

116TH CONGRESS
2D SESSION

S. 3574

To protect consumers from price-gouging during emergencies.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2020

Mr. TILLIS introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To protect consumers from price-gouging during emergencies.

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 “Ending Price-Gouging
5 During Emergencies Act”.

6 **SEC. 2. PROHIBITION OF UNCONSCIONABLY EXCESSIVE**

7 **PRICING OF NECESSARY GOODS AND SERV-**

8 **ICES DURING EMERGENCIES.**

9 (a) UNCONSCIONABLE PRICING.—

10 (1) IN GENERAL.—It shall be unlawful for any
11 person to sell, at wholesale or at retail in an emer-
12 gency area and during an emergency period, any

1 good or service covered by a proclamation issued by
 2 the Administrator of the Federal Emergency Man-
 3 agement Agency (in this section referred to as the
 4 “Administrator”) under paragraph (2) at a price
 5 that—

6 (A) is unconscionably excessive; and

7 (B) indicates the seller is taking unfair ad-
 8 vantage of the circumstances related to the
 9 emergency to increase prices unreasonably.

10 (2) NECESSARY GOODS AND SERVICES PROCLA-
 11 MATION.—

12 (A) IN GENERAL.—The Administrator may
 13 issue a proclamation with respect to an emer-
 14 gency area during an emergency period to des-
 15 ignate the goods and services to which the pro-
 16 hibition described in paragraph (1) shall apply.

17 (B) CONTENT OF PROCLAMATION.—A
 18 proclamation issued under this paragraph shall
 19 include the following:

20 (i) The geographic area covered by
 21 the proclamation.

22 (ii) The time period that such procla-
 23 mation shall be in effect.

24 (iii) The specific goods and services or
 25 categories of goods and services that are

1 subject to the prohibition described in
2 paragraph (1).

3 (C) DURATION.—The proclamation may
4 not apply for a period of more than 30 consecu-
5 tive days, but may be renewed for such consecu-
6 tive periods, each not to exceed 30 days, as the
7 Administrator determines appropriate.

8 (D) AUTHORITY TO ISSUE MULTIPLE
9 PROCLAMATIONS.—The Administrator may
10 issue multiple proclamations under this para-
11 graph with respect to an emergency area and
12 an emergency period, as necessary.

13 (3) FACTORS CONSIDERED.—In determining
14 whether a person has violated paragraph (1), there
15 shall be taken into account, among other factors—

16 (A) whether the amount charged by such
17 person for the applicable good or service at a
18 particular location in an area covered by a proc-
19 lamation issued under paragraph (2) during the
20 period such proclamation is in effect—

21 (i) grossly exceeds the average price
22 at which the applicable good or service was
23 offered for sale by that person during the
24 30 days prior to such proclamation;

1 (ii) grossly exceeds the price at which
2 the same or similar good or service was
3 readily obtainable in the same area from
4 other competing sellers during the same
5 period;

6 (iii) reasonably reflected additional
7 costs, not within the control of that person,
8 that were paid, incurred, or reasonably an-
9 ticipated by that person, or reflected addi-
10 tional risks taken by that person to
11 produce, distribute, obtain, or sell such
12 good or service under the circumstances;
13 and

14 (iv) was substantially attributable to
15 local, regional, national, or international
16 market conditions; and

17 (B) whether the quantity of the good or
18 service the person produced, distributed, or sold
19 in an area covered by a proclamation issued
20 under paragraph (2) during a 30-day period fol-
21 lowing the issuance of such proclamation in-
22 creased over the quantity that such person pro-
23 duced, distributed, or sold during the 30 days
24 prior to such proclamation, taking into account
25 usual seasonal demand variations.

1 (b) DEFINITION OF EMERGENCY AREA AND PE-
2 RIOD.—In this section, an “emergency area” is a geo-
3 graphical area in which, and an “emergency period” is the
4 period during which, there exists an emergency or disaster
5 declared by the President pursuant to the National Emer-
6 gencies Act or the Robert T. Stafford Disaster Relief and
7 Emergency Assistance Act.

8 (c) EFFECTIVE DATE.—This section shall take effect
9 on the date of enactment of this Act and shall apply to
10 any emergency or disaster declaration described in sub-
11 section (b) that is in effect on such date or made on or
12 after such date.

13 **SEC. 3. ENFORCEMENT BY THE FEDERAL TRADE COMMIS-**
14 **SION.**

15 (a) ENFORCEMENT BY FTC.—A violation of section
16 2 shall be treated as a violation of a rule defining an un-
17 fair or deceptive act or practice prescribed under section
18 18(a)(1)(B) of the Federal Trade Commission Act (15
19 U.S.C. 57a(a)(1)(B)). The Federal Trade Commission
20 shall enforce this Act in the same manner, by the same
21 means, and with the same jurisdiction as though all appli-
22 cable terms and provisions of the Federal Trade Commis-
23 sion Act were incorporated into and made a part of this
24 Act. In enforcing section 2 of this Act, the Commission
25 shall give priority to enforcement actions involving in-

1 stances of a good or service being sold at an unconscion-
 2 ably excessive price during an emergency period with the
 3 highest percentage increase in price over the price for such
 4 good or service as of the second week preceding such pe-
 5 riod.

