II

Calendar No. 728

110TH CONGRESS
2D SESSION

S. 2991

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2008

Mr. REID (for himself, Mr. SCHUMER, Mr. LEVIN, Mr. WYDEN, Mr. INOUYE, Mr. CARDIN, Ms. STABENOW, Mr. BROWN, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Mr. JOHNSON, Mr. KENNEDY, Ms. KLOBUCHAR, Mr. LAUTENBERG, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mrs. MCCASKILL, Mr. DURBIN, and Mr. KOHL) introduced the following bill; which was read the first time

MAY 8, 2008

Read the second time and placed on the calendar

A BILL

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the "Consumer-First Energy Act of 2008".

(b) TABLE OF CONTENTS.—The table of contents of this Act is as follows:

SEC. 2. FINDINGS.

Congress finds that—

(1) excessive prices for petroleum products have created, or imminently threaten to create, severe

economic dislocations and hardships, including the loss of jobs, business failures, disruption of economic activity, curtailment of vital public services, and price increases throughout the economy;

(2) those hardships and dislocations jeopardize the normal flow of commerce and constitute a national energy and economic crisis that is a threat to the public health, safety, and welfare of the United States;

(3) consumers, workers, small businesses, and large businesses of the United States are particularly vulnerable to those price increase due to the failure of the President to aggressively develop alternatives to petroleum and petroleum products and to promote efficiency and conservation;

(4) reliable and affordable supplies of crude oil and products refined from crude oil (including gasoline, diesel fuel, heating oil, and jet fuel) are vital to the economic and national security of the United States given current energy infrastructure and technology;

(5) the price of crude oil and products refined from crude oil (including gasoline, diesel fuel, heating oil, and jet fuel) have skyrocketed to record levels and are continuing to rise;

(6) since 2001, oil prices have increased from $29 per barrel to levels near $120 per barrel and gasoline prices have more than doubled from $1.47 per gallon to more than $3.50 per gallon;

(7) the record prices for crude oil and products refined from crude oil (including gasoline, diesel fuel, heating oil, and jet fuel)—

(A) are hurting millions of consumers, workers, small businesses, and large businesses of the United States, and threaten long-term damage to the economy and security of the United States;

(B) are partially due to—

(i) the declining value of the dollar and a widespread lack of confidence in the management of economic and foreign policy by the President;

(ii) the accumulation of national debt and growing budget deficits under the failed economic policies of the President; and

(iii) high levels of military expenditures under the failed policies of the President in Iraq; and

(C) are no longer justified by traditional forces of supply and demand;

(8) rampant speculation in the markets for crude oil and products refined from crude oil has magnified the price increases and market volatility resulting from those underlying causes of price increases; and

(9) Congress must take urgent action to protect consumers, workers, and businesses of the United States from rampant speculation in the energy markets and the price increases resulting from the failed domestic and foreign policies of the President.

TITLE I—TAX PROVISIONS RELATED TO OIL AND GAS

SEC. 101. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED OIL COMPANIES FOR INCOME ATTRIBUTABLE TO DOMESTIC PRODUCTION OF OIL, GAS, OR PRIMARY PRODUCTS THEREOF.

(a) IN GENERAL.—Subparagraph (B) of section 199(c)(4) (relating to exceptions) is amended by striking ‘‘or’’ at the end of clause (ii), by striking the period at the end of clause (iii) and inserting ‘‘, or’’, and by inserting after clause (iii) the following new clause:

‘‘(iv) in the case of any major integrated oil company (as defined in section

167(h)(5)(B)), the production, refining, processing, transportation, or distribution of oil, gas, or any primary product thereof during any taxable year described in section 167(h)(5)(B).''.

(b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is amended by adding at the end the following flush sentence:

''For purposes of clause (iv), the term 'primary product' has the same meaning as when used in section 927(a)(2)(C), as in effect before its repeal.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 102. ELIMINATION OF THE DIFFERENT TREATMENT OF FOREIGN OIL AND GAS EXTRACTION INCOME AND FOREIGN OIL RELATED INCOME FOR PURPOSES OF THE FOREIGN TAX CREDIT.

