

116TH CONGRESS
2D SESSION

S. 3576

To clarify that the Federal Trade Commission Act prohibits excessive and unjustified price increases in the sale of certain products and services when an emergency or disaster results in abnormal disruptions of the market, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 24, 2020

Ms. KLOBUCHAR (for herself, Mr. BLUMENTHAL, Ms. HIRONO, and Ms. CORTEZ MASTO) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To clarify that the Federal Trade Commission Act prohibits excessive and unjustified price increases in the sale of certain products and services when an emergency or disaster results in abnormal disruptions of the market, and for other purposes.

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 “Disaster and Emer-
5 gency Pricing Abuse Prevention Act”.

6 **SEC. 2. DEFINITIONS.**

7 In this section:

1 (a) COMMISSION.—The term “Commission” means
2 the Federal Trade Commission.

3 (b) ESSENTIAL GOODS OR SERVICES.—The term “es-
4 sential goods or services” means goods or services that
5 may be used to preserve, protect, or sustain the health,
6 safety, or welfare of members of the public from potential
7 harms resulting from a natural disaster, a pandemic, or
8 the circumstances giving rise to a state of emergency.

9 (c) NATURAL DISASTER.—The term “natural dis-
10 aster” means a disaster, catastrophe, or emergency, in-
11 cluding flood, fire, earthquake, storm, or other serious act
12 of nature, which threatens the health, safety, or welfare
13 of the public.

14 (d) PERSON.—The term “person” means an indi-
15 vidual or entity, its directors, officers, employees, agents,
16 representatives, successors, and assigns, including any en-
17 tity the person controls, and the respective directors, offi-
18 cers, employees, agents, representatives, successors, and
19 assigns of each.

20 (e) STATE OF EMERGENCY.—The term “state of
21 emergency” means any state of emergency or disaster de-
22 clared by the President or by the government of any State
23 or territory of the United States.

24 (f) UNCONSCIONABLY EXCESSIVE PRICE.—The term
25 “unconscionably excessive price” means a price that rep-

1 resents a gross disparity between the price of the essential
2 good or service that is the subject of an offer or trans-
3 action during, or in anticipation of, a natural disaster,
4 pandemic, or state of emergency and the average price at
5 which such essential good or service was offered in the
6 ordinary course of business prior to any public anticipa-
7 tion of a natural disaster, pandemic, or state of emer-
8 gency.

9 **SEC. 3. FEDERAL TRADE COMMISSION ENFORCEMENT**
10 **AGAINST PRICE GOUGING.**

11 (a) VIOLATION.—Selling, or offering for sale, essen-
12 tial goods and services, in or affecting commerce, at an
13 unconscionably excessive price during, or in anticipation
14 of, a natural disaster, pandemic, or state of emergency,
15 shall constitute an unfair or deceptive act or practice
16 under section 5(a) of the Federal Trade Commission Act
17 (15 U.S.C. 45(a)).

18 (b) CIVIL ACTION.—

19 (1) IN GENERAL.—If the Commission has rea-
20 son to believe that there has been a violation of sec-
21 tion 5(a) of the Federal Trade Commission Act (15
22 U.S.C. 45(a)) under subsection (a) of this section,
23 the Commission may commence a civil action to re-
24 cover a civil penalty and seek other appropriate re-
25 lief in a district court of the United States.

1 (2) PRESUMPTION.—In a civil action under
2 paragraph (1), the price of an essential good or serv-
3 ice shall be presumed to be an unconscionably exces-
4 sive price if the price charged or offered by the de-
5 fendant during, or in anticipation of, a natural dis-
6 aster, pandemic, or state of emergency, exceeded by
7 20 percent the greater of—

8 (A) the average price charged by the de-
9 fendant for the essential good or service during
10 the preceding 60 days before the public could
11 reasonably have anticipated the natural dis-
12 aster, pandemic, or state of emergency; or

13 (B) the average price at which buyers
14 could obtain such good or service or similar
15 goods or services in the geographic area during
16 the 60-day period before the date on which the
17 public could reasonably have anticipated the
18 natural disaster, pandemic, or state of emer-
19 gency,

20 unless the price charged by the defendant is attrib-
21 utable to price increases in related input markets or
22 to additional expenses not within the control of the
23 defendant that increased the defendant's costs to
24 furnish the essential goods or services.

1 (3) CIVIL PENALTY.—In an action under para-
2 graph (1), any person that has been found liable for
3 a violation of section 5(a) of the Federal Trade
4 Commission Act (15 U.S.C. 45(a)) under subsection
5 (a) of this section shall be subject to a civil penalty
6 of an amount no greater than \$10,000 per violation.

7 (4) RULE OF CONSTRUCTION.—The civil pen-
8 alty provided in this subsection is in addition to, and
9 not in lieu of, any other remedies provided by Fed-
10 eral law, including injunctive relief under section
11 13(b) of the Federal Trade Commission Act (15
12 U.S.C. 53(b)). Nothing in this paragraph shall be
13 construed to affect any authority of the Commission
14 under any other provision of law.

15 **SEC. 4. PRICE GOUGING HOTLINE.**

16 The Commission shall establish a telephone hotline
17 and an online portal dedicated solely to receiving price
18 gouging complaints from the public, which shall be acti-
19 vated in anticipation of or during major disasters or states
20 of emergency and shall remain operational until 120 days
21 after the conclusion of such major disasters or states of
22 emergency.

23 **SEC. 5. NO PREEMPTION OF STATE LAW.**

24 Nothing in this Act preempts any State law.

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