

118TH CONGRESS
2D SESSION

S. 3803

To make price gouging unlawful, to expand the ability of the Federal Trade Commission to seek permanent injunctions and equitable relief, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 26, 2024

Ms. WARREN (for herself, Ms. BALDWIN, Mr. CASEY, Mr. SANDERS, Mr. MERKLEY, Mr. MARKEY, Mr. WHITEHOUSE, Mr. BLUMENTHAL, and Mr. FETTERMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To make price gouging unlawful, to expand the ability of the Federal Trade Commission to seek permanent injunctions and equitable relief, 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; TABLE OF CONTENTS.**

4 (a) **SHORT TITLE.**—This Act may be cited as the
5 “Price Gouging Prevention Act of 2024”.

6 (b) **TABLE OF CONTENTS.**—The table of contents for
7 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Definitions.

Sec. 3. Prevention of price gouging.
Sec. 4. Disclosures in SEC filings.
Sec. 5. Funding.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

3 (1) COMMISSION.—The term “Commission”
4 means the Federal Trade Commission.

5 (2) CRITICAL TRADING PARTNER.—The term
6 “critical trading partner” means a person that has
7 the ability to restrict, impede, or foreclose access to
8 the inputs, customers, partners, goods, services,
9 technology, platform, facilities, or tools of such per-
10 son in a way that harms competition or limits the
11 ability of the customers or suppliers of such person
12 to carry out business effectively.

13 (3) EXCEPTIONAL MARKET SHOCK.—The term
14 “exceptional market shock” means—

15 (A) any change or imminently threatened
16 (as determined under guidance issued by the
17 Commission) change in the market for a good
18 or service resulting from a natural disaster,
19 failure or shortage of electric power or other
20 source of energy, concerted labor action, lock-
21 out, civil disorder, war, military action, national
22 or local emergency, public health emergency, or
23 any other cause of an atypical disruption in
24 such market; or

1 (B) any period of time during which the
2 President has declared a major disaster or
3 emergency under section 401 or 502, respec-
4 tively, of the Robert T. Stafford Disaster Relief
5 and Emergency Assistance Act (42 U.S.C.
6 5170, 5191).

7 (4) GOOD OR SERVICE.—The term “good or
8 service” means any good or service offered in com-
9 merce.

10 (5) STATE.—The term “State” means each of
11 the several States, the District of Columbia, each
12 commonwealth, territory, or possession of the United
13 States, and each federally recognized Indian Tribe.

14 (6) ULTIMATE PARENT ENTITY.—The term “ul-
15 timate parent entity” has the meaning given such
16 term in section 801.1 of title 16, Code of Federal
17 Regulations (or any successor regulation).

18 **SEC. 3. PREVENTION OF PRICE GOUGING.**

19 (a) IN GENERAL.—It shall be unlawful for a person
20 to sell or offer for sale a good or service at a grossly exces-
21 sive price, regardless of the person’s position in a supply
22 chain or distribution network.

23 (b) AFFIRMATIVE DEFENSE.—

1 (1) IN GENERAL.—Subsection (a) shall not
2 apply to the sale, or offering for sale, of a good or
3 service by a person if—

4 (A) the person’s ultimate parent entity
5 earned less than \$100,000,000 in gross revenue
6 from goods or services provided in the United
7 States during the 12-month period preceding
8 the sale or offer that allegedly violates sub-
9 section (a); and

10 (B) the person demonstrates by a prepon-
11 derance of the evidence that the increase in the
12 price of the good or service involved is directly
13 attributable to additional costs that are—

14 (i) not within the control of the per-
15 son; and

16 (ii) incurred by the person in pro-
17 curing, acquiring, distributing, or pro-
18 viding the good or service.

19 (2) INFLATION ADJUSTMENT.—Beginning on
20 January 1, 2025, the Commission shall annually ad-
21 just the amount specified in paragraph (1)(A) by the
22 percentage change in the consumer price index for
23 all urban consumers published by the Bureau of
24 Labor Statistics for the 12-month period ending on
25 December 31 of the previous year.

