

109TH CONGRESS
1ST SESSION

S. 1735

To improve the Federal Trade Commission's ability to protect consumers from price-gouging during energy emergencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 20, 2005

Ms. CANTWELL (for herself, Mr. REID, Mr. DURBIN, Mr. INOUE, Mrs. FEINSTEIN, Mr. KERRY, Mr. FEINGOLD, Mrs. CLINTON, Mr. WYDEN, Mr. KOHL, Mr. SCHUMER, Ms. STABENOW, Mr. DORGAN, Mr. JEFFORDS, Mrs. BOXER, Ms. MIKULSKI, Mr. BIDEN, Mr. LIEBERMAN, Mr. HARKIN, Mr. REED, and Mr. SALAZAR) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To improve the Federal Trade Commission's ability to protect consumers from price-gouging during energy emergencies, 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 “Energy Emergency Consumer Protection Act of 2005”.

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. Unfair or deceptive acts or practices in commerce related to gasoline and petroleum distillates.
 Sec. 3. Declaration of energy emergency.
 Sec. 4. Enforcement.
 Sec. 5. Enforcement by State attorneys general.
 Sec. 6. Penalties.
 Sec. 7. Effect on other laws.
 Sec. 8. Market transparency for crude oil, gasoline, and petroleum distillates.
 Sec. 9. Report on United States energy emergency preparedness.
 Sec. 10. Alternative fuels investment by major oil companies and automobile manufacturers.
 Sec. 11. Protective action to prevent future disruptions of supply.
 Sec. 12. Authorization of appropriations.

1 **SEC. 2. UNFAIR OR DECEPTIVE ACTS OR PRACTICES IN**
 2 **COMMERCE RELATED TO GASOLINE AND PE-**
 3 **TROLEUM DISTILLATES.**

4 (a) SALES TO CONSUMERS AT UNCONSCIONABLE
 5 PRICE.—

6 (1) IN GENERAL.—During any energy emer-
 7 gency declared by the President under section 3, it
 8 is unlawful for any person to sell crude oil, gasoline,
 9 or petroleum distillates in, or for use in, the area to
 10 which that declaration applies at a price that—

11 (A) is unconscionably excessive; or

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

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

1 (A) the amount charged represents a gross
2 disparity between the price of the crude oil, gas-
3 oline, or petroleum distillate sold and the price
4 at which it was offered for sale in the usual
5 course of the seller's business immediately prior
6 to the energy emergency; or

7 (B) the amount charged grossly exceeds
8 the price at which the same or similar crude oil,
9 gasoline, or petroleum distillate was readily ob-
10 tainable by other purchasers in the area to
11 which the declaration applies.

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, the price that would reasonably equate sup-
16 ply and demand in a competitive and freely func-
17 tioning market and whether the price at which the
18 crude oil, gasoline, or petroleum distillate was sold
19 reasonably reflects additional costs, not within the
20 control of the seller, that were paid or incurred by
21 the seller.

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

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

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

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

10 (c) MARKET MANIPULATION.—It is unlawful for any
11 person, directly or indirectly, to use or employ, in connec-
12 tion with the purchase or sale of crude oil, gasoline, or
13 petroleum distillates at wholesale, any manipulative or de-
14 ceptive device or contrivance, in contravention of such
15 rules and regulations as the Commission may prescribe as
16 necessary or appropriate in the public interest or for the
17 protection of United States citizens.

18 **SEC. 3. DECLARATION OF ENERGY EMERGENCY.**

19 (a) IN GENERAL.—If the President finds that the
20 health, safety, welfare, or economic well-being of the citi-
21 zens of the United States is at risk because of a shortage
22 or imminent shortage of adequate supplies of crude oil,
23 gasoline, or petroleum distillates due to a disruption in
24 the national distribution system for crude oil, gasoline, or
25 petroleum distillates (including such a shortage related to

1 a major disaster (as defined in section 102(2) of the Rob-
2 ert T. Stafford Disaster Relief and Emergency Assistance
3 Act (42 U.S.C. 5122))), or significant pricing anomalies
4 in national energy markets for crude oil, gasoline, or pe-
5 troleum distillates, the President may declare that a Fed-
6 eral energy emergency exists.

7 (b) SCOPE AND DURATION.—The declaration shall
8 apply to the Nation, a geographical region, or 1 or more
9 States, as determined by the President, but may not be
10 in effect for a period of more than 45 days.

11 (c) EXTENSIONS.—The President may—

12 (1) extend a declaration under subsection (a)
13 for a period of not more than 45 days; and

14 (2) extend such a declaration more than once.

