

112TH CONGRESS
1ST SESSION

H. R. 1899

To amend the Sherman Act to make oil-producing and exporting cartels illegal; to improve competition in the oil and gas industry, to strengthen antitrust enforcement with regard to industry mergers; to protect consumers from price-gouging of gasoline and other fuels; and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 13, 2011

Mr. CONYERS introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend the Sherman Act to make oil-producing and exporting cartels illegal; to improve competition in the oil and gas industry, to strengthen antitrust enforcement with regard to industry mergers; 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 “Oil Consumer Protec-
3 tion Act of 2011”.

4 **TITLE I—APPLICATION OF THE**
5 **SHERMAN ACT**

6 **SEC. 101. SHORT TITLE.**

7 This title may be cited as the “No Oil Producing and
8 Exporting Cartels Act of 2011” or “NOPEC”.

9 **SEC. 102. SHERMAN ACT.**

10 The Sherman Act (15 U.S.C. 1 et seq.) is amended
11 by adding after section 7 the following:

12 “SEC. 7A. (a) It shall be illegal and a violation of
13 this Act for any foreign state, or any instrumentality or
14 agent of any foreign state, to act collectively or in com-
15 bination with any other foreign state, any instrumentality
16 or agent of any other foreign state, or any other person,
17 whether by cartel or any other association or form of co-
18 operation or joint action—

19 “(1) to limit the production or distribution of
20 oil, natural gas, or any other petroleum product;

21 “(2) to set or maintain the price of oil, natural
22 gas, or any petroleum product; or

23 “(3) to otherwise take any action in restraint of
24 trade for oil, natural gas, or any petroleum product;
25 when such action, combination, or collective action has a
26 direct, substantial, and reasonably foreseeable effect on

1 the market, supply, price, or distribution of oil, natural
2 gas, or other petroleum product in the United States.

3 “(b) A foreign state engaged in conduct in violation
4 of subsection (a) shall not be immune under the doctrine
5 of sovereign immunity from the jurisdiction or judgments
6 of the courts of the United States in any action brought
7 to enforce this section.

8 “(c) No court of the United States shall decline,
9 based on the act of state doctrine, to make a determina-
10 tion on the merits in an action brought under this section.

11 “(d) The Attorney General of the United States may
12 bring an action to enforce this section in any district court
13 of the United States as provided under the antitrust
14 laws.”.

15 **SEC. 103. SOVEREIGN IMMUNITY.**

16 Section 1605(a) of title 28, United States Code, is
17 amended—

18 (1) in paragraph (6) by striking “or” after the
19 semicolon,

20 (2) in paragraph (7) by striking the period and
21 inserting “, or”, and

22 (3) by adding at the end the following:

23 “(8) in which the action is brought under sec-
24 tion 7A of the Sherman Act.”.

1 **TITLE II—APPLICATION OF THE**
2 **CLAYTON ACT**

3 **SEC. 201. SHORT TITLE.**

4 This title may be cited as the “Oil and Gas Industry
5 Antitrust Act of 2011”.

6 **SEC. 202. PROHIBITION ON UNILATERAL WITHHOLDING.**

7 The Clayton Act (15 U.S.C. 12 et seq.) is amended—

8 (1) by redesignating section 28 as section 29,

9 and

10 (2) by inserting after section 27 the following:

11 **“SEC. 28. OIL AND NATURAL GAS.**

12 “(a) IN GENERAL.—Except as provided in subsection
13 (b), it shall be unlawful for any person to refuse to sell,
14 or to export or divert, existing supplies of petroleum, gaso-
15 line, or other fuel derived from petroleum, or natural gas
16 with the primary intention of increasing prices or creating
17 a shortage in a geographic market.

18 “(b) CONSIDERATIONS.—In determining whether a
19 person who has refused to sell, or exported or diverted,
20 existing supplies of petroleum, gasoline, or other fuel de-
21 rived from petroleum or natural gas has done so with the
22 intent of increasing prices or creating a shortage in a geo-
23 graphic market under subsection (a), the court shall con-
24 sider whether—

1 “(1) the cost of acquiring, producing, refining,
2 processing, marketing, selling, or otherwise making
3 such products available has increased; and

4 “(2) the price obtained from exporting or di-
5 verting existing supplies is greater than the price ob-
6 tained where the existing supplies are located or are
7 intended to be shipped.”.

8 **SEC. 203. REVIEW OF CLAYTON ACT.**

9 (a) IN GENERAL.—The Attorney General and the
10 Chairman of the Federal Trade Commission shall conduct
11 a study, including a review of the report submitted under
12 section 4, regarding whether section 7 of the Clayton Act
13 should be amended to modify how that section applies to
14 persons engaged in the business of exploring for, pro-
15 ducing, refining, or otherwise processing, storing, mar-
16 keting, selling, or otherwise making available petroleum,
17 gasoline or other fuel derived from petroleum, or natural
18 gas.

