

117TH CONGRESS  
2D SESSION

# S. 3920

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

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IN THE SENATE OF THE UNITED STATES

MARCH 24, 2022

Ms. DUCKWORTH introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

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## 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 “Gas 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 States  
18 (including the entire United States), where the  
19 prohibition in paragraph (1) shall apply. The  
20 proclamation shall state the geographic area  
21 covered, the gasoline or other petroleum dis-  
22 tillate covered, and the time period that such  
23 proclamation shall be in effect.

24                   (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 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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