15 **SEC. 4. ENFORCEMENT UNDER FEDERAL TRADE COMMIS-**
16 **SION ACT.**

17 (a) ENFORCEMENT BY COMMISSION.—This Act shall
18 be enforced by the Federal Trade Commission. In enforce-
19 ing section 2(a) of this Act, the Commission shall give pri-
20 ority to enforcement actions concerning companies with
21 total United States wholesale or retail sales of crude oil,
22 gasoline, and petroleum distillates in excess of
23 \$500,000,000 per year but shall not exclude enforcement
24 actions against companies with total United States whole-
25 sale sales of \$500,000,000 or less per year.

1 (b) VIOLATION IS UNFAIR OR DECEPTIVE ACT OR
 2 PRACTICE.—The violation of any provision of this Act
 3 shall be treated as an unfair or deceptive act or practice
 4 proscribed under a rule issued under section 18(a)(1)(B)
 5 of the Federal Trade Commission Act (15 U.S.C.
 6 57a(a)(1)(B)).

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

9 (a) IN GENERAL.—A State, as *parens patriae*, may
 10 bring a civil action on behalf of its residents in an appro-
 11 priate district court of the United States to enforce the
 12 provisions of section 2(a) of this Act, or to impose the
 13 civil penalties authorized by section 6 for violations of sec-
 14 tion 2(a), whenever the attorney general of the State has
 15 reason to believe that the interests of the residents of the
 16 State have been or are being threatened or adversely af-
 17 fected by a person engaged in retail sales of gasoline or
 18 petroleum distillates to consumers for purposes other than
 19 resale that violates this Act or a regulation under this Act.

20 (b) NOTICE.—The State shall serve written notice to
 21 the Commission of any civil action under subsection (a)
 22 prior to initiating such civil action. The notice shall in-
 23 clude a copy of the complaint to be filed to initiate such
 24 civil action, except that if it is not feasible for the State

1 to provide such prior notice, the State shall provide such
2 notice immediately upon instituting such civil action.

3 (c) AUTHORITY TO INTERVENE.—Upon receiving the
4 notice required by subsection (b), the Commission may in-
5 tervene in such civil action and upon intervening—

6 (1) be heard on all matters arising in such civil
7 action; and

8 (2) file petitions for appeal of a decision in such
9 civil action.

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

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

20 (1) the venue shall be a judicial district in
21 which—

22 (A) the defendant operates;

23 (B) the defendant was authorized to do
24 business; or

1 (C) where the defendant in the civil action
2 is found;

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

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

10 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
11 ACTION IS PENDING.—If the Commission has instituted
12 a civil action or an administrative action for violation of
13 this Act, no State attorney general, or official or agency
14 of a State, may bring an action under this subsection dur-
15 ing the pendency of that action against any defendant
16 named in the complaint of the Commission or the other
17 agency for any violation of this Act alleged in the com-
18 plaint.

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

23 **SEC. 6. PENALTIES.**

24 (a) CIVIL PENALTY.—

1 (1) IN GENERAL.—In addition to any penalty
2 applicable under the Federal Trade Commission
3 Act—

4 (A) any person who violates section 2(b) or
5 2(c) of this Act is punishable by a civil penalty
6 of not more than \$1,000,000; and

7 (B) any person who violates section 2(a) of
8 this Act is punishable by a civil penalty of not
9 more than \$3,000,000.

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

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

18 (A) each day of a continuing violation shall
19 be considered a separate violation; and

20 (B) the Commission shall take into consid-
21 eration the seriousness of the violation and the
22 efforts of the person committing the violation to
23 remedy the harm caused by the violation in a
24 timely manner.

1 (b) CRIMINAL PENALTY.—Violation of section 2(a) of
2 this Act is punishable by a fine of not more than
3 \$1,000,000, imprisonment for not more than 5 years, or
4 both.

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

6 (a) OTHER AUTHORITY OF COMMISSION.—Nothing
7 in this Act shall be construed to limit or affect in any
8 way the Commission’s authority to bring enforcement ac-
9 tions or take any other measure under the Federal Trade
10 Commission Act (15 U.S.C. 41 et seq.) or any other provi-
11 sion 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 Commission shall provide
25 by rule for the dissemination, on a timely basis, of

1 information about the availability and prices of
2 wholesale crude oil, gasoline, and petroleum dis-
3 tillates to the Commission, States, wholesale buyers
4 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 Commis-
9 sion shall seek to ensure that consumers and com-
10 petitive markets are protected from the adverse ef-
11 fects of potential collusion or other anticompetitive
12 behaviors that can be facilitated by untimely public
13 disclosure of transaction-specific information.

