

116TH CONGRESS
2D SESSION

S. 3647

To prohibit price gouging for necessary products during federally declared national emergencies or disasters.

IN THE SENATE OF THE UNITED STATES

MAY 7, 2020

Mr. BOOKER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prohibit price gouging for necessary products during federally declared national emergencies or disasters.

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 “Prevent Emergency
5 and Disaster Profiteering Act of 2020”.

6 **SEC. 2. DEFINITIONS.**

7 In this Act:

8 (1) ADMINISTRATOR.—The term “Adminis-
9 trator” means the Administrator of the Federal
10 Emergency Management Agency.

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

3 (3) EMERGENCY PERIOD; EMERGENCY AREA.—
4 An “emergency period” is the period during which,
5 and an “emergency area” is a geographical area in
6 which, there exists—

7 (A) a major disaster declared by the Presi-
8 dent under section 401 of the Robert T. Staf-
9 ford Disaster Relief and Emergency Assistance
10 Act (42 U.S.C. 5170);

11 (B) an emergency declared by the Presi-
12 dent under section 501 of such Act (42 U.S.C.
13 5191); or

14 (C) a public health emergency declared by
15 the Secretary pursuant to section 319 of the
16 Public Health Service Act (42 U.S.C. 247d).

17 (4) PRICE GOUGING.—The term “price
18 gouging” means the sale of a good or service at an
19 unconscionably excessive price by a person during an
20 emergency period and in an emergency area.

21 (5) SECRETARY.—The term “Secretary” means
22 the Secretary of Health and Human Services.

23 (6) UNCONSCIONABLY EXCESSIVE PRICE.—

24 (A) IN GENERAL.—The term “unconscion-
25 ably excessive price” means, with respect to a

1 good or service sold or offered for sale by a per-
2 son, a price that exceeds, by a margin that is
3 greater than the allowable margin determined
4 by the Administrator or the Secretary (as appli-
5 cable) for the good or service under section 3,
6 the average price at which the good or service
7 was sold by the person during the 90-day pe-
8 riod prior to the date on which an emergency
9 or disaster described in paragraph (2) is de-
10 clared.

11 (B) EXCEPTION.—Such term shall not in-
12 clude any price for a good or service that is in-
13 creased beyond the margin described in sub-
14 paragraph (A) if such increased price is directly
15 attributable to an appreciable increase in the
16 cost of acquiring, producing, selling, trans-
17 porting, or delivering the good or service, or is
18 otherwise justified by circumstances outside of
19 the control of the seller, as determined by the
20 Administrator or the Secretary (as applicable).

21 **SEC. 3. PREVENTING PRICE GOUGING DURING FEDERALLY**
22 **DECLARED EMERGENCIES.**

23 (a) IN GENERAL.—During an emergency period and
24 in an emergency area, it shall be unlawful for any person
25 to engage in price gouging with respect to a necessary

1 good or service covered by a list published by the Adminis-
2 trator under subsection (b)(1) or by the Secretary under
3 subsection (b)(2).

4 (b) NECESSARY GOODS AND SERVICES LISTS.—

5 (1) PRESIDENTIALLY DECLARED EMER-
6 GENCIES.—In the case of an emergency that is de-
7 scribed in subparagraph (A) or (B) of section 2(3):

8 (A) The Administrator, in consultation
9 with the Secretary, may publish on the internet
10 website of the Federal Emergency Management
11 Agency a list with respect to an emergency area
12 during an emergency period to designate the
13 goods and services to which the prohibition de-
14 scribed in subsection (a) shall apply.

15 (B) The Administrator, in consultation
16 with the Secretary, may update any list pub-
17 lished under subparagraph (A) to remove a
18 good or service from the list or add a good or
19 service to the list, but the prohibition described
20 in subsection (a) shall not apply to a good or
21 service before the date on which good or service
22 is added to the list.

23 (C) For any good or service included in a
24 list under this paragraph, the Administrator
25 shall specify the allowable margin by which the

1 price at which a person sells or offers for sale
2 such good or service may exceed the average
3 price at which the good or service was sold or
4 offered by the person during the 90-day period
5 prior to the date on which the emergency or
6 disaster involved was declared.

7 (2) PUBLIC HEALTH EMERGENCY.—In the case
8 of an emergency described in section 2(3)(C):

9 (A) The Secretary may publish on the
10 internet website of the Department of Health
11 and Human Services a list with respect to an
12 emergency area during an emergency period to
13 designate the goods and services to which the
14 prohibition described in subsection (a) shall
15 apply.

