

110TH CONGRESS
1ST SESSION

H. R. 1252

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

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 28, 2007

Mr. STUPAK (for himself, Mr. BOUCHER, Mr. ENGEL, Mr. ALLEN, Ms. SCHAKOWSKY, Mr. MARKEY, Mr. DOYLE, Ms. BALDWIN, Mr. HILL, Ms. HOOLEY, Mr. WEINER, Mr. ROSS, Ms. HARMAN, Mr. MCHUGH, Mr. ETHERIDGE, Mr. FRANK of Massachusetts, Ms. HERSETH, Mr. ACKERMAN, Mr. BAIRD, Mr. BISHOP of New York, Mr. KILDEE, Mr. BOSWELL, Mr. DEFazio, Mr. BRADY of Pennsylvania, Mr. CARNEY, Ms. KILPATRICK, Mr. OBERSTAR, Ms. CLARKE, Mrs. NAPOLITANO, Mr. CLEAVER, Ms. MCCOLLUM of Minnesota, Mr. COHEN, Mr. CONYERS, Mr. DAVIS of Illinois, Mr. CUMMINGS, Mr. FARR, Mr. VISCLOSKEY, Mr. FATTAH, Mr. BERRY, Mr. FILNER, Mr. GRIJALVA, Mr. HARE, Mr. HIGGINS, Ms. SUTTON, Ms. HIRONO, Mr. HOLDEN, Mr. CARNAHAN, Mr. HOLT, Mr. JOHNSON of Georgia, Ms. KAPTUR, Mr. LANTOS, Ms. LINDA T. SÁNCHEZ of California, Mr. LIPINSKI, Mr. LYNCH, Mrs. MCCARTHY of New York, Mrs. CHRISTENSEN, Mr. BERMAN, Mr. MCGOVERN, Mr. MCNULTY, Mr. TAYLOR, Mrs. MALONEY of New York, Ms. MATSUI, Ms. LORETTA SANCHEZ of California, Mr. MICHAUD, Mr. TIERNEY, Mr. GEORGE MILLER of California, Mr. ALTMIRE, Mr. PATRICK J. MURPHY of Pennsylvania, Ms. BORDALLO, Mr. PASCRELL, Ms. SCHWARTZ, Mr. SERRANO, Mr. UDALL of Colorado, Mr. WEXLER, Mr. CAPUANO, Ms. BERKLEY, Ms. WOOLSEY, Mr. NADLER, and Mr. RYAN of Ohio) 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”.

6 **SEC. 2. UNCONSCIONABLE PRICING OF GASOLINE, OIL,**
 7 **NATURAL GAS, AND PETROLEUM DIS-**
 8 **TILLATES DURING EMERGENCIES.**

9 (a) UNCONSCIONABLE PRICING.—

10 (1) IN GENERAL.—It shall be unlawful for any
 11 person to sell crude oil, gasoline, natural gas, or pe-
 12 troleum distillates at a price that—

13 (A) is unconscionably excessive; or

14 (B) indicates the seller is taking unfair ad-
 15 vantage unusual market conditions (whether
 16 real or perceived) or the circumstances of an
 17 emergency to increase prices unreasonably.

18 (2) FACTORS CONSIDERED.—In determining
 19 whether a violation of paragraph (1) has occurred,
 20 there shall be taken into account, among other fac-
 21 tors, whether—

1 (A) the amount charged represents a gross
2 disparity between the price of the crude oil, gas-
3 oline, natural gas, or petroleum distillate sold
4 and the average price at which it was offered
5 for sale by the seller during the preceding 30
6 days; or

7 (B) the amount charged grossly exceeds
8 the price at which the same or similar crude oil,
9 gasoline, natural gas, or petroleum distillate
10 was readily obtainable by other purchasers in
11 the same geographical area.

12 (3) MITIGATING FACTORS.—In determining
13 whether a violation of paragraph (1) has occurred,
14 there also shall be taken into account, among other
15 factors, whether the price at which the crude oil,
16 gasoline, natural gas, or petroleum distillate was
17 sold reasonably reflects additional costs, not within
18 the control of the seller, that were paid or incurred
19 by the seller.

20 (b) FALSE PRICING INFORMATION.—It is unlawful
21 for any person to report information related to the whole-
22 sale price of crude oil, gasoline, natural gas, or petroleum
23 distillates to the Federal Trade Commission if—

24 (1) that person knew, or reasonably should have
25 known, the information to be false or misleading;

1 (2) the information was required by law to be
2 reported; and

3 (3) the person intended the false or misleading
4 data to affect data compiled by that department or
5 agency for statistical or analytical purposes with re-
6 spect to the market for crude oil, gasoline, natural
7 gas, or petroleum distillates.