1 (c) PRESUMPTIVE VIOLATIONS.—A person shall be
2 presumed to be in violation of subsection (a) if, during
3 an exceptional market shock, it is shown by a preponder-
4 ance of the evidence that the person—

5 (1)(A) has unfair leverage; or

6 (B) is using the effects or circumstances related
7 to an exceptional market shock as a pretext to in-
8 crease prices; and

9 (2) regardless of the person's position in a sup-
10 ply chain or distribution network, sells or offers for
11 sale a good or service at an excessive price compared
12 to—

13 (A) the average price at which the good or
14 service was sold or offered for sale by the per-
15 son in the market during the 120-day period
16 preceding such exceptional market shock; or

17 (B) the price at which the good or service
18 was sold or offered for sale by competing sellers
19 in the market during the exceptional market
20 shock.

21 (d) REBUTTAL.—A person may rebut a presumption
22 under subsection (c) if the person demonstrates by clear
23 and convincing evidence that the increase in the price of
24 the good or service involved is directly attributable to addi-
25 tional costs that are—

1 (1) not within the control of the person; and

2 (2) incurred by the person in procuring, acquiring,
3 ing, distributing, or providing the good or service.

4 (e) UNFAIR LEVERAGE.—

5 (1) IN GENERAL.—

6 (A) CHARACTERISTICS OF UNFAIR LEVER-
7 AGE.—For purposes of subsection (e), a person
8 has unfair leverage if the person—

9 (i) earned at least \$1,000,000,000 in
10 gross revenue from goods or services pro-
11 vided in the United States during the 12-
12 month period preceding the sale or offer
13 that allegedly violates subsection (a);

14 (ii) discriminates between otherwise
15 equal trading partners in the same market
16 by applying differential prices or condi-
17 tions;

18 (iii) is a critical trading partner;

19 (iv) engages in unfair, deceptive, or
20 abusive acts or practices;

21 (v) has a dominant position in—

22 (I) the conduct of any business,
23 trade, or commerce;

24 (II) any labor market; or

1 (III) the furnishing of any serv-
2 ice; or

3 (vi) has a characteristic described in a
4 rule promulgated by the Commission that
5 further defines unfair leverage.

6 (B) PRESUMPTION OF A DOMINANT POSI-
7 TION.—For purposes of subparagraph (A)(v), a
8 person shall be presumed to have a dominant
9 position if—

10 (i) evidence shows that the person is
11 not constrained by meaningful competitive
12 pressures; or

13 (ii) the person—

14 (I) has a share of 40 percent or
15 greater of a relevant market as a sell-
16 er; or

17 (II) has a share of 30 percent or
18 greater of a relevant market as a
19 buyer.

20 (2) INFLATION ADJUSTMENT.—Beginning on
21 January 1, 2025, the Commission shall annually ad-
22 just the amount specified in paragraph (1)(A)(i) by
23 the percentage change in the consumer price index
24 for all urban consumers published by the Bureau of

1 Labor Statistics for the 12-month period ending on
2 December 31 of the previous year.

3 (f) ENFORCEMENT BY THE COMMISSION.—

4 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
5 TICES.—A violation of this section or a regulation
6 promulgated under this section shall be treated as a
7 violation of a rule defining an unfair or deceptive act
8 or practice prescribed under section 18(a)(1)(B) of
9 the Federal Trade Commission Act (15 U.S.C.
10 57a(a)(1)(B)).

11 (2) POWERS OF THE COMMISSION.—

12 (A) IN GENERAL.—Except as provided by
13 subparagraphs (D) and (E), the Commission
14 shall enforce this section in the same manner,
15 by the same means, and with the same jurisdic-
16 tion, powers, and duties as though all applicable
17 terms and provisions of the Federal Trade
18 Commission Act (15 U.S.C. 41 et seq.) were in-
19 corporated into and made a part of this section.