(a) IN GENERAL.—Subsections (a) and (b) of section 907 of the Internal Revenue Code of 1986 (relating to special rules in case of foreign oil and gas income) are amended to read as follows:

"(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN TAX UNDER SECTION 901.—In applying section 901, the amount of any foreign oil and gas taxes paid or accrued (or deemed to have been paid) during the taxable year which would (but for this subsection) be taken into account for purposes of section 901 shall be reduced by the amount (if any) by which the amount of such taxes exceeds the product of—

"(1) the amount of the combined foreign oil and gas income for the taxable year,

"(2) multiplied by—

"(A) in the case of a corporation, the percentage which is equal to the highest rate of tax specified under section 11(b), or

"(B) in the case of an individual, a fraction the numerator of which is the tax against which the credit under section 901(a) is taken and the denominator of which is the taxpayer's entire taxable income.

"(b) COMBINED FOREIGN OIL AND GAS INCOME; FOREIGN OIL AND GAS TAXES.—For purposes of this section—

"(1) COMBINED FOREIGN OIL AND GAS INCOME.—The term 'combined foreign oil and gas income' means, with respect to any taxable year, the sum of—

"(A) foreign oil and gas extraction income, and

"(B) foreign oil related income.

"(2) FOREIGN OIL AND GAS TAXES.—The term 'foreign oil and gas taxes' means, with respect to any taxable year, the sum of—

"(A) oil and gas extraction taxes, and

"(B) any income, war profits, and excess profits taxes paid or accrued (or deemed to have been paid or accrued under section 902 or 960) during the taxable year with respect to foreign oil related income (determined without regard to subsection (c)(4)) or loss which would be taken into account for purposes of section 901 without regard to this section.".

(b) RECAPTURE OF FOREIGN OIL AND GAS LOSSES.—Paragraph (4) of section 907(c) of the Internal Revenue Code of 1986 (relating to recapture of foreign oil and gas extraction losses by recharacterizing later extraction income) is amended to read as follows:

"(4) RECAPTURE OF FOREIGN OIL AND GAS LOSSES BY RECHARACTERIZING LATER COMBINED FOREIGN OIL AND GAS INCOME.—

"(A) IN GENERAL.—The combined foreign oil and gas income of a taxpayer for a taxable year (determined without regard to this paragraph) shall be reduced—

"(i) first by the amount determined under subparagraph (B), and

"(ii) then by the amount determined under subparagraph (C).

The aggregate amount of such reductions shall be treated as income (from sources without the United States) which is not combined foreign oil and gas income.

"(B) REDUCTION FOR PRE-2008 FOREIGN OIL EXTRACTION LOSSES.—The reduction under this paragraph shall be equal to the lesser of—

"(i) the foreign oil and gas extraction income of the taxpayer for the taxable year (determined without regard to this paragraph), or

"(ii) the excess of—

"(I) the aggregate amount of foreign oil extraction losses for preceding taxable years beginning after December 31, 1982, and before January 1, 2008, over

"(II) so much of such aggregate amount as was recharacterized under this paragraph (as in effect before and after the date of the enactment of the Consumer-First Energy Act of 2008) for preceding taxable years beginning after December 31, 1982.

"(C) REDUCTION FOR POST-2008 FOREIGN OIL AND GAS LOSSES.—The reduction under this paragraph shall be equal to the lesser of—

"(i) the combined foreign oil and gas income of the taxpayer for the taxable year (determined without regard to this paragraph), reduced by an amount equal to the reduction under subparagraph (A) for the taxable year, or

"(ii) the excess of—

"(I) the aggregate amount of foreign oil and gas losses for preceding taxable years beginning after December 31, 2008, over

"(II) so much of such aggregate amount as was recharacterized under this paragraph for preceding taxable years beginning after December 31, 2008.

