

110TH CONGRESS
1ST SESSION

H. R. 2460

To protect the welfare of consumers by prohibiting price gouging by merchants with respect to gasoline and other fuels during certain abnormal market disruptions.

IN THE HOUSE OF REPRESENTATIVES

MAY 23, 2007

Mr. FOSSELLA (for himself, Mr. HAYES, Mr. MORAN of Kansas, and Mr. ISSA) 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 the welfare of consumers by prohibiting price gouging by merchants with respect to gasoline and other fuels during certain abnormal market disruptions.

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 Energy Price
5 Protection Act”.

1 **SEC. 2. PROTECTION OF CONSUMERS AGAINST PRICE**
2 **GOUGING.**

3 It shall be unlawful for any supplier to increase the
4 price at which that supplier sells, or offers to sell, crude
5 oil, gasoline, or petroleum distillates in an area covered
6 by a Presidential proclamation issued under section
7 4(a)(1) by an unconscionable amount during the period
8 beginning on the date the proclamation is issued and end-
9 ing on the date specified in the proclamation.

10 **SEC. 3. JUSTIFIABLE PRICE INCREASES.**

11 (a) IN GENERAL.—The prohibition in section 2 does
12 not apply to the extent that the increase in the price of
13 the crude oil, gasoline, or petroleum distillate is substan-
14 tially attributable to—

15 (1) an increase in the wholesale cost of crude
16 oil, gasoline, or petroleum distillates to a supplier;

17 (2) an increase in the replacement costs for
18 crude oil, gasoline, or petroleum distillate sold;

19 (3) an increase in operational costs; or

20 (4) local, regional, national, or international
21 market conditions.

22 (b) OTHER MITIGATING FACTORS.—In determining
23 whether a violation of section 2 has occurred, there also
24 shall be taken into account, among other factors, the price
25 that would reasonably equate supply and demand in a
26 competitive and freely functioning market and whether the

1 price at which the crude oil, gasoline, or petroleum dis-
2 tillate was sold reasonably reflects other additional costs
3 or risks, not within the control of the seller, that were
4 paid or incurred by the seller.

5 **SEC. 4. EMERGENCY PROCLAMATIONS AND ORDERS.**

6 (a) **PRESIDENTIAL EMERGENCY PROCLAMATIONS.—**

7 The President may issue an emergency proclamation when
8 an abnormal market disruption has occurred or is reason-
9 ably expected to occur.

10 (b) **SCOPE AND DURATION.—**

11 (1) **IN GENERAL.—**The emergency proclamation
12 or order shall specify with particularity—

13 (A) the period for which the proclamation
14 or order applies;

15 (B) the event, circumstance, or condition
16 that is the reason such a proclamation or order
17 is determined to be necessary; and

18 (C) the geographic area or region to which
19 it applies.

20 (2) **LIMITATIONS.—**An emergency proclamation
21 or an order under subsection (a)—

22 (A) may not apply for a period of more
23 than 30 consecutive days (renewable for a con-
24 secutive period of not more than 30 days); and

1 (B) may apply to a period of not more
2 than 7 days preceding the occurrence of an
3 event, circumstance, or condition that is the
4 reason such a proclamation or order is nec-
5 essary.

6 **SEC. 5. ENFORCEMENT BY FEDERAL TRADE COMMISSION.**

7 (a) UNFAIR OR DECEPTIVE ACT OR PRACTICE.—Sec-
8 tion 2 of this Act shall be treated as a violation of a rule
9 defining an unfair or deceptive act or practice prescribed
10 under section 18(a)(1)(B) of the Federal Trade Commis-
11 sion Act (15 U.S.C. 57a(a)(1)(B)).

12 (b) ACTIONS BY THE COMMISSION.—The Commis-
13 sion shall prevent any supplier from violating this Act in
14 the same manner, by the same means, and with the same
15 jurisdiction, powers, and duties as though all applicable
16 terms and provisions of the Federal Trade Commission
17 Act (15 U.S.C. 41 et seq.) were incorporated into and
18 made a part of this Act. Any entity that violates any provi-
19 sion of this Act is subject to the penalties and entitled
20 to the privileges and immunities provided in the Federal
21 Trade Commission Act in the same manner, by the same
22 means, and with the same jurisdiction, power, and duties
23 as though all applicable terms and provisions of the Fed-
24 eral Trade Commission Act were incorporated into and
25 made a part of this Act.

1 (c) REGULATIONS.—Not later than 180 days after
2 the date of enactment of this Act, the Federal Trade Com-
3 mission shall prescribe such regulations as may be nec-
4 essary or appropriate to implement this Act.