20 (B) PRIVILEGES AND IMMUNITIES.—Any
21 person who violates this section or a regulation
22 promulgated under this section shall be subject
23 to the penalties and entitled to the privileges
24 and immunities provided in the Federal Trade
25 Commission Act (15 U.S.C. 41 et seq.).

1 (C) AUTHORITY PRESERVED.—Nothing in
2 this section shall be construed to limit the au-
3 thority of the Commission under any other pro-
4 vision of law.

5 (D) INDEPENDENT LITIGATION AUTHOR-
6 ITY.—If the Commission has reason to believe
7 that a person has violated this section, the
8 Commission may bring a civil action in any ap-
9 propriate United States district court to—

10 (i) enjoin any further such violation
11 by such person;

12 (ii) enforce compliance with this sec-
13 tion;

14 (iii) obtain a permanent, temporary,
15 or preliminary injunction;

16 (iv) obtain civil penalties;

17 (v) obtain damages, restitution, or
18 other compensation on behalf of aggrieved
19 consumers; or

20 (vi) obtain any other appropriate equi-
21 table relief.

22 (E) CIVIL PENALTIES.—In addition to any
23 other penalties as may be prescribed by law,
24 each violation of this section shall carry a civil
25 penalty not to exceed—

1 (i) if the person who committed the
2 violation does not have unfair leverage (as
3 described in subsection (e)), the lesser of—

4 (I) \$25,000; or

5 (II) 5 percent of the revenues
6 earned by the person's ultimate par-
7 ent entity during the preceding 12-
8 month period; or

9 (ii) if the person who committed the
10 violation has unfair leverage, 5 percent of
11 the revenues earned by the person's ulti-
12 mate parent entity during the preceding
13 12-month period.

14 (F) RULEMAKING.—

15 (i) IN GENERAL.—The Commission
16 may promulgate in accordance with section
17 553 of title 5, United States Code, such
18 rules as may be necessary to carry out this
19 section, including guidelines regarding
20 what circumstances constitute an excep-
21 tional market shock or guidelines that pro-
22 vide for additional characteristics that
23 demonstrate that a person has unfair le-
24 verage.

1 (ii) REQUIRED GUIDANCE.—Not later
2 than 180 days after the date of enactment
3 of this Act, the Commission shall promul-
4 gate regulations regarding violations of
5 this section, which shall include guidelines
6 on, for the purposes of this Act, what con-
7 stitutes a market, a grossly excessive price
8 for a good or service, and an excessive
9 price for a good or service.

10 (iii) DEFINITION OF GROSSLY EXCES-
11 SIVE PRICE.—

12 (I) IN GENERAL.—For purposes
13 of subsection (a) and the guidelines
14 on what constitutes a grossly excessive
15 price described in clause (ii), the
16 Commission shall define the term
17 “grossly excessive price” using any
18 metric it deems appropriate.

19 (II) DEFINITION CONSIDER-
20 ATIONS.—In formulating the defini-
21 tion in subclause (I), the Commission
22 shall consider whether to provide that
23 such term shall include a price for a
24 good or service that is an amount
25 equal to or greater than 120 percent

1 (or a lesser percentage, as determined
2 appropriate by the Commission) of the
3 average price for such good or service
4 in the market during the 6-month pe-
5 riod preceding the sale or offer that
6 allegedly violates subsection (a).

7 (g) ENFORCEMENT BY STATE ATTORNEYS GEN-
8 ERAL.—

9 (1) IN GENERAL.—If the attorney general of a
10 State has reason to believe that any person has vio-
11 lated or is violating this section, the attorney gen-
12 eral, in addition to any authority it may have to
13 bring an action in State court under the laws of
14 such State, may bring a civil action in any appro-
15 priate United States district court or in any other
16 court of competent jurisdiction, including a State
17 court, to—

18 (A) enjoin any further such violation by
19 such person;

20 (B) enforce compliance with this section;

21 (C) obtain a permanent, temporary, or pre-
22 liminary injunction;

23 (D) obtain civil penalties;

1 (E) obtain damages, restitution, or other
2 compensation on behalf of residents of the
3 State; or

4 (F) obtain any other appropriate equitable
5 relief.