"(D) FOREIGN OIL AND GAS LOSS DEFINED.—

"(i) IN GENERAL.—For purposes of this paragraph, the term 'foreign oil and gas loss' means the amount by which—

"(I) the gross income for the taxable year from sources without the United States and its possessions (whether or not the taxpayer chooses the benefits of this subpart for such taxable year) taken into account in determining the combined foreign oil and gas income for such year, is exceeded by

"(II) the sum of the deductions properly apportioned or allocated thereto.

"(ii) NET OPERATING LOSS DEDUCTION NOT TAKEN INTO ACCOUNT.—For purposes of clause (i), the net operating loss deduction allowable for the taxable year under section 172(a) shall not be taken into account.

"(iii) EXPROPRIATION AND CASUALTY LOSSES NOT TAKEN INTO ACCOUNT.—For purposes of clause (i), there shall not be taken into account—

"(I) any foreign expropriation loss (as defined in section 172(h) (as in effect on the day before the date of the enactment of the Revenue Reconciliation Act of 1990)) for the taxable year, or

"(II) any loss for the taxable year which arises from fire, storm, shipwreck, or other casualty, or from theft,

to the extent such loss is not compensated for by insurance or otherwise.

"(iv) FOREIGN OIL EXTRACTION LOSS.—For purposes of subparagraph (B)(ii)(I), foreign oil extraction losses shall be determined under this paragraph as in effect on the day before the date of the enactment of the Consumer-First Energy Act of 2008.".

(c) CARRYBACK AND CARRYOVER OF DISALLOWED CREDITS.—Section 907(f) of the Internal Revenue Code of 1986 (relating to carryback and carryover of disallowed credits) is amended—

(1) by striking "oil and gas extraction taxes" each place it appears and inserting "foreign oil and gas taxes", and

(2) by adding at the end the following new paragraph:

"(4) TRANSITION RULES FOR PRE-2009 AND 2009 DISALLOWED CREDITS.—

"(A) PRE-2009 CREDITS.—In the case of any unused credit year beginning before January 1, 2009, this subsection shall be applied to any unused oil and gas extraction taxes carried from such unused credit year to a year beginning after December 31, 2008—

"(i) by substituting 'oil and gas extraction taxes' for 'foreign oil and gas taxes' each place it appears in paragraphs (1), (2), and (3), and

"(ii) by computing, for purposes of paragraph (2)(A), the limitation under subparagraph (A) for the year to which such taxes are carried by substituting 'foreign oil and gas extraction income' for 'foreign oil and gas income' in subsection (a).

"(B) 2009 CREDITS.—In the case of any unused credit year beginning in 2009, the amendments made to this subsection by the Consumer-First Energy Act of 2008 shall be treated as being in effect for any preceding year beginning before January 1, 2009, solely for purposes of determining how much of the unused foreign oil and gas taxes for such unused credit year may be deemed paid or accrued in such preceding year.".

(d) CONFORMING AMENDMENT.—Section 6501(i) of the Internal Revenue Code of 1986 is amended by striking "oil and gas extraction taxes" and inserting "foreign oil and gas taxes".

(e) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2008.

SEC. 103. WINDFALL PROFITS TAX.

(a) IN GENERAL.—Subtitle E of the Internal Revenue Code of 1986 (relating to alcohol, tobacco, and certain other excise taxes) is amended by adding at the end thereof the following new chapter:

"CHAPTER 56—WINDFALL PROFITS ON CRUDE OIL

"SEC. 5896. IMPOSITION OF TAX.

"(a) IN GENERAL.—In addition to any other tax imposed under this title, there is hereby imposed on any applicable taxpayer an excise tax in an amount equal to 25 percent of the excess of—

"(1) the windfall profit of such taxpayer, over

"(2) the amount of the qualified investment of such applicable taxpayer.

"(b) APPLICABLE TAXPAYER.—For purposes of this chapter, the term 'applicable taxpayer' means any major integrated oil company (as defined in section 167(h)(5)(B)).

"SEC. 5897. WINDFALL PROFIT; QUALIFIED INVESTMENT.

"(a) GENERAL RULE.—For purposes of this chapter, the term 'windfall profit' means the excess of the adjusted taxable income of the applicable taxpayer for the taxable year over the reasonably inflated average profit for such taxable year.