19 (b) REPORT.—Not later than 270 days after the date
20 of enactment of this Act, the Attorney General and the
21 Chairman of the Federal Trade Commission shall submit
22 a report to Congress regarding the findings of the study
23 conducted under subsection (a), including recommenda-
24 tions and proposed legislation, if any.

1 **SEC. 204. STUDY BY THE GOVERNMENT ACCOUNTABILITY**
2 **OFFICE.**

3 (a) DEFINITION.—In this section, the term “covered
4 consent decree” means a consent decree—

5 (1) to which either the Federal Trade Commis-
6 sion or the Department of Justice is a party,

7 (2) that was entered by the district court not
8 earlier than 10 years before the date of enactment
9 of this Act,

10 (3) that required divestitures, and

11 (4) that involved a person engaged in the busi-
12 ness of exploring for, producing, refining, or other-
13 wise processing, storing, marketing, selling, or other-
14 wise making available petroleum, gasoline or other
15 fuel derived from petroleum, or natural gas.

16 (b) REQUIREMENT FOR A STUDY.—Not later than
17 180 days after the date of enactment of this Act, the
18 Comptroller General of the United States shall conduct
19 a study evaluating the effectiveness of divestitures re-
20 quired under covered consent decrees.

21 (c) REQUIREMENT FOR A REPORT.—Not later than
22 180 days after the date of enactment of this Act, the
23 Comptroller General shall submit a report to Congress, the
24 Federal Trade Commission, and the Department of Jus-
25 tice regarding the findings of the study conducted under
26 subsection (b).

1 (d) FEDERAL AGENCY CONSIDERATION.—Upon re-
2 ceipt of the report required by subsection (c), the Attorney
3 General or the Chairman of the Federal Trade Commis-
4 sion, as appropriate, shall consider whether any additional
5 action is required to restore competition or prevent a sub-
6 stantial lessening of competition occurring as a result of
7 any transaction that was the subject of the study con-
8 ducted under subsection (b).

9 **SEC. 205. JOINT FEDERAL AND STATE TASK FORCE.**

10 The Attorney General and the Chairman of the Fed-
11 eral Trade Commission shall establish a joint Federal-
12 State task force, which shall include the attorney general
13 of any State that chooses to participate, to investigate in-
14 formation sharing (including through the use of exchange
15 agreements and commercial information services) among
16 persons in the business of exploring for, producing, refin-
17 ing, or otherwise processing, storing, marketing, selling,
18 or otherwise making available petroleum, gasoline or other
19 fuel derived from petroleum, or natural gas (including any
20 person about which the Energy Information Administra-
21 tion collects financial and operating data as part of its
22 Financial Reporting System).

1 **TITLE III—PREVENTION OF**
2 **PRICE GOUGING**

3 **SEC. 301. SHORT TITLE.**

4 This title may be cited as the “Federal Price Gouging
5 Prevention Act”.

6 **SEC. 302. UNCONSCIONABLE PRICING OF GASOLINE AND**
7 **OTHER PETROLEUM DISTILLATES DURING**
8 **EMERGENCIES.**

9 (a) UNCONSCIONABLE PRICING.—

10 (1) IN GENERAL.—It shall be unlawful for any
11 person to sell, at wholesale or at retail in an area
12 and during a period of an international crisis affect-
13 ing the oil markets proclaimed under paragraph (2),
14 gasoline or any other petroleum distillate covered by
15 a proclamation issued under paragraph (2) at a
16 price that—

17 (A) is unconscionably excessive; and

18 (B) indicates the seller is taking unfair ad-
19 vantage of the circumstances related to an
20 international crisis to increase prices unreason-
21 ably.

22 (2) ENERGY EMERGENCY PROCLAMATION.—

23 (A) IN GENERAL.—The President may
24 issue a proclamation of an international crisis
25 affecting the oil markets and may designate any

1 area within the jurisdiction of the United
2 States, where the prohibition in paragraph (1)
3 shall apply. The proclamation shall state the ge-
4 ographic area covered, the gasoline or other pe-
5 troleum distillate covered, and the time period
6 that such proclamation shall be in effect.

7 (B) DURATION.—The proclamation—

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

13 (ii) may include a period of time not
14 to exceed 1 week preceding a reasonably
15 foreseeable emergency.

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

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

1 (i) grossly exceeds the average price
2 at which the applicable gasoline or other
3 petroleum distillate was offered for sale by
4 that person during the 30 days prior to
5 such proclamation;

6 (ii) grossly exceeds the price at which
7 the same or similar gasoline or other pe-
8 troleum distillate was readily obtainable in
9 the same area from other competing sellers
10 during the same period;

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

18 (iv) was substantially attributable to
19 local, regional, national, or international
20 market conditions; and

21 (B) whether the quantity of gasoline or
22 other petroleum distillate the person produced,
23 distributed, or sold in an area covered by a
24 proclamation issued under paragraph (2) dur-
25 ing a 30-day period following the issuance of

1 such proclamation increased over the quantity
2 that that person produced, distributed, or sold
3 during the 30 days prior to such proclamation,
4 taking into account usual seasonal demand vari-
5 ations.