6 (2) RIGHTS OF THE COMMISSION.—

7 (A) NOTICE TO THE COMMISSION.—

8 (i) IN GENERAL.—Except as provided
9 in clause (ii), before initiating a civil action
10 under paragraph (1), the attorney general
11 of the State involved shall provide to the
12 Commission a written notice of such action
13 and a copy of the complaint for such ac-
14 tion.

15 (ii) EXCEPTION.—If the attorney gen-
16 eral determines that it is not feasible to
17 provide the notice described in clause (i)
18 before initiating a civil action under this
19 subsection, the attorney general shall pro-
20 vide written notice of the action and a copy
21 of the complaint to the Commission imme-
22 diately upon initiating the civil action.

23 (iii) JURISDICTION NOT AFFECTED.—
24 An attorney general failing to provide no-
25 tice under clause (i) shall not prevent the

1 attorney general or the Commission from
2 having jurisdiction over a civil action
3 brought under paragraph (1) or imperil
4 such civil action in any way.

5 (B) INTERVENTION.—The Commission
6 may—

7 (i) intervene in any civil action
8 brought by the attorney general, official, or
9 agency of a State under this subsection;
10 and

11 (ii) upon intervening—

12 (I) be heard on all matters arising
13 in the civil action; and

14 (II) file petitions for appeal of a
15 decision in the civil action.

16 (3) INVESTIGATORY POWERS.—Nothing in this
17 subsection may be construed to prevent the attorney
18 general of a State from exercising the powers conferred
19 on the attorney general by the laws of the
20 State to conduct investigations, to administer oaths
21 or affirmations, or to compel the attendance of witnesses
22 or the production of documentary or other
23 evidence.

24 (4) LIMITATION ON STATE ACTION WHILE FEDERAL
25 ACTION IS PENDING.—If the Commission has

1 instituted a civil action for a violation of this section,
2 no State attorney general may, without the approval
3 of the Commission, bring an action under this sub-
4 section during the pendency of that action against
5 any defendant named in the complaint of the Com-
6 mission for any violation of this section alleged in
7 the complaint.

8 (5) RELATIONSHIP WITH STATE-LAW CLAIMS.—

9 If the attorney general of a State has authority to
10 bring an action under State law directed at acts or
11 practices that also violate this section, the attorney
12 general may assert a claim under State law and a
13 claim under this section in the same civil action.

14 (6) VENUE; SERVICE OF PROCESS.—

15 (A) VENUE.—Any action brought under
16 paragraph (1) may be brought in—

17 (i) the district court of the United
18 States that meets applicable requirements
19 relating to venue under section 1391 of
20 title 28, United States Code; or

21 (ii) another court of competent juris-
22 diction.

23 (B) SERVICE OF PROCESS.—In an action
24 brought under paragraph (1), process may be
25 served in any district in which—

1 (i) the defendant is an inhabitant,
2 may be found, or transacts business; or

3 (ii) venue is proper under section
4 1391 of title 28, United States Code.

5 (7) ACTIONS BY OTHER STATE OFFICIALS.—

6 (A) IN GENERAL.—In addition to civil ac-
7 tions brought by an attorney general under
8 paragraph (1), any other officer of a State who
9 is authorized by the State to do so may bring
10 a civil action under paragraph (1), subject to
11 the same requirements and limitations that
12 apply under this subsection to civil actions
13 brought by attorneys general.

14 (B) SAVINGS PROVISION.—Nothing in this
15 subsection may be construed to prohibit an au-
16 thorized official of a State from initiating or
17 continuing any proceeding in a court of the
18 State for a violation of any civil or criminal law
19 of the State.

20 (8) EFFECT ON STATE LAWS.—Nothing in this
21 section shall preempt or otherwise affect any State
22 or local law.