6 (b) CIVIL PENALTIES.—

7 (1) IN GENERAL.—Notwithstanding the pen-
 8 alties set forth under the Federal Trade Commission
 9 Act, any person who violates section 2 with actual
 10 knowledge or knowledge fairly implied on the basis
 11 of objective circumstances shall be subject to—

12 (A) a civil penalty of not more than 10
 13 times the amount of profits gained by such per-
 14 son through such violation; or

15 (B) a civil penalty of not more than
 16 \$100,000,000.

17 (2) METHOD.—The penalties provided by para-
 18 graph (1) shall be obtained in the same manner as
 19 civil penalties obtained under section 5 of the Fed-
 20 eral Trade Commission Act (15 U.S.C. 45).

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

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

1 (B) the court shall take into consideration,
2 among other factors, the seriousness of the vio-
3 lation and the efforts of the person committing
4 the violation to remedy the harm caused by the
5 violation in a timely manner.

6 **SEC. 4. CRIMINAL PENALTIES.**

7 (a) IN GENERAL.—In addition to any penalty appli-
8 cable under section 3, any person who violates section 2
9 shall be fined under title 18, United States Code, in an
10 amount not to exceed \$500,000,000.

11 (b) ENFORCEMENT.—The criminal penalty provided
12 by subsection (a) may be imposed only pursuant to a
13 criminal action brought by the Attorney General or other
14 officer of the Department of Justice. The Attorney Gen-
15 eral shall give priority to enforcement actions involving in-
16 stances of a good or service being sold at an unconscion-
17 ably excessive price during an emergency period with the
18 highest percentage increase in price over the price for such
19 good or service as of the second week preceding such pe-
20 riod.

21 **SEC. 5. ENFORCEMENT AT RETAIL LEVEL BY STATE ATTOR-**
22 **NEYS GENERAL.**

23 (a) IN GENERAL.—A State, as *parens patriae*, may
24 bring a civil action on behalf of its residents in an appro-
25 priate district court of the United States to enforce the

1 provisions of section 2 of this Act, or to impose the civil
2 penalties authorized by section 3(b)(1)(B), whenever the
3 attorney general of the State has reason to believe that
4 the interests of the residents of the State have been or
5 are being threatened or adversely affected by a violation
6 of this Act or a regulation under this Act, involving a re-
7 tail sale.

8 (b) NOTICE.—The State shall serve written notice to
9 the Federal Trade Commission of any civil action under
10 subsection (a) prior to initiating such civil action. The no-
11 tice shall include a copy of the complaint to be filed to
12 initiate such civil action, except that if it is not feasible
13 for the State to provide such prior notice, the State shall
14 provide such notice immediately upon instituting such civil
15 action.

16 (c) AUTHORITY TO INTERVENE.—Upon receiving the
17 notice required by subsection (b), the Federal Trade Com-
18 mission may intervene in such civil action and upon inter-
19 vening—

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

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

24 (d) CONSTRUCTION.—For purposes of bringing any
25 civil action under subsection (a), nothing in this section

1 shall prevent the attorney general of a State from exer-
2 cising the powers conferred on the attorney general by the
3 laws of such State to conduct investigations or to admin-
4 ister oaths or affirmations or to compel the attendance
5 of witnesses or the production of documentary and other
6 evidence.

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

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

11 (A) the defendant operates;

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

14 (C) the defendant in the civil action is
15 found;

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

19 (3) a person who participated with the defend-
20 ant in an alleged violation that is being litigated in
21 the civil action may be joined in the civil action with-
22 out regard to the residence of the person.

23 (f) LIMITATION ON STATE ACTION WHILE FEDERAL
24 ACTION IS PENDING.—If the Federal Trade Commission
25 has instituted a civil action or an administrative action

1 for violation of this Act, no State attorney general, or offi-
2 cial or agency of a State, may bring an action under this
3 subsection during the pendency of that action against any
4 defendant named in the complaint of the Federal Trade
5 Commission or the other agency for any violation of this
6 Act alleged in the complaint.

7 (g) ENFORCEMENT OF STATE LAW.—Nothing con-
8 tained in this section shall prohibit an authorized State
9 official from proceeding in State court to enforce a civil
10 or criminal statute of such State.

11 **SEC. 6. EFFECT ON OTHER LAWS.**

12 (a) OTHER AUTHORITY OF FEDERAL TRADE COM-
13 MISSION.—Nothing in this Act shall be construed to limit
14 or affect in any way the Federal Trade Commission’s au-
15 thority to bring enforcement actions or take any other
16 measure under the Federal Trade Commission Act (15
17 U.S.C. 41 et seq.) or any other provision of law.

18 (b) STATE LAW.—Nothing in this Act preempts any
19 State law.

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