

111TH CONGRESS
1ST SESSION

H. R. 2129

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

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2009

Mr. STUPAK (for himself, Mr. BAIRD, Mr. BERMAN, Ms. BORDALLO, Mr. CARNAHAN, Mr. CARNEY, Mr. CONYERS, Mr. COURTNEY, Mr. DOYLE, Ms. ESHOO, Mr. FARR, Mr. GRIJALVA, Mr. HARE, Mr. HIGGINS, Mr. HILL, Mr. HINCHEY, Mr. HOLDEN, Mr. LEVIN, Mr. MCGOVERN, Mr. MCHUGH, Mrs. MALONEY, Mr. MARKEY of Massachusetts, Mr. OBERSTAR, Mr. PASCRELL, Mr. RYAN of Ohio, Mr. SIRES, Mr. SPACE, Ms. SUTTON, Mr. TAYLOR, Mr. TIERNEY, Mr. VAN HOLLEN, and Mr. VIS-CLOSKY) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Education and Labor, 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 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”.

1 **SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE AND**
2 **OTHER PETROLEUM DISTILLATES DURING**
3 **EMERGENCIES.**

4 (a) UNCONSCIONABLE PRICING.—

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

11 (A) is unconscionably excessive; and

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

15 (2) ENERGY EMERGENCY PROCLAMATION.—

16 (A) IN GENERAL.—The President may
17 issue an energy emergency proclamation for any
18 area within the jurisdiction of the United
19 States, during which 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 (c) CONSTRUCTION.—As described in this section, a
12 sale of gasoline or other petroleum distillate does not in-
13 clude a transaction on a futures market.

14 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
15 **SION.**

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

1 shall give priority to enforcement actions concerning com-
2 panies with total United States wholesale or retail sales
3 of gasoline and other petroleum distillates in excess of
4 \$500,000,000 per year.

5 (b) CIVIL PENALTIES.—

6 (1) IN GENERAL.—Notwithstanding the pen-
7 alties set forth under the Federal Trade Commission
8 Act, any person who violates this Act with actual
9 knowledge or knowledge fairly implied on the basis
10 of objective circumstances shall be subject to the fol-
11 lowing penalties:

12 (A) PRICE GOUGING; UNJUST PROFITS.—

13 Any person who violates section 2(a) shall be
14 subject to—

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

18 (ii) a fine of not more than
19 \$3,000,000.

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

23 (2) METHOD.—The penalties provided by para-
24 graph (1) shall be obtained in the same manner as

1 civil penalties obtained under section 5 of the Fed-
2 eral Trade Commission Act (15 U.S.C. 45).

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

6 (A) each day of a continuing violation shall
7 be considered a separate violation; and

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

13 **SEC. 4. CRIMINAL PENALTIES.**

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

17 (1) if a corporation, not to exceed
18 \$150,000,000; and

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

21 (b) ENFORCEMENT.—The criminal penalty provided
22 by subsection (a) may be imposed only pursuant to a
23 criminal action brought by the Attorney General or other
24 officer of the Department of Justice.

1 **SEC. 5. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTOR-**
2 **NEYS 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 2(a) of this Act, or to impose the
7 civil penalties authorized by section 3(b)(1)(B), whenever
8 the attorney general of the State has reason to believe that
9 the interests of the residents of the State have been or
10 are being threatened or adversely affected by a violation
11 of this Act or a regulation under this Act, involving a re-
12 tail sale.

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

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

25 (1) be heard on all matters arising in such civil
26 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 Act, 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 Act 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. 6. LOW INCOME ENERGY ASSISTANCE.**

17 Amounts collected in fines and penalties under sec-
18 tion 3 of this Act shall be deposited in a separate fund
19 in the treasury to be known as the Consumer Relief Trust
20 Fund. To the extent provided for in advance in appropria-
21 tions Acts, the fund shall be used to provide assistance
22 under the Low Income Home Energy Assistance Program
23 administered by the Secretary of Health and Human Serv-
24 ices.

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

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

8 (b) STATE LAW.—Nothing in this Act preempts any
9 State law.

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