

109TH CONGRESS  
1ST SESSION

# S. 1854

To prohibit price gouging for commodities and services sold during national emergency situations.

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IN THE SENATE OF THE UNITED STATES

OCTOBER 6, 2005

Mr. SALAZAR introduced the following bill; which was read twice and referred to the Committee on the Judiciary

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## A BILL

To prohibit price gouging for commodities and services sold during national emergency situations.

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 “Treat Emergency Vic-  
5 tims Fairly Act of 2005”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) Price gouging in emergencies, including nat-  
9 ural disasters and other emergencies, is reprehen-  
10 sible commercial activity.

1           (2) Emergencies place great strains on commer-  
2           cial and consumer relationships in the areas af-  
3           fected.

4           (3) Emergencies can strain commercial and  
5           consumer relationships in areas beyond those di-  
6           rectly damaged or affected by the emergency.

7           (4) It is an unfortunate truth that some will try  
8           to take advantage of others in emergency situations  
9           by price gouging for consumer and other commercial  
10          goods or services.

11          (5) Price gouging can take place prior to, dur-  
12          ing, and following natural disasters and other emer-  
13          gencies.

14          (6) Price gouging in commercial and consumer  
15          settings affects interstate commerce.

16          (7) Price gouging—

17                (A) distorts markets without regard to  
18                State lines;

19                (B) disturbs and interferes with the flow of  
20                commodities and services across State lines;  
21                and

22                (C) creates or exacerbates shortages and  
23                interruptions of supplies of materials across  
24                State lines.

1           (8) It is in the interest of the United States to  
2           prohibit and deter price gouging.

3 **SEC. 3. DEFINITIONS.**

4           In this Act:

5           (1) **EMERGENCY.**—The term “emergency”  
6           means a natural disaster or other circumstance or  
7           event that is formally declared to be an emergency  
8           by Federal or State authorities. An emergency may  
9           be associated with a designated area.

10          (2) **GOODS OR SERVICES.**—The term “goods or  
11          services” means goods or services of any type, in-  
12          cluding food, transportation, housing, and energy  
13          supplies.

14          (3) **PERSON.**—The term “person” means a nat-  
15          ural person, corporation, governmental body, or  
16          other entity.

17          (4) **PRICE GOUGING.**—

18                 (A) **IN GENERAL.**—The term “price  
19                 gouging” means charging an unreasonable and  
20                 unconscionable price for a good or service im-  
21                 mediately prior to, during, or following an  
22                 emergency.

23                 (B) **PRESUMPTION.**—

1 (i) AFFIRMATIVE.—A price for a good  
2 or service is presumed to be unreasonable  
3 and unconscionable—

4 (I) in the designated area of an  
5 emergency if it reflects a price in-  
6 crease at least 10 percent greater  
7 than the average price for the good or  
8 service charged by the seller in the  
9 designated area during the 30 days  
10 prior to the formal declaration of the  
11 emergency; and

12 (II) outside the designated area  
13 of an emergency if the price is af-  
14 fected by the emergency and if the  
15 price reflects a price increase at least  
16 10 percent greater than the average  
17 price for the good or service charged  
18 by the seller in the area of the sale  
19 during the 30 days prior to the formal  
20 declaration of an emergency.

21 For purposes of subclause (II), a price is  
22 presumed to be affected by the emergency  
23 if, within 30 days following the declaration  
24 of the emergency, the price is at least 25  
25 percent greater than the average price for

1 the good or service charged by the seller in  
2 the area of the sale during the 30 days  
3 prior to the formal declaration of the emer-  
4 gency.

5 (ii) **NEGATIVE.**—A price for a good or  
6 service is not unreasonable and uncon-  
7 scionable if it reflects only the cost of the  
8 good or service to the seller prior to the  
9 emergency, the average profit margin of  
10 the seller during the 30 days prior to the  
11 formal declaration of an emergency, and  
12 the increased costs actually incurred by the  
13 seller to sell the good or service during or  
14 following the emergency.

15 **SEC. 4. CAUSE OF ACTION.**

16 (a) **IN GENERAL.**—It shall be unlawful for any seller  
17 of goods or services to engage in price gouging.