8 (c) MARKET MANIPULATION.—It is unlawful for any
9 person, directly or indirectly, to use or employ, in connec-
10 tion with the purchase or sale of crude oil, gasoline, nat-
11 ural gas, or petroleum distillates at wholesale, any ma-
12 nipulative or deceptive device or contrivance, in contraven-
13 tion of such rules and regulations as the Federal Trade
14 Commission may prescribe as necessary or appropriate in
15 the public interest or for the protection of United States
16 citizens.

17 (d) RULEMAKING.—Not later than 180 days after the
18 date of the enactment of this Act, the Federal Trade Com-
19 mission shall promulgate rules necessary and appropriate
20 to enforce this section.

21 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
22 **SION.**

23 (a) ENFORCEMENT BY FTC.—A violation of section
24 2 shall be treated as a violation of a rule defining an un-
25 fair or deceptive act or practice prescribed under section

1 18(a)(1)(B) of the Federal Trade Commission Act (15
2 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
3 shall enforce this Act in the same manner, by the same
4 means, and with the same jurisdiction as though all appli-
5 cable terms and provisions of the Federal Trade Commis-
6 sion Act were incorporated into and made a part of this
7 Act. In enforcing section 2(a) of this Act, the Commission
8 shall give priority to enforcement actions concerning com-
9 panies with total United States wholesale or retail sales
10 of crude oil, gasoline, and petroleum distillates in excess
11 of \$500,000,000 per year.

12 (b) CIVIL PENALTIES.—

13 (1) IN GENERAL.—Notwithstanding the pen-
14 alties set forth under the Federal Trade Commission
15 Act, any person who violates this Act shall be sub-
16 ject to the following penalties:

17 (A) PRICE GOUGING; UNJUST PROFITS.—

18 Any person who violates section 2(a) of this Act
19 shall be subject to—

20 (i) a fine of not more than 3 times the
21 amount of profits gained by such person
22 through such violation; or

23 (ii) a fine of not more than
24 \$3,000,000.

1 (B) FALSE INFORMATION; MARKET MANIP-
2 ULATION.—Any person who violates section
3 2(b) or 2(c) of this Act shall be subject to a
4 civil penalty of not more than \$1,000,000.

5 (2) METHOD OF ASSESSMENT.—The penalties
6 provided by paragraph (1) shall be assessed in the
7 same manner as civil penalties imposed under sec-
8 tion 5 of the Federal Trade Commission Act (15
9 U.S.C. 45).

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

13 (A) each day of a continuing violation shall
14 be considered a separate violation; and

15 (B) the Federal Trade Commission shall
16 take into consideration the seriousness of the
17 violation and the efforts of the person commit-
18 ting the violation to remedy the harm caused by
19 the violation in a timely manner.

20 **SEC. 4. CRIMINAL PENALTIES.**

21 Any person who violates section 2 or any rule or order
22 issued thereunder shall be fined under title 18, United
23 States Code—

24 (1) if a corporation, not to exceed
25 \$150,000,000; or

1 (2) if any other person, not to exceed
2 \$2,000,000, or imprisoned for not more than 10
3 years, or both.

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

6 (a) **IN GENERAL.**—A State, as *parens patriae*, may
7 bring a civil action on behalf of its residents in an appro-
8 priate district court of the United States to enforce the
9 provisions of section 2(a) of this Act, or to impose the
10 civil penalties authorized by section 3(b)(1)(B), whenever
11 the attorney general of the State has reason to believe that
12 the interests of the residents of the State have been or
13 are being threatened or adversely affected by a violation
14 of this Act or a regulation under this Act.

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

23 (c) **AUTHORITY TO INTERVENE.**—Upon receiving the
24 notice required by subsection (b), the Federal Trade Com-

1 mission may intervene in such civil action and upon inter-
2 vening—

3 (1) be heard on all matters arising in such civil
4 action; and

5 (2) file petitions for appeal of a decision in such
6 civil action.

7 (d) CONSTRUCTION.—For purposes of bringing any
8 civil action under subsection (a), nothing in this section
9 shall prevent the attorney general of a State from exer-
10 cising the powers conferred on the attorney general by the
11 laws of such State to conduct investigations or to admin-
12 ister oaths or affirmations or to compel the attendance
13 of witnesses or the production of documentary and other
14 evidence.

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

17 (1) the venue shall be a judicial district in
18 which—

19 (A) the defendant operates;

20 (B) the defendant was authorized to do
21 business; or

22 (C) where the defendant in the civil action
23 is found;

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

4 (3) a person who participated with the defend-
5 ant in an alleged violation that is being litigated in
6 the civil action may be joined in the civil action with-
7 out regard to the residence of the person.

8 (f) **LIMITATION ON STATE ACTION WHILE FEDERAL**
9 **ACTION IS PENDING.**—If the Federal Trade Commission
10 has instituted a civil action or an administrative action
11 for violation of this Act, no State attorney general, or offi-
12 cial or agency of a State, may bring an action under this
13 subsection during the pendency of that action against any
14 defendant named in the complaint of the Federal Trade
15 Commission or the other agency for any violation of this
16 Act alleged in the complaint.

