

112TH CONGRESS
1ST SESSION

H. R. 964

To protect consumers from price-gouging of gasoline and other fuels, and
for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 9, 2011

Mr. BISHOP of New York (for himself, Mr. MCNERNEY, Mr. WALZ of Minnesota, Mr. MCINTYRE, Mr. BRALEY of Iowa, Mr. YARMUTH, and Mr. CHANDLER) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

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,*

3 **SECTION 1. SHORT TITLE.**

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

6 **SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE AND**

7 **OTHER PETROLEUM DISTILLATES DURING**

8 **EMERGENCIES.**

9 (a) UNCONSCIONABLE PRICING.—

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

8 (A) is unconscionably excessive; and

9 (B) indicates the seller is taking unfair ad-
10 vantage of the circumstances related to an
11 international crisis to increase prices unreason-
12 ably.

13 (2) ENERGY EMERGENCY PROCLAMATION.—

14 (A) IN GENERAL.—The President may
15 issue a proclamation of an international crisis
16 affecting the oil markets and may designate any
17 area within the jurisdiction of the United
18 States, where the prohibition in paragraph (1)
19 shall apply. The proclamation shall state the ge-
20 ographic area covered, the gasoline or other pe-
21 troleum distillate covered, and the time period
22 that such proclamation shall be in effect.

23 (B) DURATION.—The proclamation—

24 (i) may not apply for a period of more
25 than 30 consecutive days, but may be re-

1 newed for such consecutive periods, each
2 not to exceed 30 days, as the President de-
3 termines appropriate; and

4 (ii) may include a period of time not
5 to exceed 1 week preceding a reasonably
6 foreseeable emergency.

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

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

16 (i) grossly exceeds the average price
17 at which the applicable gasoline or other
18 petroleum distillate was offered for sale by
19 that person during the 30 days prior to
20 such proclamation;

21 (ii) grossly exceeds the price at which
22 the same or similar gasoline or other pe-
23 troleum distillate was readily obtainable in
24 the same area from other competing sellers
25 during the same period;

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

8 (iv) was substantially attributable to
9 local, regional, national, or international
10 market conditions; and

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

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

22 (1) the term “wholesale”, with respect to sales
23 of gasoline or other petroleum distillates, means ei-
24 ther truckload or smaller sales of gasoline or petro-
25 leum distillates where title transfers at a product

1 terminal or a refinery, and dealer tank wagon sales
2 of gasoline or petroleum distillates priced on a deliv-
3 ered basis to retail outlets; and

4 (2) the term “retail”, with respect to sales of
5 gasoline or other petroleum distillates, includes all
6 sales to end users such as motorists as well as all
7 direct sales to other end users such as agriculture,
8 industry, residential, and commercial consumers.

9 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
10 **SION.**

11 (a) ENFORCEMENT BY FTC.—A violation of section
12 2 shall be treated as a violation of a rule defining an un-
13 fair or deceptive act or practice prescribed under section
14 18(a)(1)(B) of the Federal Trade Commission Act (15
15 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
16 shall enforce this Act in the same manner, by the same
17 means, and with the same jurisdiction as though all appli-
18 cable terms and provisions of the Federal Trade Commis-
19 sion Act were incorporated into and made a part of this
20 Act. In enforcing section 2 of this Act, the Commission
21 shall give priority to enforcement actions concerning com-
22 panies with total United States wholesale or retail sales
23 of gasoline and other petroleum distillates in excess of
24 \$10,000,000,000 per year.

25 (b) CIVIL PENALTIES.—

1 (1) IN GENERAL.—Notwithstanding the pen-
2 alties set forth under the Federal Trade Commission
3 Act, any person who violates section 2 with actual
4 knowledge or knowledge fairly implied on the basis
5 of objective circumstances shall be subject to—

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

9 (B) a civil penalty of not more than
10 \$100,000,000.

11 (2) METHOD.—The penalties provided by para-
12 graph (1) shall be obtained in the same manner as
13 civil penalties obtained under section 5 of the Fed-
14 eral Trade Commission Act (15 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 court shall take into consideration,
21 among other factors, the seriousness of the vio-
22 lation and the efforts of the person committing
23 the violation to remedy the harm caused by the
24 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, in an
5 amount not to exceed \$500,000,000.

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

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

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

1 (b) NOTICE.—The State shall serve written notice to
2 the Federal Trade Commission of any civil action under
3 subsection (a) prior to initiating such civil action. The no-
4 tice shall include a copy of the complaint to be filed to
5 initiate such civil action, except that if it is not feasible
6 for the State to provide such prior notice, the State shall
7 provide such notice immediately upon instituting such civil
8 action.

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

13 (1) be heard on all matters arising in such civil
14 action; and

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

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

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

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

5 (A) the defendant operates;

6 (B) the defendant was authorized to do
7 business; or

8 (C) the defendant in the civil action is
9 found;

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

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

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

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

5 **SEC. 6. EFFECT ON OTHER LAWS.**

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

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

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