

116TH CONGRESS
2D SESSION

S. 3853

To prevent price gouging during emergencies, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 1, 2020

Ms. WARREN (for herself and Ms. HARRIS) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

A BILL

To prevent price gouging during emergencies, 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 “Price Gouging Preven-
5 tion Act”.

6 **SEC. 2. FINDINGS.**

7 Congress finds the following:

8 (1) During a national emergency, state of emer-
9 gency, or public health emergency, some merchants

1 have taken unfair advantage of consumers by greatly
2 increasing prices for essential consumer goods.

3 (2) When a declared national emergency or
4 state of emergency results in abnormal disruptions
5 of the market, the public interest requires that ex-
6 cessive and unjustified increases in the prices of es-
7 sential consumer goods be prohibited.

8 (3) To protect citizens from excessive and un-
9 justified increases in the prices charged during or
10 shortly after a declared national emergency, state of
11 emergency, or public health emergency for consumer
12 goods and supplies that are vital and necessary for
13 the health, safety, and welfare of consumers is of ut-
14 most concern and importance.

15 **SEC. 3. PREVENTION OF PRICE GOUGING DURING EMER-**
16 **GENCIES.**

17 (a) IN GENERAL.—During an emergency period and
18 in a covered geographical area, it shall be unlawful for
19 a seller to sell or offer for sale a consumer good at an
20 excessive or opportunistic price.

21 (b) PRESUMPTION OF EXCESSIVE OR OPPORTUN-
22 ISTIC PRICE.—

23 (1) IN GENERAL.—A seller shall be presumed to
24 be in violation of subsection (a) if, during an emer-
25 gency period and in a covered geographical area, the

1 seller sells or offers for sale a consumer good at a
2 price that exceeds by more than 10 percent either—

3 (A) the average price at which the con-
4 sumer good was sold or offered for sale by all
5 sellers in such area during the 120-day period
6 preceding such emergency period; or

7 (B) the average price at which the con-
8 sumer good was sold or offered for sale by the
9 seller involved during the 120-day period pre-
10 ceeding such emergency period.

11 (2) REBUTTAL.—A seller may rebut a presump-
12 tion under paragraph (1) if the seller demonstrates
13 by clear and convincing evidence that the increase in
14 price of the consumer good involved is directly at-
15 tributable to additional costs paid by the seller in
16 procuring, acquiring, or providing the consumer dur-
17 ing the emergency period.

18 (c) ENFORCEMENT.—

19 (1) ENFORCEMENT BY FEDERAL TRADE COM-
20 MISSION.—

21 (A) UNFAIR OR DECEPTIVE ACTS OR PRAC-
22 TICES.—A violation of this section shall be
23 treated as a violation of a regulation under sec-
24 tion 18(a)(1)(B) of the Federal Trade Commis-

1 sion Act (15 U.S.C. 57a(a)(1)(B)) regarding
2 unfair or deceptive acts or practices.

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

14 (2) EFFECT ON OTHER LAWS.—Nothing in this
15 section shall be construed in any way to limit the
16 authority of the Commission under any other provi-
17 sion of law or to limit the application of any other
18 Federal or State law.

19 (3) ENFORCEMENT BY STATE ATTORNEYS GEN-
20 ERAL.—

21 (A) IN GENERAL.—If the attorney general
22 of a State, or another official or agency des-
23 ignated by a State, has reason to believe that
24 any person has violated or is violating this sec-
25 tion, the attorney general, official, or agency of

1 the State, in addition to any authority it may
2 have to bring an action in State court under
3 State law, may bring a civil action in any ap-
4 propriate United States district court or in any
5 other court of competent jurisdiction, including
6 a State court, to—

7 (i) enjoin further such violation by
8 such person;

9 (ii) enforce compliance with such sec-
10 tion;

11 (iii) obtain civil penalties; and

12 (iv) obtain damages, restitution, or
13 other compensation on behalf of residents
14 of the State.

15 (B) NOTICE.—Before filing an action
16 under subparagraph (A), the attorney general,
17 official, or agency of the State involved shall
18 provide to the Commission a written notice of
19 such action and a copy of the complaint for
20 such action. If the attorney general, official, or
21 agency determines that it is not feasible to pro-
22 vide the notice described in this subparagraph
23 before the filing of the action, the attorney gen-
24 eral, official, or agency shall provide written no-
25 tice of the action and a copy of the complaint

1 to the Commission immediately upon the filing
2 of the action.

3 (C) AUTHORITY OF COMMISSION.—With
4 respect to an action described in subparagraph
5 (A), the Commission shall have the right—

6 (i) to intervene in the action;

7 (ii) upon so intervening, to be heard
8 on all matters arising therein; and

9 (iii) to file petitions for appeal.

10 (d) DEFINITIONS.—In this section:

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

13 (2) CONSUMER GOOD.—The term “consumer
14 good” a good offered in commerce, including—

15 (A) food, water, ice, flashlights, radios,
16 batteries, candles, blankets, soaps, diapers,
17 toiletries, gasoline, generator, temporary shel-
18 ters, plywood, nails, hammers;

19 (B) prescription and nonprescription medi-
20 cations, bandages, gauze, isopropyl alcohol, any
21 personal protective equipment for protection
22 from or prevention of a contagious disease,
23 antibacterial materials; or

24 (C) goods vital and necessary for the
25 health, safety, welfare of consumers deemed

1 necessary by public health officials during a dis-
2 aster or emergency described in paragraph
3 (3)(A).

4 (3) EMERGENCY PERIOD; COVERED GEO-
5 GRAPHICAL AREA.—

6 (A) IN GENERAL.—Subject to subpara-
7 graph (B), an “emergency period” is the period
8 during which, and a “covered geographical
9 area” is a geographical area in which, there ex-
10 ists—

11 (i) a major disaster declared by the
12 President under section 401 of the Robert
13 T. Stafford Disaster Relief and Emergency
14 Assistance Act (42 U.S.C. 5170); or

15 (ii) a public health emergency de-
16 clared by the Secretary pursuant to section
17 319 of the Public Health Service Act (42
18 U.S.C. 247d).

19 (B) RULE OF APPLICATION.—For pur-
20 poses of subparagraph (A)—

21 (i) an “emergency period” with re-
22 spect to a disaster or emergency declara-
23 tion described in such subparagraph shall
24 include the 30-day period following the last

1 day that such disaster or emergency dec-
2 laration is in effect; and

3 (ii) a geographical area in which there
4 exists a disaster or emergency described in
5 subparagraph (A) shall be considered to be
6 a “covered geographical area” through the
7 end of the period described in clause (i).

8 (4) SELLER.—The term “seller” means, with
9 respect to a consumer good, any person selling or of-
10 fering for sale such consumer good.

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