"(b) ADJUSTED TAXABLE INCOME.—For purposes of this chapter, with respect to any applicable taxpayer, the adjusted taxable income for any taxable year is equal to the taxable income for such taxable year (within the meaning of section 63 and determined without regard to this subsection)—

"(1) increased by any interest expense deduction, charitable contribution deduction, and any net operating loss deduction carried forward from any prior taxable year, and

"(2) reduced by any interest income, dividend income, and net operating losses to the extent such losses exceed taxable income for the taxable year.

In the case of any applicable taxpayer which is a foreign corporation, the adjusted taxable income shall be determined with respect to such income which is effectively connected with the conduct of a trade or business in the United States.

"(c) REASONABLY INFLATED AVERAGE PROFIT.—For purposes of this chapter, with respect to any applicable taxpayer, the reasonably inflated average profit for any taxable year is an amount equal to the average of the adjusted taxable income of such taxpayer for taxable years beginning during the 2001–2005 taxable year period (determined without regard to the taxable year with the highest adjusted taxable income in such period) plus 10 percent of such average.

"(d) QUALIFIED INVESTMENT.—For purposes of this chapter—

"(1) IN GENERAL.—The term 'qualified investment' means, with respect to any applicable taxpayer, means any amount paid or incurred with respect to—

"(A) section 263(c) costs,

"(B) qualified refinery property (as defined in section 179C(c) and determined without regard to any termination date),

"(C) any qualified facility described in paragraph (1), (2), (3), or (4) of section 45(d) (determined without regard to any placed in service date), or

"(D) any facility for the production renewable fuel or advanced biofuel (as defined in section 211(o) of the Clean Air Act 942 U.S.C. 7545).

"(2) SECTION 263(c) COSTS.—For purposes of this subsection, the term 'section 263(c) costs' means intangible drilling and development costs incurred by the taxpayer which (by reason of an election under section 263(c)) may be deducted as expenses for purposes of this title (other than this paragraph). Such term shall not include costs incurred in drilling a nonproductive well.

"SEC. 5898. SPECIAL RULES AND DEFINITIONS.

"(a) WITHHOLDING AND DEPOSIT OF TAX.—The Secretary shall provide such rules as are necessary for the withholding and deposit of the tax imposed under section 5896.

"(b) RECORDS AND INFORMATION.—Each taxpayer liable for tax under section 5896 shall keep such records, make such returns, and furnish such information as the Secretary may by regulations prescribe.

"(c) RETURN OF WINDFALL PROFIT TAX.—The Secretary shall provide for the filing and the time of such filing of the return of the tax imposed under section 5896.

"(d) CRUDE OIL.—The term 'crude oil' includes crude oil condensates and natural gasoline.

"(e) BUSINESSES UNDER COMMON CONTROL.—For purposes of this chapter, all members of the same controlled group of corporations (within the meaning of section 267(f)) and all persons under common control (within the meaning of section 52(b) but determined by treating an interest of more than 50 percent as a controlling interest) shall be treated as 1 person.

"(f) REGULATIONS.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this chapter.".

(b) CLERICAL AMENDMENT.—The table of chapters for subtitle E of the Internal Revenue Code of 1986 is amended by adding at the end the following new item:

"CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL.".

(c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—The first sentence of section 164(a) of the Internal Revenue Code of 1986 (relating to deduction for taxes) is amended by inserting after paragraph (5) the following new paragraph:

"(6) The windfall profit tax imposed by section 5896.".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2007.

SEC. 104. ENERGY INDEPENDENCE AND SECURITY TRUST FUND.

(a) ESTABLISHMENT.—Subchapter A of chapter 98 of the Internal Revenue Code of 1986 (relating to trust fund code) is amended by adding at the end the following new section:

"SEC. 9511. ENERGY INDEPENDENCE AND SECURITY TRUST FUND.

"(a) CREATION OF TRUST FUND.—There is established in the Treasury of the United States a trust fund to be known as 'Energy Independence and Security Trust Fund' (referred to in this section as the 'Trust Fund'), consisting of such amounts as may be appropriated or credited to the Trust Fund as provided in this section or section 9602(b).

