

110TH CONGRESS
1ST SESSION

H. R. 1252

IN THE SENATE OF THE UNITED STATES

MAY 24, 2007

Received; read twice and referred to the Committee on Commerce, Science,
and Transportation

AN ACT

To protect consumers from price-gouging of gasoline and
other fuels, 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,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Federal Price Gouging
3 Prevention Act”.

4 **SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE AND**
5 **OTHER PETROLEUM DISTILLATES DURING**
6 **EMERGENCIES.**

7 (a) UNCONSCIONABLE PRICING.—

8 (1) IN GENERAL.—It shall be unlawful for any
9 person to sell, at wholesale or at retail in an area
10 and during a period of an energy emergency, gaso-
11 line or any other petroleum distillate covered by a
12 proclamation issued under paragraph (2) at a price
13 that—

14 (A) is unconscionably excessive; and

15 (B) indicates the seller is taking unfair ad-
16 vantage of the circumstances related to an en-
17 ergy emergency to increase prices unreasonably.

18 (2) ENERGY EMERGENCY PROCLAMATION.—

19 (A) IN GENERAL.—The President may
20 issue an energy emergency proclamation for any
21 area within the jurisdiction of the United
22 States, during which the prohibition in para-
23 graph (1) shall apply. The proclamation shall
24 state the geographic area covered, the gasoline
25 or other petroleum distillate covered, and the

1 time period that such proclamation shall be in
2 effect.

3 (B) DURATION.—The proclamation—

4 (i) may not apply for a period of more
5 than 30 consecutive days, but may be re-
6 newed for such consecutive periods, each
7 not to exceed 30 days, as the President de-
8 termines appropriate; and

9 (ii) may include a period of time not
10 to exceed 1 week preceding a reasonably
11 foreseeable emergency.

12 (3) FACTORS CONSIDERED.—In determining
13 whether a person has violated paragraph (1), there
14 shall be taken into account, among other factors—

15 (A) whether the amount charged by such
16 person for the applicable gasoline or other pe-
17 troleum distillate at a particular location in an
18 area covered by a proclamation issued under
19 paragraph (2) during the period such proclama-
20 tion is in effect—

21 (i) grossly exceeds the average price
22 at which the applicable gasoline or other
23 petroleum distillate was offered for sale by
24 that person during the 30 days prior to
25 such proclamation;

1 (ii) grossly exceeds the price at which
2 the same or similar gasoline or other pe-
3 troleum distillate was readily obtainable in
4 the same area from other competing sellers
5 during the same period;

6 (iii) reasonably reflected additional
7 costs, not within the control of that person,
8 that were paid, incurred, or reasonably an-
9 ticipated by that person, or reflected addi-
10 tional risks taken by that person to
11 produce, distribute, obtain, or sell such
12 product under the circumstances; and

13 (iv) was substantially attributable to
14 local, regional, national, or international
15 market conditions; and

16 (B) whether the quantity of gasoline or
17 other petroleum distillate the person produced,
18 distributed, or sold in an area covered by a
19 proclamation issued under paragraph (2) dur-
20 ing a 30-day period following the issuance of
21 such proclamation increased over the quantity
22 that that person produced, distributed, or sold
23 during the 30 days prior to such proclamation,
24 taking into account usual seasonal demand vari-
25 ations.

1 (b) FALSE PRICING INFORMATION.—It shall be un-
2 lawful for any person to report to a Federal agency infor-
3 mation related to the wholesale price of gasoline or other
4 petroleum distillates with actual knowledge or knowledge
5 fairly implied on the basis of objective circumstances that
6 such information is false or misleading.

7 (c) DEFINITIONS.—As used in this section—

8 (1) the term “wholesale”, with respect to sales
9 of gasoline or other petroleum distillates, means ei-
10 ther truckload or smaller sales of gasoline or petro-
11 leum distillates where title transfers at a product
12 terminal or a refinery, and dealer tank wagon sales
13 of gasoline or petroleum distillates priced on a deliv-
14 ered basis to retail outlets; and

15 (2) the term “retail”, with respect to sales of
16 gasoline or other petroleum distillates, includes all
17 sales to end users such as motorists as well as all
18 direct sales to other end users such as agriculture,
19 industry, residential, and commercial consumers.

20 (d) CONSTRUCTION.—As described in this section, a
21 sale of gasoline or other petroleum distillate does not in-
22 clude a transaction on a futures market.

1 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
2 **SION.**

3 (a) ENFORCEMENT BY FTC.—A violation of section
4 2 shall be treated as a violation of a rule defining an un-
5 fair or deceptive act or practice prescribed under section
6 18(a)(1)(B) of the Federal Trade Commission Act (15
7 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
8 shall enforce this Act in the same manner, by the same
9 means, and with the same jurisdiction as though all appli-
10 cable terms and provisions of the Federal Trade Commis-
11 sion Act were incorporated into and made a part of this
12 Act. In enforcing section 2(a) of this Act, the Commission
13 shall give priority to enforcement actions concerning com-
14 panies with total United States wholesale or retail sales
15 of gasoline and other petroleum distillates in excess of
16 \$500,000,000 per year.

