

118TH CONGRESS
1ST SESSION

S. 355

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

IN THE SENATE OF THE UNITED STATES

FEBRUARY 9, 2023

Ms. DUCKWORTH (for herself, Mr. BLUMENTHAL, Mrs. MURRAY, and Ms.
WARREN) introduced the following bill; which was read twice and referred
to the Committee on Commerce, Science, and Transportation

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 a domestic or an inter-
4 national crisis affecting the oil markets proclaimed
5 under paragraph (2), gasoline or any other petro-
6 leum distillate covered by a proclamation issued
7 under paragraph (2) at a price that—

8 (A) is unconscionably excessive; and

9 (B) indicates the seller is taking unfair ad-
10 vantage of the circumstances related to a do-
11 mestic or an international crisis to increase
12 prices unreasonably.

13 (2) ENERGY EMERGENCY PROCLAMATION.—

14 (A) IN GENERAL.—The President may
15 issue a proclamation of a domestic or an inter-
16 national crisis affecting the oil markets and
17 may designate any area within the jurisdiction
18 of the United States (including the entire
19 United States), where the prohibition in para-
20 graph (1) shall apply. The proclamation shall
21 state the geographic area covered, the gasoline
22 or other petroleum distillate covered, and the
23 time period that such proclamation shall be in
24 effect.

25 (B) DURATION.—The proclamation—

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

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

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

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

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

23 (ii) grossly exceeds the price at which
24 the same or similar gasoline or other pe-
25 troleum distillate was readily obtainable in

1 the same area from other competing sellers
2 during the same period;

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

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

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

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

24 (1) the term “wholesale”, with respect to sales
25 of gasoline or other petroleum distillates, means ei-

1 ther truckload or smaller sales of gasoline or petro-
2 leum distillates where title transfers at a product
3 terminal or a refinery, and dealer tank wagon sales
4 of gasoline or petroleum distillates priced on a deliv-
5 ered basis to retail outlets; and

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

11 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
12 **SION.**

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

1 of gasoline and other petroleum distillates in excess of
2 \$10,000,000,000 per year.

3 (b) CIVIL PENALTIES.—

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

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

12 (B) a civil penalty of not more than
13 \$100,000,000.

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

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

21 (A) each day of a continuing violation shall
22 be considered a separate violation; and

23 (B) the court shall take into consideration,
24 among other factors, the seriousness of the vio-
25 lation and the efforts of the person committing

1 the violation to remedy the harm caused by the
2 violation in a timely manner.

3 **SEC. 4. CRIMINAL PENALTIES.**

4 (a) IN GENERAL.—In addition to any penalty appli-
5 cable under section 3, any person who violates section 2
6 shall be fined under title 18, United States Code, in an
7 amount not to exceed \$500,000,000.

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

16 **SEC. 5. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTOR-**
17 **NEYS GENERAL.**

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

1 of this Act or a regulation under this Act, involving a re-
2 tail sale.

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

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

15 (1) be heard on all matters arising in such civil
16 action; and

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

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

1 of witnesses or the production of documentary and other
2 evidence.

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

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

7 (A) the defendant operates;

8 (B) the defendant was authorized to do
9 business; or

10 (C) the defendant in the civil action is
11 found;

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

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

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

1 Commission or the other agency for any violation of this
2 Act alleged in the complaint.

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

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

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

14 (b) STATE LAW.—Nothing in this Act preempts any
15 State law.

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