"(b) TRANSFERS TO TRUST FUND.—There is hereby appropriated to the Trust Fund an amount equivalent to the increase in the revenues received in the Treasury as the result of the amendments made by sections 101, 102, and 103 of the Consumer-First Energy Act of 2008.

"(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—Amounts in the Trust Fund shall be available, as provided by appropriation Acts, for the purposes of reducing the dependence of the United States on foreign and unsustainable energy sources and reducing the risks of global warming through programs and measures that—

"(1) reduce the burdens on consumers of rising energy prices;

"(2) diversify and expand the use of secure, efficient, and environmentally friendly energy supplies and technologies;

"(3) result in net reductions in emissions of greenhouse gases; and

"(4) prevent energy price gouging, profiteering, and market manipulation.".

(b) CLERICAL AMENDMENT.—The table of sections for subchapter A of chapter 98 of such Code is amended by adding at the end the following new item:

''Sec. 9511. Energy Independence and Security Trust Fund.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

TITLE II—PRICE GOUGING

SEC. 201. SHORT TITLE.

This title may be cited as the ''Petroleum Consumer Price Gouging Protection Act''.

SEC. 202. DEFINITIONS.

In this title:

(1) AFFECTED AREA.—The term ''affected area'' means an area covered by a Presidential declaration of energy emergency.

(2) SUPPLIER.—The term ''supplier'' means any person engaged in the trade or business of selling or reselling, at retail or wholesale, or distributing crude oil, gasoline, petroleum distillates, or biofuel.

(3) PRICE GOUGING.—The term ''price gouging'' means the charging of an unconscionably excessive price by a supplier in an affected area.

(4) UNCONSCIONABLY EXCESSIVE PRICE.—The term ''unconscionably excessive price'' means an average price charged during an energy emergency de-

clared by the President in an area and for a product subject to the declaration, that—

(A)(i)(I) constitutes a gross disparity from the average price at which it was offered for sale in the usual course of the supplier's business during the 30 days prior to the President's declaration of an energy emergency; and

(II) grossly exceeds the prices at which the same or similar crude oil, gasoline, petroleum distillates, or biofuel was readily obtainable by purchasers from other suppliers in the same relevant geographic market within the affected area; or

(ii) represents an exercise of unfair leverage or unconscionable means on the part of the supplier, during a period of declared energy emergency; and

(B) is not attributable to increased wholesale or operational costs, including replacement costs, outside the control of the supplier, incurred in connection with the sale of crude oil, gasoline, petroleum distillates, or biofuel, and is not attributable to local, regional, national, or international market conditions.

(5) COMMISSION.—The term ''Commission'' means the Federal Trade Commission.

SEC. 203. ENERGY EMERGENCY AND ADDITIONAL PRICE GOUGING ENFORCEMENT.

(a) IN GENERAL.—During any energy emergency declared by the President under section 204 of this title, it is unlawful for any supplier to sell, or offer to sell crude oil, gasoline, petroleum distillates, or biofuel subject to that declaration in, or for use in, the area to which that declaration applies at an unconscionably excessive price.

(b) FACTORS CONSIDERED.—In determining whether a violation of subsection (a) has occurred, there shall be taken into account, among other factors, whether—

(1) the price charged was a price that would reasonably exist in a competitive and freely functioning market; and

(2) the amount of gasoline, other petroleum distillates, or biofuel the seller produced, distributed, or sold during the period the Proclamation was in effect increased over the average amount during the preceding 30 days.

SEC. 204. PRESIDENTIAL DECLARATION OF ENERGY EMERGENCY.

(a) IN GENERAL.—If the President finds that the health, safety, welfare, or economic well-being of the citizens of the United States is at risk because of a shortage or imminent shortage of adequate supplies of crude oil, gasoline, petroleum distillates, or biofuel due to a disruption in the national distribution system for crude oil, gasoline, petroleum distillates, or biofuel (including such a shortage related to a major disaster (as defined in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122(2))), or significant pricing anomalies in national energy markets for crude oil, gasoline, petroleum distillates, or biofuel the President may declare that a Federal energy emergency exists.