17 (b) CIVIL PENALTIES.—

18 (1) IN GENERAL.—Notwithstanding the pen-
19 alties set forth under the Federal Trade Commission
20 Act, any person who violates this Act with actual
21 knowledge or knowledge fairly implied on the basis
22 of objective circumstances shall be subject to the fol-
23 lowing penalties:

24 (A) PRICE GOUGING; UNJUST PROFITS.—

25 Any person who violates section 2(a) shall be
26 subject to—

1 (i) a fine of not more than 3 times the
2 amount of profits gained by such person
3 through such violation; or

4 (ii) a fine of not more than
5 \$3,000,000.

6 (B) FALSE INFORMATION.—Any person
7 who violates section 2(b) shall be subject to a
8 civil penalty of not more than \$1,000,000.

9 (2) METHOD.—The penalties provided by para-
10 graph (1) shall be obtained in the same manner as
11 civil penalties obtained under section 5 of the Fed-
12 eral Trade Commission Act (15 U.S.C. 45).

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

16 (A) each day of a continuing violation shall
17 be considered a separate violation; and

18 (B) the court shall take into consideration,
19 among other factors, the seriousness of the vio-
20 lation and the efforts of the person committing
21 the violation to remedy the harm caused by the
22 violation in a timely manner.

1 **SEC. 4. CRIMINAL PENALTIES.**

2 (a) IN GENERAL.—In addition to any penalty appli-
3 cable under section 3, any person who violates section 2
4 shall be fined under title 18, United States Code—

5 (1) if a corporation, not to exceed
6 \$150,000,000; and

7 (2) if an individual not to exceed \$2,000,000,
8 or imprisoned for not more than 10 years, or both.

9 (b) ENFORCEMENT.—The criminal penalty provided
10 by subsection (a) may be imposed only pursuant to a
11 criminal action brought by the Attorney General or other
12 officer of the Department of Justice.

13 **SEC. 5. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTOR-**
14 **NEYS GENERAL.**

15 (a) IN GENERAL.—A State, as *parens patriae*, may
16 bring a civil action on behalf of its residents in an appro-
17 priate district court of the United States to enforce the
18 provisions of section 2(a) of this Act, or to impose the
19 civil penalties authorized by section 3(b)(1)(B), whenever
20 the attorney general of the State has reason to believe that
21 the interests of the residents of the State have been or
22 are being threatened or adversely affected by a violation
23 of this Act or a regulation under this Act, involving a re-
24 tail sale.

25 (b) NOTICE.—The State shall serve written notice to
26 the Federal Trade Commission of any civil action under

1 subsection (a) prior to initiating such civil action. The no-
2 tice shall include a copy of the complaint to be filed to
3 initiate such civil action, except that if it is not feasible
4 for the State to provide such prior notice, the State shall
5 provide such notice immediately upon instituting such civil
6 action.

7 (c) **AUTHORITY TO INTERVENE.**—Upon receiving the
8 notice required by subsection (b), the Federal Trade Com-
9 mission may intervene in such civil action and upon inter-
10 vening—

11 (1) be heard on all matters arising in such civil
12 action; and

13 (2) file petitions for appeal of a decision in such
14 civil action.

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

23 (e) **VENUE; SERVICE OF PROCESS.**—In a civil action
24 brought under subsection (a)—

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

3 (A) the defendant operates;

4 (B) the defendant was authorized to do
5 business; or

6 (C) the defendant in the civil action is
7 found;

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

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

15 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
16 ACTION IS PENDING.—If the Federal Trade Commission
17 has instituted a civil action or an administrative action
18 for violation of this Act, no State attorney general, or offi-
19 cial or agency of a State, may bring an action under this
20 subsection during the pendency of that action against any
21 defendant named in the complaint of the Federal Trade
22 Commission or the other agency for any violation of this
23 Act alleged in the complaint.

24 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
25 tained in this section shall prohibit an authorized State

1 official from proceeding in State court to enforce a civil
2 or criminal statute of such State.

3 **SEC. 6. LOW INCOME ENERGY ASSISTANCE.**

4 Amounts collected in fines and penalties under sec-
5 tion 3 of this Act shall be deposited in a separate fund
6 in the treasury to be known as the Consumer Relief Trust
7 Fund. To the extent provided for in advance in appropria-
8 tions Acts, the fund shall be used to provide assistance
9 under the Low Income Home Energy Assistance Program
10 administered by the Secretary of Health and Human Serv-
11 ices.

12 **SEC. 7. EFFECT ON OTHER LAWS.**

13 (a) OTHER AUTHORITY OF FEDERAL TRADE COM-
14 MISSION.—Nothing in this Act shall be construed to limit
15 or affect in any way the Federal Trade Commission’s au-
16 thority to bring enforcement actions or take any other
17 measure under the Federal Trade Commission Act (15
18 U.S.C. 41 et seq.) or any other provision of law.

19 (b) STATE LAW.—Nothing in this Act preempts any
20 State law.

Passed the House of Representatives May 23, 2007.

Attest: LORRAINE C. MILLER,
Clerk.