

111TH CONGRESS  
2D SESSION

# S. 3547

To prohibit price gouging relating to gasoline and diesel fuels in areas affected by major disasters, and for other purposes.

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IN THE SENATE OF THE UNITED STATES

JUNE 29, 2010

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

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## A BILL

To prohibit price gouging relating to gasoline and diesel fuels in areas affected by major disasters, 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 “Price Gouging Act of  
5 2010”.

6 **SEC. 2. FUEL PRICE GOUGING PROHIBITION FOLLOWING**  
7 **MAJOR DISASTERS.**

8 (a) IN GENERAL.—The Federal Trade Commission  
9 Act (15 U.S.C. 41 et seq.) is amended by inserting after  
10 section 24 (15 U.S.C. 57b–5) the following:

1 **“SEC. 24A. PROTECTION FROM FUEL PRICE GOUGING FOL-**  
2 **LOWING MAJOR DISASTERS.**

3 “(a) DEFINITIONS.—In this section:

4 “(1) AFFECTED AREA.—The term ‘affected  
5 area’ means an area affected by a major disaster de-  
6 clared by the President under Federal law in effect  
7 on the date of the enactment of this section.

8 “(2) PRICE GOUGING.—The term ‘price  
9 gouging’ means the charging of an unconscionably  
10 excessive price by a supplier in an affected area.

11 “(3) SUPPLIER.—The term ‘supplier’ means  
12 any person that sells gasoline or diesel fuel for resale  
13 or ultimate consumption.

14 “(4) UNCONSCIONABLY EXCESSIVE PRICE.—  
15 The term ‘unconscionably excessive price’ means a  
16 price charged in an affected area for gasoline or die-  
17 sel fuel that—

18 “(A) represents a gross disparity, as deter-  
19 mined by the Commission in accordance with  
20 subsection (e), between the price charged for  
21 gasoline or diesel fuel and the average price of  
22 gasoline or diesel fuel charged by suppliers in  
23 the affected area during the 30-day period end-  
24 ing on the date the President declares the exist-  
25 ence of a major disaster; and

1           “(B) is not attributable to increased whole-  
2           sale or operational costs incurred by the sup-  
3           plier in connection with the sale of gasoline or  
4           diesel fuel.

5           “(b) DETERMINATION OF THE COMMISSION.—As  
6           soon as practicable after the President declares a major  
7           disaster, the Commission shall—

8           “(1) consult with the Attorney General, the  
9           United States Attorney for the district in which the  
10          disaster occurred, and State and local law enforce-  
11          ment officials to determine whether any supplier in  
12          the affected area is charging or has charged an un-  
13          conscionably excessive price for gasoline or diesel  
14          fuel provided in the affected area; and

15          “(2) establish within the Commission—

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

19                “(B) a program to develop and distribute  
20                to the public informational materials in English  
21                and Spanish to consumers in the affected area  
22                on detecting and avoiding price gouging.

23          “(c) PRICE GOUGING INVOLVING DISASTER VIC-  
24          TIMS.—

1           “(1) OFFENSE.—During the 180-day period be-  
2           ginning on the date on which a major disaster is de-  
3           clared by the President, it shall be unlawful for a  
4           supplier to sell, or offer to sell, gasoline or diesel fuel  
5           in an affected area at an unconscionably excessive  
6           price.

7           “(2) ACTION BY COMMISSION.—

8                   “(A) IN GENERAL.—During the period de-  
9                   scribed in paragraph (1), the Commission shall  
10                  conduct investigations of complaints by con-  
11                  sumers of price gouging by suppliers in an af-  
12                  fected area.

13                   “(B) POSITIVE DETERMINATION.—If the  
14                  Commission determines under subparagraph  
15                  (A) that a supplier is in violation of paragraph  
16                  (1), the Commission shall take any action the  
17                  Commission determines to be appropriate to  
18                  remedy the violation.

19           “(3) CIVIL PENALTIES.—A supplier who com-  
20           mits a violation described in paragraph (1) may, in  
21           a civil action brought in a court of competent juris-  
22           diction, be subject to—

23                   “(A) a civil penalty of not more than  
24                  \$500,000;

1           “(B) an order to pay special and punitive  
2 damages;

3           “(C) an order to pay reasonable attorney’s  
4 fees;

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

7           “(E) an order for disgorgement of profits  
8 earned as a result of a violation of paragraph  
9 (1); and

10           “(F) any other relief determined by the  
11 court to be appropriate.

12           “(4) CRIMINAL PENALTY.—A supplier that  
13 knowingly commits a violation described in para-  
14 graph (1) shall be imprisoned not more than 1 year.

15           “(5) ACTION BY VICTIMS.—A person, Federal  
16 agency, State, or local government that suffers loss  
17 or damage as a result of a violation of paragraph (1)  
18 may bring a civil action against a supplier in any  
19 court of competent jurisdiction for disgorgement,  
20 special or punitive damages, injunctive relief, reason-  
21 able attorney’s fees, costs of the litigation, and any  
22 other appropriate legal or equitable relief.

23           “(6) ACTION BY STATE ATTORNEYS GEN-  
24 ERAL.—An attorney general of a State, or other au-  
25 thorized State official, may bring a civil action in the

1 name of the State, on behalf of persons residing in  
2 the State, in any court of competent jurisdiction for  
3 disgorgement, special or punitive damages, reason-  
4 able attorney's fees, costs of litigation, and any other  
5 appropriate legal or equitable relief.

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

8 “(d) REPORT.—Not later than 1 year after the date  
9 of the enactment of this section, and annually thereafter,  
10 the Commission shall submit to the Committee on Com-  
11 merce, Science, and Transportation of the Senate and the  
12 Committee on Energy and Commerce of the House of  
13 Representatives a report describing the following:

14 “(1) The number of price gouging complaints  
15 received by the Commission for each major disaster  
16 declared by the President during the preceding year.

17 “(2) The number of price gouging investiga-  
18 tions of the Commission initiated, in progress, and  
19 completed as of the date on which the report is pre-  
20 pared.

21 “(3) The number of enforcement actions of the  
22 Commission initiated, in progress, and completed as  
23 of the date on which the report is prepared.

1           “(4) An evaluation of the effectiveness of the  
2           toll-free hotline and program established under sub-  
3           section (b)(2).

4           “(5) Recommendations for any additional ac-  
5           tion with respect to the implementation or effective-  
6           ness of this section.

7           “(e) DEFINITION OF GROSS DISPARITY.—Not later  
8           than 180 days after the date of the enactment of this sub-  
9           section, the Commission shall promulgate regulations to  
10          define the term ‘gross disparity’ for purposes of this sec-  
11          tion.”.

12          (b) EFFECT OF SECTION.—Nothing in this section,  
13          or the amendment made by this section, affects the au-  
14          thority of the Federal Trade Commission in effect on the  
15          date of the enactment of this Act with respect to price  
16          gouging.

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