14 (3) PROTECTION OF MARKET MECHANISMS.—
15 The Commission shall withhold from public disclo-
16 sure under this section any information the Commis-
17 sion determines would, if disclosed, be detrimental to
18 the operation of an effective market or jeopardize se-
19 curity.

20 (c) INFORMATION SOURCES.—

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

23 (A) obtain information from any market
24 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 Commission shall consider the degree of
7 price transparency provided by existing price pub-
8 lishers and providers of trade processing services,
9 and shall rely on such publishers and services to the
10 maximum extent possible.

11 (3) ELECTRONIC INFORMATION SYSTEMS.—The
12 Commission may establish an electronic information
13 system if it determines that existing price publica-
14 tions are not adequately providing price discovery or
15 market transparency. Nothing in this section, how-
16 ever, shall affect any electronic information filing re-
17 quirements in effect under this Act as of the date
18 of enactment of this section.

19 (4) DE MINIMUS EXCEPTION.—The Commission
20 may not require entities who have a de minimus
21 market presence to comply with the reporting re-
22 quirements 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 Commission shall conclude a memorandum
4 of understanding with the Commodity Futures Trad-
5 ing Commission and other appropriate agencies (if
6 applicable) relating to information sharing, which
7 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 Commission shall initiate a
21 rulemaking proceeding to establish such rules as the Com-
22 mission determines to be necessary and appropriate to
23 carry out this section.

1 **SEC. 9. REPORT ON UNITED STATES ENERGY EMERGENCY**
2 **PREPAREDNESS.**

3 (a) **POTENTIAL IMPACTS REPORT.**—Within 30 days
4 after the date of enactment of this Act, the Federal Trade
5 Commission shall transmit to the Congress a report de-
6 scribing the potential impact on domestic prices of crude
7 oil, residual fuel oil, and refined petroleum products that
8 would result from the disruption for periods of 1 week,
9 1 year, and 5 years, respectively, of not less than—

10 (1) 30 percent of United States oil production;

11 (2) 20 percent of United States refining capac-
12 ity; and

13 (3) 5 percent of global oil supplies.

14 (b) **PROJECTIONS AND POSSIBLE REMEDIES.**—The
15 President shall include in the report—

16 (1) projections of the impact any such disrup-
17 tions would be likely to have on the United States
18 economy; and

19 (2) detailed and prioritized recommendations
20 for remedies under each scenario covered by the re-
21 port.

22 **SEC. 10. ALTERNATIVE FUELS INVESTMENT BY MAJOR OIL**
23 **COMPANIES AND AUTOMOBILE MANUFAC-**
24 **TURERS.**

25 The Comptroller General shall conduct an investiga-
26 tion within 1 year after the date of enactment of this Act

1 and every 4 years thereafter of the extent to which compa-
2 nies with total United States wholesale or retail sales of
3 crude oil, gasoline, and petroleum distillates in excess of
4 \$500,000,000 per year and automobile manufacturers
5 have invested in alternative fuels production, infrastruc-
6 ture, and technology development to diversify the motor
7 vehicle fuel and vehicle options available to consumers in
8 the United States. At the conclusion of each such inves-
9 tigation, the Comptroller General shall transmit a report
10 containing the findings and conclusions to the Congress.

11 **SEC. 11. PROTECTIVE ACTION TO PREVENT FUTURE DIS-**
12 **RUPTIONS OF SUPPLY.**

13 The National Academy of Sciences shall review ex-
14 penditures by, and activities undertaken by, companies
15 with total United States wholesale or retail sales of crude
16 oil, gasoline, and petroleum distillates in excess of
17 \$500,000,000 per year to protect the energy supply sys-
18 tem from terrorist attacks, international supply disrup-
19 tions, and natural disasters, and ensure a stable and rea-
20 sonably priced supply of such products to consumers in
21 the United States, that includes an assessment of the com-
22 panies' preparations for the current forecasted period of
23 more frequent and, due to global warming, more intense
24 hurricane activity in the Gulf of Mexico and other vulner-
25 able coastal areas.

1 **SEC. 12. AUTHORIZATION OF APPROPRIATIONS.**

2 There are authorized to be appropriated to the Fed-
3 eral Trade Commission such sums as may be necessary
4 to carry out the provisions of this Act.

○