17 (g) **ENFORCEMENT OF STATE LAW.**—Nothing con-
18 tained in this section shall prohibit an authorized State
19 official from proceeding in State court to enforce a civil
20 or criminal statute of such State.

21 **SEC. 6. LOW INCOME ENERGY ASSISTANCE.**

22 Amounts collected in fines and penalties under sec-
23 tions 3 or 4 of this Act shall be deposited in a separate
24 fund in the treasury to be known as the Consumer Relief
25 Trust Fund. To the extent provided for in advance in ap-

1 appropriations Acts fund shall be used to provide assistance
2 under the Low Income Home Energy Assistance Program
3 administered by the Secretary of Health and Human Serv-
4 ices.

5 **SEC. 7. 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.

14 **SEC. 8. MARKET TRANSPARENCY FOR CRUDE OIL, GASO-**
15 **LINE, AND PETROLEUM DISTILLATES.**

16 (a) IN GENERAL.—The Federal Trade Commission
17 shall facilitate price transparency in markets for the sale
18 of crude oil and essential petroleum products at wholesale,
19 having due regard for the public interest, the integrity of
20 those markets, fair competition, and the protection of con-
21 sumers.

22 (b) MARKETPLACE TRANSPARENCY.—

23 (1) DISSEMINATION OF INFORMATION.—In car-
24 rying out this section the Federal Trade Commission
25 shall provide by rule for the dissemination, on a

1 timely basis, of information about the availability
2 and prices of wholesale crude oil, gasoline, and pe-
3 troleum distillates to the Federal Trade Commission,
4 States, wholesale buyers and sellers, and the public.

5 (2) PROTECTION OF PUBLIC FROM ANTI-
6 COMPETITIVE ACTIVITY.—In determining the infor-
7 mation to be made available under this section and
8 time to make the information available, the Federal
9 Trade Commission shall seek to ensure that con-
10 sumers and competitive markets are protected from
11 the adverse effects of potential collusion or other
12 anticompetitive behaviors that can be facilitated by
13 untimely public disclosure of transaction-specific in-
14 formation.

15 (3) PROTECTION OF MARKET MECHANISMS.—
16 The Federal Trade Commission shall withhold from
17 public disclosure under this section any information
18 the Commission determines would, if disclosed, be
19 detrimental to the operation of an effective market
20 or jeopardize system security.

21 (c) INFORMATION SOURCES.—

22 (1) IN GENERAL.—In carrying out subsection
23 (b), the Federal Trade Commission may—

24 (A) obtain information from any market
25 participant; and

1 (B) rely on entities other than the Com-
2 mission to receive and make public the informa-
3 tion, subject to the disclosure rules in sub-
4 section (b)(3).

5 (2) PUBLISHED DATA.—In carrying out this
6 section, the Federal Trade Commission shall con-
7 sider the degree of price transparency provided by
8 existing price publishers and providers of trade proc-
9 essing services, and shall rely on such publishers and
10 services to the maximum extent possible.

11 (3) ELECTRONIC INFORMATION SYSTEMS.—The
12 Federal Trade Commission may establish an elec-
13 tronic information system if it determines that exist-
14 ing price publications are not adequately providing
15 price discovery or market transparency. Nothing in
16 this section, however, shall affect any electronic in-
17 formation filing requirements in effect under this
18 Act as of the date of enactment of this section.

19 (4) DE MINIMUS EXCEPTION.—The Federal
20 Trade Commission may not require entities who
21 have a de minimus market presence to comply with
22 the reporting requirements of this section.

23 (d) COOPERATION WITH OTHER FEDERAL AGEN-
24 CIES.—

1 (1) MEMORANDUM OF UNDERSTANDING.—
2 Within 180 days after the date of enactment of this
3 Act, the Federal Trade Commission shall conclude a
4 memorandum of understanding with the Commodity
5 Futures Trading Commission and other appropriate
6 agencies (if applicable) relating to information shar-
7 ing, which shall include provisions—

8 (A) ensuring that information requests to
9 markets within the respective jurisdiction of
10 each agency are properly coordinated to mini-
11 mize duplicative information requests; and

12 (B) regarding the treatment of proprietary
13 trading information.

14 (2) CFTC JURISDICTION.—Nothing in this sec-
15 tion may be construed to limit or affect the exclusive
16 jurisdiction of the Commodity Futures Trading
17 Commission under the Commodity Exchange Act (7
18 U.S.C. 1 et seq.).

19 (e) RULEMAKING.—Within 180 days after the date
20 of enactment of this Act, the Federal Trade Commission
21 shall initiate a rulemaking proceeding to establish such
22 rules as the Commission determines to be necessary and
23 appropriate to carry out this section.

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