(b) SCOPE AND DURATION.—The emergency declaration shall specify—

(1) the period, not to exceed 30 days, for which the declaration applies;

(2) the circumstance or condition necessitating the declaration;

(3) the area or region to which it applies which may not be limited to a single State; and

(4) the product or products to which it applies.

(c) EXTENSIONS.—The President may—

(1) extend a declaration under subsection (a) for a period of not more than 30 days;

(2) extend such a declaration more than once; and

(3) discontinue such a declaration before its expiration.

SEC. 205. ENFORCEMENT BY THE FEDERAL TRADE COMMISSION.

(a) ENFORCEMENT.—This title shall be enforced by the Federal Trade Commission in the same manner, by the same means, and with the same jurisdiction as though all applicable terms of the Federal Trade Commission Act were incorporated into and made a part of this title. In enforcing section 203 of this title, the Commission shall give priority to enforcement actions concerning companies with total United States wholesale or retail sales of crude oil, gasoline, petroleum distillates, and biofuel in excess of $500,000,000 per year but shall not exclude enforcement actions against companies with total United States wholesale sales of $500,000,000 or less per year.

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

(c) COMMISSION ACTIONS.—Following the declaration of an energy emergency by the President under section 204 of this title, the Commission shall—

(1) maintain within the Commission—

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

(B) a program to develop and distribute to the public informational materials to assist residents of the affected area in detecting, avoiding, and reporting price gouging;

(2) consult with the Attorney General, the United States Attorney for the districts in which a disaster occurred (if the declaration is related to a major disaster), and State and local law enforcement officials to determine whether any supplier in the affected area is charging or has charged an unconscionably excessive price for crude oil, gasoline, petroleum distillates, or biofuel in the affected area; and

(3) conduct investigations as appropriate to determine whether any supplier in the affected area has violated section 203 of this title, and upon such finding, take any action the Commission determines to be appropriate to remedy the violation.

SEC. 206. ENFORCEMENT BY STATE ATTORNEYS GENERAL.

(a) IN GENERAL.—A State, as parens patriae, may bring a civil action on behalf of its residents in an appropriate district court of the United States to enforce the provisions of section 203 of this title, or to impose the civil penalties authorized by section 207 for violations of section 203, whenever the attorney general of the State has reason to believe that the interests of the residents of the State have been or are being threatened or adversely affected by a supplier engaged in the sale or resale, at retail or wholesale, or distribution of crude oil, gasoline, petroleum distillates, or biofuel in violation of section 203 of this title.

(b) NOTICE.—The State shall serve written notice to the Commission of any civil action under subsection (a) prior to initiating the action. The notice shall include a copy of the complaint to be filed to initiate the civil action, except that if it is not feasible for the State to provide such prior notice, the State shall provide such notice immediately upon instituting the civil action.

(c) AUTHORITY TO INTERVENE.—Upon receiving the notice required by subsection (b), the Commission may intervene in the civil action and, upon intervening—

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

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

(d) CONSTRUCTION.—For purposes of bringing any civil action under subsection (a), nothing in this section shall prevent the attorney general of a State from exercising the powers conferred on the Attorney General by the laws of such State to conduct investigations or to administer oaths or affirmations or to compel the attendance of witnesses or the production of documentary and other evidence.

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

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

(A) the defendant operates;

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

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

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

(3) a person who participated with the defendant in an alleged violation that is being litigated in

the civil action may be joined in the civil action without regard to the residence of the person.

(f) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action or an administrative action for violation of this title, a State attorney general, or official or agency of a State, may not bring an action under this section during the pendency of that action against any defendant named in the complaint of the Commission or the other agency for any violation of this title alleged in the Commission's civil or administrative action.

(g) NO PREEMPTION.—Nothing contained in this section shall prohibit an authorized State official from proceeding in State court to enforce a civil or criminal statute of that State.

SEC. 207. PENALTIES.