23 **SEC. 4. DISCLOSURES IN SEC FILINGS.**

24 (a) DEFINITIONS.—In this section:

1 (1) COVERED ISSUER.—The term “covered
2 issuer” means an issuer that—

3 (A) has a covered quarter; and

4 (B) in the quarter following the covered
5 quarter described in subparagraph (A), is re-
6 quired to submit Form 10-Q or Form 10-K.

7 (2) COVERED QUARTER.—The term “covered
8 quarter” means a quarter during which there is an
9 exceptional market shock.

10 (3) FORM 10-K.—The term “Form 10-K”
11 means the form described in section 249.310 of title
12 17, Code of Federal Regulations, or any successor
13 regulation.

14 (4) FORM 10-Q.—The term “Form 10-Q”
15 means the form described in section 240.15d-13 of
16 title 17, Code of Federal Regulations, or any suc-
17 cessor regulation.

18 (5) ISSUER.—The term “issuer” has the mean-
19 ing given the term in section 3(a) of the Securities
20 Exchange Act of 1934 (15 U.S.C. 78c(a)).

21 (b) INCLUSION IN FILING.—Each covered issuer, in
22 each Form 10-K or Form 10-Q that the covered issuer
23 is required to file in a quarter following a covered quarter,
24 shall include in the filing the following information with

1 respect to that covered quarter, as compared with the
2 quarter preceding that covered quarter:

3 (1) The percentage change in the volume of
4 goods or services sold, and the percentage change in
5 the average sales price of those goods or services,
6 which shall be broken down by material product cat-
7 egories, when relevant, and presented in a tabular
8 format.

9 (2) The gross margins of the covered issuer,
10 which shall be broken down by material product cat-
11 egories, when relevant, and presented in a tabular
12 format.

13 (3) Presented in tabular format, the share of
14 the increase in revenue of the covered issuer that is
15 attributable to—

16 (A) a change in the cost of goods or serv-
17 ices sold by the covered issuer; and

18 (B) a change in the volume of goods or
19 services sold by the covered issuer.

20 (4) The percentage change in the costs of the
21 covered issuer, which shall be broken down by cat-
22 egory and presented in tabular format.

23 (5) In dollars, the change in the costs of the
24 covered issuer and the revenue of the covered issuer,
25 which shall be presented in tabular format.

1 (6) A detailed narrative disclosure of the pric-
2 ing strategy of the covered issuer, which shall in-
3 clude—

4 (A) an explanation for any increase in the
5 gross margins of material product categories,
6 including all material causes for such an in-
7 crease, an explanation of how each such mate-
8 rial cause affected such an increase, and a de-
9 scription of the relative importance of each such
10 material cause with respect to such an increase;

11 (B) an explanation for the decisions made
12 by the covered issuer with respect to the prices
13 of goods or services sold by the covered issuer;

14 (C) if the covered issuer increased prices at
15 a rate that was greater than the rate at which
16 the costs incurred by the covered issuer in-
17 creased, the rationale and objectives for increas-
18 ing prices in such a manner; and

19 (D) a description of conditions under
20 which the covered issuer plans to modify pricing
21 after the date on which the covered issuer sub-
22 mits the filing.

23 (c) REGULATIONS.—Not later than 180 days after
24 the date of enactment of this Act, the Securities and Ex-
25 change Commission shall issue final regulations, or amend

1 existing regulations of the Commission, to carry out this
2 section.

3 (d) **EFFECTIVE DATE.**—This section shall take effect
4 on the date on which the Securities and Exchange Com-
5 mission issues final regulations under subsection (c) or
6 completes the amendments required under that sub-
7 section, as applicable.

8 **SEC. 5. FUNDING.**

9 In addition to amounts otherwise available, there is
10 appropriated to the Commission for fiscal year 2024, out
11 of any money in the Treasury not otherwise appropriated,
12 \$1,000,000,000, to remain available until September 30,
13 2032, for carrying out work of the Commission.

○