 those markets, fair competition, and the protection of con-
21 sumers.

22 (b) MARKETPLACE TRANSPARENCY.—

23 (1) DISSEMINATION OF INFORMATION.—In car-
24 rying out this section, the Commission shall provide
25 by rule for the dissemination, on a timely basis, of

1 information about the availability and prices of
2 wholesale crude oil, gasoline, and petroleum dis-
3 tillates to the Commission, States, wholesale buyers
4 and sellers, and the public.

5 (2) PROTECTION OF PUBLIC FROM ANTI-
6 COMPETITIVE ACTIVITY.—In determining the infor-
7 mation to be made available under this section and
8 time to make the information available, the Commis-
9 sion shall seek to ensure that consumers and com-
10 petitive markets are protected from the adverse ef-
11 fects of potential collusion or other anticompetitive
12 behaviors that can be facilitated by untimely public
13 disclosure of transaction-specific information.

14 (3) PROTECTION OF MARKET MECHANISMS.—
15 The Commission shall withhold from public disclo-
16 sure under this section any information the Commis-
17 sion determines would, if disclosed, be detrimental to
18 the operation of an effective market or jeopardize se-
19 curity.

20 (c) INFORMATION SOURCES.—

21 (1) IN GENERAL.—In carrying out subsection
22 (b), the Commission may—

23 (A) obtain information from any market
24 participant; and

1 (B) rely on entities other than the Com-
2 mission to receive and make public the informa-
3 tion, subject to the disclosure rules in sub-
4 section (b)(3).

5 (2) PUBLISHED DATA.—In carrying out this
6 section, the Commission shall—

7 (A) consider the degree of price trans-
8 parency provided by existing price publishers
9 and providers of trade processing services; and

10 (B) rely on such publishers and services to
11 the maximum extent practicable.

12 (3) ELECTRONIC INFORMATION SYSTEMS.—

13 (A) IN GENERAL.—The Commission may
14 establish an electronic information system if the
15 Commission determines that existing price pub-
16 lications are not adequately providing price dis-
17 covery or market transparency.

18 (B) ELECTRONIC INFORMATION FILING
19 REQUIREMENTS.—Nothing in this section af-
20 fects any electronic information filing require-
21 ments in effect under this title as of the date
22 of enactment of this Act.

23 (4) DE MINIMUS EXCEPTION.—The Commission
24 may not require entities who have a de minimus

1 market presence to comply with the reporting re-
2 quirements of this section.

3 (d) COOPERATION WITH OTHER FEDERAL AGEN-
4 CIES.—

5 (1) MEMORANDUM OF UNDERSTANDING.—Not
6 later 180 days after the date of enactment of this
7 Act, the Commission shall conclude a memorandum
8 of understanding with the Commodity Futures Trad-
9 ing Commission and other appropriate agencies (if
10 applicable) relating to information sharing, which
11 shall include provisions—

12 (A) ensuring that information requests to
13 markets within the respective jurisdiction of
14 each agency are properly coordinated to mini-
15 mize duplicative information requests; and

16 (B) regarding the treatment of proprietary
17 trading information.

18 (2) CFTC JURISDICTION.—Nothing in this sec-
19 tion limits or affects the exclusive jurisdiction of the
20 Commodity Futures Trading Commission under the
21 Commodity Exchange Act (7 U.S.C. 1 et seq.).

22 (e) RULEMAKING.—Not later than 180 days after the
23 date of enactment of this Act, the Commission shall ini-
24 tiate a rulemaking proceeding to establish such rules as

- 1 the Commission determines to be necessary and appro-
- 2 priate to carry out this section.

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