(a) CIVIL PENALTY.—

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

(A) that violates section 203 of this title is punishable by a civil penalty of not more than $1,000,000; and

(B) that violates section 203 of this title is punishable by a civil penalty of—

(i) not more than $500,000, in the case of an independent small business marketer of gasoline (within the meaning of section 324(c) of the Clean Air Act (42 U.S.C. 7625(c))); and

(ii) not more than $5,000,000 in the case of any other supplier.

(2) METHOD.—The penalties provided by paragraph (1) shall be obtained in the same manner as civil penalties imposed under section 5 of the Federal Trade Commission Act (15 U.S.C. 45).

(3) MULTIPLE OFFENSES; MITIGATING FACTORS.—In assessing the penalty provided by subsection (a)—

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

(B) the court shall take into consideration, among other factors, the seriousness of the violation and the efforts of the person committing the violation to remedy the harm caused by the violation in a timely manner.

(b) CRIMINAL PENALTY.—Violation of section 203 of this title is punishable by a fine of not more than $5,000,000, imprisonment for not more than 5 years, or both.

SEC. 208. EFFECT ON OTHER LAWS.

(a) OTHER AUTHORITY OF THE COMMISSION.—Nothing in this title shall be construed to limit or affect in any way the Commission's authority to bring enforcement actions or take any other measure under the Federal Trade Commission Act (15 U.S.C. 41 et seq.) or any other provision of law.

(b) STATE LAW.—Nothing in this title preempts any State law.

TITLE III—STRATEGIC PETROLEUM RESERVE

SEC. 301. SUSPENSION OF PETROLEUM ACQUISITION FOR STRATEGIC PETROLEUM RESERVE.

(a) IN GENERAL.—Except as provided in subsection (b) and notwithstanding any other provision of law, during the period beginning on the date of enactment of this Act and ending on December 31, 2008—

(1) the Secretary of the Interior shall suspend acquisition of petroleum for the Strategic Petroleum Reserve through the royalty-in-kind program; and

(2) the Secretary of Energy shall suspend acquisition of petroleum for the Strategic Petroleum Reserve through any other acquisition method.

(b) RESUMPTION.—Not earlier than 30 days after the date on which the President notifies Congress that the President has determined that the weighted average price of petroleum in the United States for the most recent 90-day period is $75 or less per barrel—

(1) the Secretary of the Interior may resume acquisition of petroleum for the Strategic Petroleum Reserve through the royalty-in-kind program; and

(2) the Secretary of Energy may resume acquisition of petroleum for the Strategic Petroleum Reserve through any other acquisition method.

(c) EXISTING CONTRACTS.—In the case of any oil scheduled to be delivered to the Strategic Petroleum Reserve pursuant to a contract entered into by the Secretary of Energy prior to, and in effect on, the date of enactment of this Act, the Secretary shall, to the maximum extent practicable, negotiate a deferral of the delivery of the oil for a period of not less than 1 year, in accordance with procedures of the Department of Energy in effect on the date of enactment of this Act for deferrals of oil.

TITLE IV—NO OIL PRODUCING AND EXPORTING CARTELS

SEC. 401. NO OIL PRODUCING AND EXPORTING CARTELS ACT OF 2008.

(a) SHORT TITLE.—This section may be cited as the "No Oil Producing and Exporting Cartels Act of 2008" or "NOPEC".

(b) SHERMAN ACT.—The Sherman Act (15 U.S.C. 1 et seq.) is amended by adding after section 7 the following:

"SEC. 7A. OIL PRODUCING CARTELS.

"(a) IN GENERAL.—It shall be illegal and a violation of this Act for any foreign state, or any instrumentality or agent of any foreign state, to act collectively or in combination with any other foreign state, any instrumentality or agent of any other foreign state, or any other person, whether by cartel or any other association or form of cooperation or joint action—

"(1) to limit the production or distribution of oil, natural gas, or any other petroleum product;

"(2) to set or maintain the price of oil, natural gas, or any petroleum product; or

"(3) to otherwise take any action in restraint of trade for oil, natural gas, or any petroleum product;

when such action, combination, or collective action has a direct, substantial, and reasonably foreseeable effect on the market, supply, price, or distribution of oil, natural gas, or other petroleum product in the United States.

