

110TH CONGRESS
1ST SESSION

S. 1263

To protect the welfare of consumers by prohibiting price gouging with respect to gasoline and petroleum distillates during natural disasters and abnormal market disruptions, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 2, 2007

Ms. CANTWELL (for herself, Mr. SMITH, Mr. KERRY, Mrs. BOXER, Mr. NELSON of Florida, Mrs. MCCASKILL, Mr. ROCKEFELLER, Mrs. MURRAY, Mrs. FEINSTEIN, Mr. BIDEN, Mrs. STABENOW, Mr. WYDEN, Mr. REED, Mr. DORGAN, Mr. DURBIN, and Mr. HARKIN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To protect the welfare of consumers by prohibiting price gouging with respect to gasoline and petroleum distillates during natural disasters and abnormal market disruptions, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Petroleum Consumer Price Gouging Protection Act”.

1 (b) TABLE OF CONTENTS.—The table of contents for
 2 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Definitions.
- Sec. 3. Prohibition on price gouging during energy emergencies.
- Sec. 4. Prohibition on market manipulation.
- Sec. 5. Prohibition on false information.
- Sec. 6. Presidential declaration of energy emergency.
- Sec. 7. Enforcement by the Federal Trade Commission.
- Sec. 8. Enforcement by State Attorneys General.
- Sec. 9. Penalties.
- Sec. 10. Effect on other laws.

3 **SEC. 2. DEFINITIONS.**

4 In this Act:

5 (1) AFFECTED AREA.—The term “affected
 6 area” means an area covered by a Presidential dec-
 7 laration of energy emergency.

8 (2) SUPPLIER.—The term “supplier” means
 9 any person engaged in the trade or business of sell-
 10 ing or reselling, at retail or wholesale, or distributing
 11 crude oil, gasoline, or petroleum distillates.

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) UNCONSCIONABLY EXCESSIVE PRICE.—The
 16 term “unconscionably excessive price” means a price
 17 charged in an affected area for crude oil, gasoline,
 18 or petroleum distillates that—

19 (A)(i) represents a gross disparity between
 20 the price at which it was offered for sale in the

1 usual course of the supplier's business imme-
2 diately prior to the President's declaration of an
3 energy emergency;

4 (ii) grossly exceeds the price at which the
5 same or similar crude oil, gasoline, or petroleum
6 distillate was readily obtainable by other pur-
7 chasers in the affected area; or

8 (iii) represents an exercise of unfair lever-
9 age or unconscionable means on the part of the
10 supplier, during a period of declared energy
11 emergency; and

12 (B) is not attributable to increased whole-
13 sale or operational costs outside the control of
14 the supplier, incurred in connection with the
15 sale of crude oil, gasoline, or petroleum dis-
16 tillates.

17 (5) COMMISSION.—The term “Commission”
18 means the Federal Trade Commission.

19 **SEC. 3. PROHIBITION ON PRICE GOUGING DURING ENERGY**
20 **EMERGENCIES.**

21 (a) IN GENERAL.—During any energy emergency de-
22 clared by the President under section 6 of this Act, it is
23 unlawful for any supplier to sell, or offer to sell, crude
24 oil, gasoline, or petroleum distillates in, or for use in, the

1 area to which that declaration applies at an unconscion-
 2 ably excessive price.

3 (b) FACTORS CONSIDERED.—In determining whether
 4 a violation of subsection (a) has occurred, there shall be
 5 taken into account, among other factors, the price that
 6 would reasonably equate supply and demand in a competi-
 7 tive and freely functioning market.

8 **SEC. 4. PROHIBITION ON MARKET MANIPULATION.**

9 It is unlawful for any person, directly or indirectly,
 10 to use or employ, in connection with the purchase or sale
 11 of crude oil, gasoline, or petroleum distillates at wholesale,
 12 any manipulative or deceptive device or contrivance, in
 13 contravention of such rules and regulations as the Com-
 14 mission may prescribe as necessary or appropriate in the
 15 public interest or for the protection of United States citi-
 16 zens.

17 **SEC. 5. PROHIBITION ON FALSE INFORMATION.**

18 (a) IN GENERAL.—It is unlawful for any person to
 19 report information related to the wholesale price of crude
 20 oil, gasoline, or petroleum distillates to the Commission
 21 if—

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

24 (2) the information was required by law to be
 25 reported; and

1 (3) the person intended the false or misleading
2 data to affect data compiled by the Commission for
3 statistical or analytical purposes with respect to the
4 market for crude oil, gasoline, or petroleum dis-
5 tillates.

6 **SEC. 6. PRESIDENTIAL DECLARATION OF ENERGY EMER-**
7 **GENCY.**

8 (a) IN GENERAL.—If the President finds that the
9 health, safety, welfare, or economic well-being of the citi-
10 zens of the United States is at risk because of a shortage
11 or imminent shortage of adequate supplies of crude oil,
12 gasoline, or petroleum distillates due to a disruption in
13 the national distribution system for crude oil, gasoline, or
14 petroleum distillates (including such a shortage related to
15 a major disaster (as defined in section 102(2) of the Rob-
16 ert T. Stafford Disaster Relief and Emergency Assistance
17 Act (42 U.S.C. 5122(2))), or significant pricing anomalies
18 in national energy markets for crude oil, gasoline, or pe-
19 troleum distillates, the President may declare that a Fed-
20 eral energy emergency exists.