5 **SEC. 6. PENALTIES.**

6 (a) CIVIL PENALTY.—

7 (1) IN GENERAL.—In addition to any penalty
8 applicable under the Federal Trade Commission Act
9 any supplier who violates this Act is punishable by
10 a civil penalty of—

11 (A) not more than \$500,000, in the case of
12 an independent small business marketer of gas-
13 oline (within the meaning of section 324(c) of
14 the Clean Air Act (42 U.S.C. 7625(c)); and

15 (B) not more than \$5,000,000 in the case
16 of any other supplier.

17 (2) METHOD OF ASSESSMENT.—The penalty
18 provided by paragraph (1) shall be assessed in the
19 same manner as civil penalties imposed under sec-
20 tion 5 of the Federal Trade Commission Act (15
21 U.S.C. 45).

22 (3) MULTIPLE OFFENSES; MITIGATING FAC-
23 TORS.—In assessing the penalty provided by sub-
24 section (a)—

1 (A) the Commission shall take into consid-
2 eration the seriousness of the violation and the
3 efforts of the supplier committing the violation
4 to remedy the harm caused by the violation in
5 a timely manner; and

6 (B) each determination that the price at
7 which crude oil, gasoline, or other petroleum
8 distillate has been sold or offered for sale in an
9 area and during a period covered by a procla-
10 mation or order issued under section 4 was in-
11 creased by an unconscionable amount shall be
12 treated as a single violation.

13 (b) CRIMINAL PENALTY.—

14 (1) IN GENERAL.—In addition to any penalty
15 applicable under the Federal Trade Commission Act,
16 the violation of this Act is punishable by a fine of
17 not more than \$1,000,000, imprisonment for not
18 more than 2 years, or both.

19 (2) ENFORCEMENT.—The criminal penalty pro-
20 vided by paragraph (1) may be imposed only pursu-
21 ant to a criminal action brought by the Attorney
22 General or other officer of the Department of Jus-
23 tice.

1 **SEC. 7. LOW INCOME ENERGY ASSISTANCE.**

2 Amounts collected in fines and penalties under sec-
3 tion 6 of this Act shall be deposited in a separate fund
4 in the treasury to be known as the Consumer Relief Trust
5 Fund. To the extent provided for in advance in appropria-
6 tions Acts fund shall be used to provide assistance under
7 the Low Income Home Energy Assistance Program ad-
8 ministered by the Secretary of Health and Human Serv-
9 ices.

10 **SEC. 8. DEFINITIONS.**

11 In this Act:

12 (1) **ABNORMAL MARKET DISRUPTION.**—The
13 term “abnormal market disruption” means there is
14 a reasonable likelihood that, in the absence of a
15 proclamation under section 4(a), there will be an in-
16 crease in the average price of crude oil, gasoline, or
17 petroleum distillates as a result of a change in the
18 market, whether actual or imminently threatened,
19 resulting from extreme weather, a natural disaster,
20 strike, civil disorder, war, military action, a national
21 or local emergency, or other similar cause, that ad-
22 versely affects the availability or delivery of crude
23 oil, gasoline, or petroleum distillates.

24 (2) **SUPPLIER.**—The term “supplier” means
25 any person engaged in the trade or business of sell-

1 ing, reselling, at retail or wholesale, or distributing
2 crude oil, gasoline, or petroleum distillates.

3 (3) REPLACEMENT COSTS.—The term “replace-
4 ment costs” means, with respect to a supplier to
5 whom sections 2 and 3 apply, costs to that supplier
6 determined by referencing either—

7 (A) the actual or reasonably anticipated re-
8 placement cost as evidenced by bills of sale, in-
9 voices, or other appropriate documentation; or

10 (B) the cost for crude oil, gasoline, or
11 other petroleum distillates in the relevant mar-
12 ket at the time of the sale or offer for sale that
13 is the subject of a violation of section 2, plus
14 actual storage, transportation, and delivery
15 costs.

16 (4) UNCONSCIONABLE AMOUNT.—The term
17 “unconscionable amount” means, with respect to
18 any supplier to whom section 2 applies, a significant
19 increase in the price at which crude oil, gasoline, or
20 petroleum distillates are sold or offered for sale by
21 that supplier that increases the price, for the same
22 grade of crude oil, gasoline, or petroleum distillate,
23 to an amount that—

24 (A) substantially exceeds the average price
25 at which crude oil, gasoline, or petroleum dis-

1 tillates were sold or offered for sale by that sup-
2 plier during the 30-day period immediately pre-
3 ceding the sale or offer;

4 (B) substantially exceeds the average price
5 at which crude oil, gasoline, or petroleum dis-
6 tillates were sold or offered for sale by that per-
7 son's competitors in the area and during the pe-
8 riod for which the emergency proclamation ap-
9 plies; and

10 (C) cannot be justified by taking into ac-
11 count the factors described in section 3.

12 **SEC. 9. EFFECTIVE DATE.**

13 This Act shall take effect on the date on which a final
14 rule issued by the Federal Trade Commission under sec-
15 tion 5(c) is published in the Federal Register.

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