6 (b) DEFINITIONS.—As used in this section—

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

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

19 **SEC. 303. ENFORCEMENT BY THE FEDERAL TRADE COM-**
20 **MISSION.**

21 (a) ENFORCEMENT BY FTC.—A violation of section
22 302 shall be treated as a violation of a rule defining an
23 unfair or deceptive act or practice prescribed under section
24 18(a)(1)(B) of the Federal Trade Commission Act (15
25 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission

1 shall enforce this title in the same manner, by the same
2 means, and with the same jurisdiction as though all appli-
3 cable terms and provisions of the Federal Trade Commis-
4 sion Act were incorporated into and made a part of this
5 title. In enforcing section 302 of this title, the Commission
6 shall give priority to enforcement actions concerning com-
7 panies with total United States wholesale or retail sales
8 of gasoline and other petroleum distillates in excess of
9 \$10,000,000,000 per year.

10 (b) CIVIL PENALTIES.—

11 (1) IN GENERAL.—Notwithstanding the pen-
12 alties set forth under the Federal Trade Commission
13 Act, any person who violates section 302 with actual
14 knowledge or knowledge fairly implied on the basis
15 of objective circumstances shall be subject to—

16 (A) a civil penalty of not more than 3
17 times the amount of profits gained by such per-
18 son through such violation; or

19 (B) a civil penalty of not more than
20 \$100,000,000.

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

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

4 (A) each day of a continuing violation shall
5 be considered a separate violation; and

6 (B) the court shall take into consideration,
7 among other factors, the seriousness of the vio-
8 lation and the efforts of the person committing
9 the violation to remedy the harm caused by the
10 violation in a timely manner.

11 **SEC. 304. CRIMINAL PENALTIES.**

12 (a) IN GENERAL.—In addition to any penalty appli-
13 cable under section 303, any person who violates section
14 302 shall be fined under title 18, United States Code, in
15 an amount not to exceed \$500,000,000.

16 (b) ENFORCEMENT.—The criminal penalty provided
17 by subsection (a) may be imposed only pursuant to a
18 criminal action brought by the Attorney General or other
19 officer of the Department of Justice. The Attorney Gen-
20 eral shall give priority to enforcement actions concerning
21 companies with total United States wholesale or retail
22 sales of gasoline and other petroleum distillates in excess
23 of \$10,000,000,000 per year.

1 **SEC. 305. ENFORCEMENT AT RETAIL LEVEL BY STATE AT-**
2 **TORNEYS GENERAL.**

3 (a) **IN GENERAL.**—A State, as *parens patriae*, may
4 bring a civil action on behalf of its residents in an appro-
5 priate district court of the United States to enforce the
6 provisions of section 302, or to impose the civil penalties
7 authorized by section 303(b)(1)(B), whenever the attorney
8 general of the State has reason to believe that the interests
9 of the residents of the State have been or are being threat-
10 ened or adversely affected by a violation of this title or
11 a regulation under this title, involving a retail sale.

12 (b) **NOTICE.**—The State shall serve written notice to
13 the Federal Trade Commission of any civil action under
14 subsection (a) prior to initiating such civil action. The no-
15 tice shall include a copy of the complaint to be filed to
16 initiate such civil action, except that if it is not feasible
17 for the State to provide such prior notice, the State shall
18 provide such notice immediately upon instituting such civil
19 action.

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

24 (1) be heard on all matters arising in such civil
25 action; and

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

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

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

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

15 (A) the defendant operates;

16 (B) the defendant was authorized to do
17 business; or

18 (C) the defendant in the civil action is
19 found;

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

23 (3) a person who participated with the defend-
24 ant in an alleged violation that is being litigated in

1 the civil action may be joined in the civil action with-
2 out regard to the residence of the person.

3 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
4 ACTION IS PENDING.—If the Federal Trade Commission
5 has instituted a civil action or an administrative action
6 for violation of this title, no State attorney general, or offi-
7 cial or agency of a State, may bring an action under this
8 subsection during the pendency of that action against any
9 defendant named in the complaint of the Federal Trade
10 Commission or the other agency for any violation of this
11 title alleged in the complaint.

12 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
13 tained in this section shall prohibit an authorized State
14 official from proceeding in State court to enforce a civil
15 or criminal statute of such State.

16 **SEC. 306. EFFECT ON OTHER LAWS.**

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

23 (b) STATE LAW.—Nothing in this title preempts any
24 State law.

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