

109TH CONGRESS
1ST SESSION

S. 1744

To prohibit price gouging relating to gasoline and diesel fuels in areas affected by major disasters.

IN THE SENATE OF THE UNITED STATES

SEPTEMBER 21, 2005

Mr. NELSON of Florida (for himself and Mr. BINGAMAN) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit price gouging relating to gasoline and diesel fuels in areas affected by major disasters.

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 “Price Gouging Act of
5 2005”.

6 **SEC. 2. PRICE GOUGING PROHIBITION FOLLOWING MAJOR**
7 **DISASTERS.**

8 The Federal Trade Commission Act (15 U.S.C. 41
9 et seq.) is amended—

1 (1) by redesignating sections 25 and 26 (15
2 U.S.C. 57c, 58) as sections 26 and 27, respectively;
3 and

4 (2) by inserting after section 24 (15 U.S.C.
5 57b–5) the following:

6 **“SEC. 25. PROTECTION FROM PRICE GOUGING FOLLOWING**
7 **MAJOR DISASTERS.**

8 “(a) DEFINITIONS.—In this section:

9 “(1) AFFECTED AREA.—The term ‘affected
10 area’ means an area affected by a major disaster de-
11 clared by the President under Federal law in exist-
12 ence on the date of enactment of this subsection.

13 “(2) PRICE GOUGING.—The term ‘price
14 gouging’ means the charging of an unconscionably
15 excessive price by a supplier in an affected area.

16 “(3) SUPPLIER.—The term ‘supplier’ means
17 any person that sells gasoline or diesel fuel for resale
18 or ultimate consumption.

19 “(4) UNCONSCIONABLY EXCESSIVE PRICE.—
20 The term ‘unconscionably excessive price’ means a
21 price charged in an affected area for gasoline or die-
22 sel fuel that—

23 “(A) represents a gross disparity, as deter-
24 mined by the Commission in accordance with
25 subsection (e), between the price charged for

1 gasoline or diesel fuel and the average price of
2 gasoline or diesel fuel charged by suppliers in
3 the affected area during the 30-day period im-
4 mediately before the President declares the ex-
5 istence of a major disaster; and

6 “(B) is not attributable to increased whole-
7 sale or operational costs incurred by the sup-
8 plier in connection with the sale of gasoline or
9 diesel fuel.

10 “(b) DETERMINATION OF THE COMMISSION.—Fol-
11 lowing the declaration of a major disaster by the Presi-
12 dent, the Commission shall—

13 “(1) consult with the Attorney General, the
14 United States Attorney for the district in which the
15 disaster occurred, and State and local law enforce-
16 ment officials to determine whether any supplier in
17 the affected area is charging or has charged an un-
18 conscionably excessive price for gasoline or diesel
19 fuel provided in the affected area; and

20 “(2) establish within the Commission—

21 “(A) a toll-free hotline that a consumer
22 may call to report an incidence of price gouging
23 in the affected area; and

24 “(B) a program to develop and distribute
25 to the public informational materials in English

1 and Spanish to assist residents of the affected
2 area in detecting and avoiding price gouging.

3 “(c) PRICE GOUGING INVOLVING DISASTER VIC-
4 TIMS.—

5 “(1) OFFENSE.—During the 180-day period
6 after the date on which a major disaster is declared
7 by the President, no supplier shall sell, or offer to
8 sell, gasoline or diesel fuel in an affected area at an
9 unconscionably excessive price.

10 “(2) ACTION BY COMMISSION.—

11 “(A) IN GENERAL.—During the period de-
12 scribed in paragraph (1), the Commission shall
13 conduct investigations to determine whether any
14 supplier in an affected area is in violation of
15 paragraph (1).

16 “(B) POSITIVE DETERMINATION.—If the
17 Commission determines under subparagraph
18 (A) that a supplier is in violation of paragraph
19 (1), the Commission shall take any action the
20 Commission determines to be appropriate to
21 remedy the violation.

22 “(3) CIVIL PENALTIES.—A supplier that com-
23 mits an offense described in paragraph (1) may, in
24 a civil action brought in a court of competent juris-
25 diction, be subject to—

1 “(A) a civil penalty of not more than
2 \$500,000;

3 “(B) an order to pay special and punitive
4 damages;

5 “(C) an order to pay reasonable attorney’s
6 fees;

7 “(D) an order to pay costs of litigation re-
8 lating to the offense;

9 “(E) an order for disgorgement of profits
10 earned as a result of a violation of paragraph
11 (1); and

12 “(F) any other relief determined by the
13 court to be appropriate.

14 “(4) CRIMINAL PENALTY.—A supplier that
15 knowingly commits an offense described in para-
16 graph (1) shall be imprisoned not more than 1 year.

17 “(5) ACTION BY VICTIMS.—A person, Federal
18 agency, State, or local government that suffers loss
19 or damage as a result of a violation of paragraph (1)
20 may bring a civil action against a supplier in any
21 court of competent jurisdiction for disgorgement,
22 special or punitive damages, injunctive relief, reason-
23 able attorney’s fees, costs of the litigation, and any
24 other appropriate legal or equitable relief.

1 “(6) ACTION BY STATE ATTORNEYS GEN-
2 ERAL.—An attorney general of a State, or other au-
3 thorized State official, may bring a civil action in the
4 name of the State, on behalf of persons residing in
5 the State, in any court of competent jurisdiction for
6 disgorgement, special or punitive damages, reason-
7 able attorney’s fees, costs of litigation, and any other
8 appropriate legal or equitable relief.

9 “(7) NO PREEMPTION.—Nothing in this section
10 preempts any State law.

11 “(d) REPORT.—Not later than 1 year after the date
12 of enactment of this subsection, and annually thereafter,
13 the Commission shall submit to the Committee on Com-
14 merce, Science, and Transportation of the Senate and the
15 Committee on Energy and Commerce of the House of
16 Representatives a report describing—

17 “(1) the number of price gouging complaints re-
18 ceived by the Commission for each major disaster
19 declared by the President during the preceding year;

20 “(2) the number of price gouging investigations
21 of the Commission initiated, in progress, and com-
22 pleted as of the date on which the report is pre-
23 pared;

1 “(3) the number of enforcement actions of the
2 Commission initiated, in progress, and completed as
3 of the date on which the report is prepared;

4 “(4) an evaluation of the effectiveness of the
5 toll-free hotline and program established under sub-
6 section (b)(2); and

7 “(5) recommendations for any additional action
8 with respect to the implementation or effectiveness
9 of this section.

10 “(e) DEFINITION OF GROSS DISPARITY.—Not later
11 than 180 days after the date of enactment of this sub-
12 section, the Commission shall promulgate regulations to
13 define the term ‘gross disparity’ for purposes of this sec-
14 tion.”.

15 **SEC. 3. EFFECT OF ACT.**

16 Nothing in this Act, or an amendment made by this
17 Act, affects any authority of the Federal Trade Commis-
18 sion in existence on the date of enactment of this Act with
19 respect to price gouging actions.

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