18 (b) **LITIGATION.**—A cause of action under this sec-  
19 tion may be brought—

20 (1) in Federal or State court; and

21 (2) by the Federal Government, through the At-  
22 torney General, or a State Government acting  
23 through its attorney general.

24 (c) **VENUE AND PROCEDURE.**—

1           (1) FEDERAL COURT.—An action in Federal  
2           court under this section may be brought in any court  
3           whose jurisdiction includes—

4                   (A) the geographic area in which price  
5                   gouging is alleged to have occurred; or

6                   (B) the State which is a plaintiff in the ac-  
7                   tion.

8           (2) STATE COURT.—An action in State court  
9           under this section shall conform to State rules of  
10          procedure.

11          (d) EXPEDITED FEDERAL CONSIDERATION.—An ac-  
12          tion under this section in Federal court shall receive expe-  
13          dited review.

14          (e) INVESTIGATIONS.—

15                  (1) IN GENERAL.—During the course of an in-  
16                  vestigation under this section by the Attorney Gen-  
17                  eral of the United States or a State attorney gen-  
18                  eral, whether prior to filing an action or during such  
19                  an action, the investigating attorney general may—

20                          (A) order any person to file a statement,  
21                          report in writing, or answer questions in writ-  
22                          ing, under oath or otherwise, concerning facts  
23                          or circumstances reasonably related to alleged  
24                          price gouging;

1 (B) order any person to provide data or in-  
 2 formation the attorney general reasonably  
 3 deems to be necessary to an investigation; and

4 (C) issue subpoenas to require the attend-  
 5 ance of witnesses or the production of relevant  
 6 documents, administer oaths, and conduct hear-  
 7 ings in aid of the investigation.

8 (2) ENFORCEMENT.—A subpoena issued under  
 9 this subsection may be enforced in Federal or State  
 10 court.

11 (3) PENALTY.—Failure to comply with an order  
 12 or subpoena under this subsection is subject to a  
 13 civil penalty of up to \$10,000.

14 (f) LIMITATION.—An action under this section shall  
 15 be brought not later than 3 years of the date of the sale  
 16 of the goods or services at issue.

17 **SEC. 5. DAMAGES AND PENALTIES.**

18 (a) IN GENERAL.—A prevailing plaintiff shall be enti-  
 19 tled to—

20 (1) plaintiff's damages incurred as a result of  
 21 the price gouging, including without limitation a re-  
 22 fund of all prices paid by the plaintiff in excess of  
 23 conscionable and reasonable prices;

24 (2) injunctive relief prohibiting the defendant  
 25 from price gouging or mandating action; and

1           (3) attorneys fees and costs incurred by the  
2     plaintiff.

3           (b) RESTITUTION.—The Attorney General of the  
4     United States and a State attorney general, in an action  
5     brought on behalf of the citizens of the United States or  
6     a State, respectively, may recover restitution or  
7     disgorgement of excess profits on behalf of those citizens.

8           (c) CIVIL PENALTIES.—

9           (1) IN GENERAL.—A person who violates sec-  
10    tion 4(a) shall be subject to civil penalties of up to  
11    \$10,000 per incident.

12          (2) DISPOSITION OF PENALTIES.—Civil pen-  
13    alties collected through an action by the United  
14    States Attorney General shall be deposited in the  
15    United States Treasury. Civil penalties collected  
16    through an action by an attorney general of a State  
17    shall be deposited in the State’s treasury. The court  
18    may apportion the deposit of civil penalties as appro-  
19    priate in the circumstances.

20 **SEC. 6. ATTORNEY GENERAL AUTHORITIES.**

21    The Attorney General of the United States shall—

22          (1) provide assistance to and cooperate with the  
23    States in State investigations of price gouging and  
24    in State litigation brought under this Act;

1           (2) create and disseminate guidelines designed  
2           to assist the public to recognize and report price  
3           gouging and establish a system to gather and dis-  
4           seminate information about instances of reported  
5           price gouging; and

6           (3) provide grants to offices of the State attor-  
7           neys general of not greater than \$50,000 in order to  
8           support the pursuit of price gouging investigations  
9           and other activities.

10 **SEC. 7. SAVINGS PROVISION.**

11           This Act shall not preempt or otherwise affect any  
12           State or local law.

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