16 (B) The Secretary may update any list
17 published under subparagraph (A) to remove a
18 good or service from the list or add a good or
19 service to the list, but the prohibition described
20 in subsection (a) shall not apply to a good or
21 service before the date on which good or service
22 is added to the list.

23 (C) For any good or service included in a
24 list under this paragraph, the Secretary shall
25 specify the allowable margin by which the price

1 at which a person sells or offers for sale such
2 good or service may exceed the average price at
3 which the good or service was sold or offered by
4 the person during the 90-day period prior to
5 the date on which the emergency or disaster in-
6 volved was declared.

7 (c) DURATION OF PROHIBITION.—The prohibition
8 described in subsection (a) shall apply to a good or service
9 that is included on a list published by the Administrator
10 or the Secretary (as applicable) under subsection (b)—

11 (1) beginning with the first day that the good
12 or service is included on such a list; and

13 (2) ending with the earlier of—

14 (A) the last day that the good or service is
15 included on such a list; and

16 (B) the last day of every emergency period
17 relating to a list on which the good or service
18 is included.

19 **SEC. 4. ENFORCEMENT.**

20 (a) ENFORCEMENT BY FEDERAL TRADE COMMIS-
21 SION.—

22 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-
23 TICES.—A violation of section 3 shall be treated as
24 a violation of a regulation under section 18(a)(1)(B)
25 of the Federal Trade Commission Act (15 U.S.C.

1 57a(a)(1)(B)) regarding unfair or deceptive acts or
2 practices.

3 (2) POWERS OF COMMISSION.—The Commis-
4 sion shall enforce section 3 in the same manner, by
5 the same means, and with the same jurisdiction,
6 powers, and duties as though all applicable terms
7 and provisions of the Federal Trade Commission Act
8 (15 U.S.C. 41 et seq.) were incorporated into and
9 made a part of this Act. Any person who violates
10 such section shall be subject to the penalties and en-
11 titled to the privileges and immunities provided in
12 the Federal Trade Commission Act.

13 (b) EFFECT ON OTHER LAWS.—Nothing in this Act
14 shall be construed in any way to limit or affect the author-
15 ity of the Commission under any other provision of law.

16 (c) ENFORCEMENT BY STATE ATTORNEYS GEN-
17 ERAL.—

18 (1) IN GENERAL.—If the chief law enforcement
19 officer of a State, or an official or agency designated
20 by a State, has reason to believe that any person has
21 violated or is violating section 3, the attorney gen-
22 eral, official, or agency of the State, in addition to
23 any authority it may have to bring an action in
24 State court under its consumer protection law, may
25 bring a civil action in any appropriate United States

1 district court or in any other court of competent ju-
2 risdiction, including a State court, to—

3 (A) enjoin further such violation by such
4 person;

5 (B) enforce compliance with such section;

6 (C) obtain civil penalties; and

7 (D) obtain damages, restitution, or other
8 compensation on behalf of residents of the
9 State.

10 (2) NOTICE AND INTERVENTION BY THE
11 FTC.—The attorney general of a State shall provide
12 prior written notice of any action under paragraph
13 (1) to the Commission and provide the Commission
14 with a copy of the complaint in the action, except in
15 any case in which such prior notice is not feasible,
16 in which case the attorney general shall serve such
17 notice immediately upon instituting such action. The
18 Commission shall have the right—

19 (A) to intervene in the action;

20 (B) upon so intervening, to be heard on all
21 matters arising therein; and

22 (C) to file petitions for appeal.

23 (3) LIMITATION ON STATE ACTION WHILE FED-
24 ERAL ACTION IS PENDING.—If the Commission has
25 instituted a civil action for violation of this Act, no

1 State attorney general, or official or agency of a
2 State, may bring an action under this subsection
3 during the pendency of that action against any de-
4 fendant named in the complaint of the Commission
5 for any violation of this Act alleged in the complaint.

6 (4) RELATIONSHIP WITH STATE-LAW CLAIMS.—
7 If the attorney general of a State has authority to
8 bring an action under State law directed at acts or
9 practices that also violate this Act, the attorney gen-
10 eral may assert the State-law claim and a claim
11 under this Act in the same civil action.

12 (d) SAVINGS CLAUSE.—Nothing in this Act shall pre-
13 empt or otherwise affect any State or local law.

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