"(b) SOVEREIGN IMMUNITY.—A foreign state engaged in conduct in violation of subsection (a) shall not be immune under the doctrine of sovereign immunity from the jurisdiction or judgments of the courts of the United States in any action brought to enforce this section.

"(c) INAPPLICABILITY OF ACT OF STATE DOCTRINE.—No court of the United States shall decline, based on the act of state doctrine, to make a determination on the merits in an action brought under this section.

"(d) ENFORCEMENT.—The Attorney General of the United States may bring an action to enforce this section in any district court of the United States as provided under the antitrust laws.".

(c) SOVEREIGN IMMUNITY.—Section 1605(a) of title 28, United States Code, is amended—

(1) in paragraph (6), by striking "or" after the semicolon;

(2) in paragraph (7), by striking the period and inserting "; or"; and

(3) by adding at the end the following:

"(8) in which the action is brought under section 7A of the Sherman Act.".

TITLE V—MARKET SPECULATION

SEC. 501. SPECULATIVE LIMITS AND TRANSPARENCY FOR OFF-SHORE OIL TRADING.

Section 4 of the Commodity Exchange Act (7 U.S.C. 6) is amended by adding at the end the following:

"(e) FOREIGN BOARDS OF TRADE.—

"(1) IN GENERAL.—In the case of any foreign board of trade for which the Commission has granted or is considering an application to grant a board of trade located outside of the United States relief from the requirement of subsection (a) to become a designated contract market, derivatives transaction execution facility, or other registered entity, with respect to an energy commodity that is physically delivered in the United States, prior to continuing to or initially granting the relief, the Commission shall determine that the foreign board of trade—

"(A) applies comparable principles or requirements regarding the daily publication of trading information and position limits or accountability levels for speculators as apply to a designated contract market, derivatives transaction execution facility, or other registered entity trading energy commodities physically delivered in the United States; and

"(B) provides such information to the Commission regarding the extent of speculative and nonspeculative trading in the energy commodity that is comparable to the information the Commission determines necessary to publish a Commitment of Traders report for a designated contract market, derivatives transaction execution facility, or other registered entity trading energy commodities physically delivered in the United States.

"(2) EXISTING FOREIGN BOARDS OF TRADE.—During the period beginning 1 year after the date of enactment of this subsection and ending 18 months after the date of enactment of this subsection, the Commission shall determine whether to continue to grant relief in accordance with paragraph (1) to any foreign board of trade for which the Commission granted relief prior to the date of enactment of this subsection.".

SEC. 502. MARGIN LEVEL FOR CRUDE OIL.

(a) IN GENERAL.—Section 2(a)(1) of the Commodity Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding at the end the following:

"(G) MARGIN LEVEL FOR CRUDE OIL.—Not later than 90 days after the date of enactment of this subparagraph, the Commission shall promulgate regulations to set a substantial increase in margin levels for crude oil traded on any trading facility or as part of any agreement, contract, or transaction covered by this

Act in order to reduce excessive speculation and protect consumers.''.

(b) STUDIES.—

(1) STUDY RELATING TO EFFECT OF CERTAIN REGULATIONS.—Not later than 1 year after the date of enactment of this Act, the Commodity Futures Trading Commission shall submit to the appropriate committees of Congress a report describing the effect of the amendment made by subsection (a) on any trading facilities and agreements, contracts, and transactions covered by the Commodity Exchange Act (7 U.S.C. 1 et seq.).

(2) STUDY RELATING TO EFFECTS OF CHANGES IN MARGIN LEVELS.—Not later than 180 days after the date of enactment of this Act, the Comptroller General of the United States shall submit to the appropriate committees of Congress a report describing the effect (including any effect relating to trade volume or volatility) of any change of a margin level that occurred during the 10-year period ending on the date of enactment of this Act.

Calendar No. 728

110TH CONGRESS
2D SESSION

S. 2991

A BILL

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

MAY 8, 2008

Read the second time and placed on the calendar