21 (b) SCOPE AND DURATION.—The emergency declara-
22 tion shall specify—

23 (1) the period, not to exceed 30 days, for which
24 the declaration applies;

1 (2) the circumstance or condition necessitating
2 the declaration; and

3 (3) the area or region to which it applies,
4 which, for the 48 contiguous states may not be lim-
5 ited to a single State.

6 (c) EXTENSIONS.—The President may—

7 (1) extend a declaration under subsection (a)
8 for a period of not more than 30 days; and

9 (2) extend such a declaration more than once.

10 **SEC. 7. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
11 **SION.**

12 (a) ENFORCEMENT.—This Act shall be enforced by
13 the Federal Trade Commission. In enforcing section 3 of
14 this Act, the Commission shall give priority to enforcement
15 actions concerning companies with total United States
16 wholesale or retail sales of crude oil, gasoline, and petro-
17 leum distillates in excess of \$500,000,000 per year but
18 shall not exclude enforcement actions against companies
19 with total United States wholesale sales of \$500,000,000
20 or less per year.

21 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
22 PRACTICE.—The violation of any provision of this Act
23 shall be treated as an unfair or deceptive act or practice
24 proscribed under a rule issued under section 18(a)(1)(B)

1 of the Federal Trade Commission Act (15 U.S.C.
2 57a(a)(1)(B)).

3 (c) COMMISSION ACTIONS.—Following the declara-
4 tion of an energy emergency by the President under sec-
5 tion 6 of this Act, the Commission shall—

6 (1) establish within the Commission—

7 (A) a toll-free hotline that a consumer may
8 call to report an incident of price gouging in the
9 affected area; and

10 (B) a program to develop and distribute to
11 the public informational materials to assist resi-
12 dents of the affected area in detecting and
13 avoiding price gouging;

14 (2) consult with the Attorney General, the
15 United States Attorney for the districts in which a
16 disaster occurred (if the declaration is related to a
17 major disaster), and State and local law enforcement
18 officials to determine whether any supplier in the af-
19 fected area is charging or has charged an uncon-
20 scionably excessive price for crude oil, gasoline, or
21 petroleum distillates in the affected area; and

22 (3) conduct an investigation to determine
23 whether any supplier in the affected area has vio-
24 lated section 3 of this Act, and upon such finding,

1 take any action the Commission determines to be
2 appropriate to remedy the violation.

3 **SEC. 8. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

4 (a) IN GENERAL.—A State, as *parens patriae*, may
5 bring a civil action on behalf of its residents in an appro-
6 priate district court of the United States to enforce the
7 provisions of section 3 of this Act, or to impose the civil
8 penalties authorized by section 9 for violations of section
9 3, whenever the attorney general of the State has reason
10 to believe that the interests of the residents of the State
11 have been or are being threatened or adversely affected
12 by a supplier engaged in the sale or resale, at retail or
13 wholesale, or distribution of crude oil, gasoline, or petro-
14 leum distillates in violation of section 3 of this Act.

15 (b) NOTICE.—The State shall serve written notice to
16 the Commission of any civil action under subsection (a)
17 prior to initiating the action. The notice shall include a
18 copy of the complaint to be filed to initiate the civil action,
19 except that if it is not feasible for the State to provide
20 such prior notice, the State shall provide such notice im-
21 mediately upon instituting the civil action.

22 (c) AUTHORITY TO INTERVENE.—Upon receiving the
23 notice required by subsection (b), the Commission may in-
24 tervene in the civil action and, upon intervening—

1 (1) may be heard on all matters arising in such
2 civil action; and

3 (2) may file petitions for appeal of a decision in
4 such civil action.

5 (d) CONSTRUCTION.—For purposes of bringing any
6 civil action under subsection (a), nothing in this section
7 shall prevent the attorney general of a State from exer-
8 cising the powers conferred on the Attorney General by
9 the laws of such State to conduct investigations or to ad-
10 minister oaths or affirmations or to compel the attendance
11 of witnesses or the production of documentary and other
12 evidence.

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

15 (1) the venue shall be a judicial district in
16 which—

17 (A) the defendant operates;

18 (B) the defendant was authorized to do
19 business; or

20 (C) where the defendant in the civil action
21 is found;

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

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

5 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
6 ACTION IS PENDING.—If the Commission has instituted
7 a civil action or an administrative action for violation of
8 this Act, a State attorney general, or official or agency
9 of a State, may not bring an action under this section
10 during the pendency of that action against any defendant
11 named in the complaint of the Commission or the other
12 agency for any violation of this Act alleged in the Commis-
13 sion’s civil or administrative action.

14 (g) NO PREEMPTION.—Nothing contained in this
15 section shall prohibit an authorized State official from pro-
16 ceeding in State court to enforce a civil or criminal statute
17 of that State.

18 **SEC. 9. PENALTIES.**

19 (a) CIVIL PENALTY.—

20 (1) IN GENERAL.—In addition to any penalty
21 applicable under the Federal Trade Commission Act,
22 any supplier—

23 (A) that violates section 4 or section 5 of
24 this Act is punishable by a civil penalty of not
25 more than \$1,000,000; and

1 (B) that violates section 3 of this Act is
2 punishable by a civil penalty of—

3 (i) not more than \$500,000, in the
4 case of an independent small business mar-
5 keter of gasoline (within the meaning of
6 section 324(c) of the Clean Air Act (42
7 U.S.C. 7625(c))); and

8 (ii) not more than \$5,000,000 in the
9 case of any other supplier.

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 3 of
2 this Act is punishable by a fine of not more than
3 \$5,000,000, imprisonment for not more than 5 years, or
4 both.

5 **SEC. 10. EFFECT ON OTHER LAWS.**

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

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

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