

109TH CONGRESS
2^D SESSION

H. R. 5253

To prohibit price gouging in the sale of gasoline, diesel fuel, crude oil,
and home heating oil, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 2, 2006

Mrs. WILSON of New Mexico (for herself, Mr. BASS, Mr. SHAYS, Mr. HALL, Mr. DEAL of Georgia, Mr. BILIRAKIS, Mr. SHIMKUS, Mr. PITTS, Mr. NORWOOD, Mr. BURGESS, Mrs. BONO, Mr. BUYER, Mr. ROGERS of Michigan, Mr. CHOCOLA, Mr. BRADLEY of New Hampshire, Mr. FERGUSON, Mrs. CUBIN, Mr. WALDEN of Oregon, Mrs. JOHNSON of Connecticut, Mr. SULLIVAN, Mr. UPTON, Mr. BARTON of Texas, and Mr. WAMP) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit price gouging in the sale of gasoline, diesel fuel, crude oil, and home heating oil, 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 “Federal Energy Price
5 Protection Act of 2006”.

6 **SEC. 2. GASOLINE PRICE GOUGING PROHIBITED.**

7 (a) UNLAWFUL CONDUCT.—

1 (1) UNFAIR AND DECEPTIVE ACT OR PRAC-
2 TICE.—It shall be an unfair or deceptive act or prac-
3 tice in violation of section 5 of the Federal Trade
4 Commission Act for any person to sell crude oil, gas-
5 oline, diesel fuel, home heating oil, or any biofuel at
6 a price that constitutes price gouging as defined by
7 rule pursuant to subsection (b).

8 (2) DEFINITION.—For purposes of this sub-
9 section, the term “biofuel” means any fuel con-
10 taining any organic matter that is available on a re-
11 newable or recurring basis, including agricultural
12 crops and trees, wood and wood wastes and residues,
13 plants (including aquatic plants), grasses, residues,
14 fibers, and animal wastes, municipal wastes, and
15 other waste materials.

16 (b) PRICE GOUGING.—

17 (1) IN GENERAL.—Not later than 6 months
18 after the date of the enactment of this Act, the Fed-
19 eral Trade Commission shall promulgate, in accord-
20 ance with section 553 of title 5, United States Code,
21 any rules necessary for the enforcement of this sec-
22 tion.

23 (2) CONTENTS.—Such rules—

1 (A) shall define “price gouging”, “retail
2 sale”, and “wholesale sale” for purposes of this
3 Act; and

4 (B) shall be consistent with the require-
5 ments for declaring unfair acts or practices in
6 section 5(n) of the Federal Trade Commission
7 Act (15 U.S.C. 45(n)).

8 (c) ENFORCEMENT.—

9 (1) IN GENERAL.—Except as provided in sub-
10 section (d), a violation of subsection (a) shall be
11 treated as a violation of a rule defining an unfair or
12 deceptive act or practice prescribed under section
13 18(a)(1)(B) of the Federal Trade Commission Act
14 (15 U.S.C. 57a(a)(1)(B)). The Federal Trade Com-
15 mission shall enforce this Act in the same manner,
16 by the same means, and with the same jurisdiction
17 as though all applicable terms and provisions of the
18 Federal Trade Commission Act were incorporated
19 into and made a part of this Act.

20 (2) EXCLUSIVE ENFORCEMENT.—Notwith-
21 standing any other provision of law, no person,
22 State, or political subdivision of a State, other than
23 the Federal Trade Commission or the Attorney Gen-
24 eral of the United States to the extent provided for
25 in section 5 of the Federal Trade Commission Act

1 or the attorney general of a State as provided by
2 subsection (d), shall have any authority to enforce
3 this Act or any rule prescribed pursuant to this Act.

4 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
5 ERAL.—

6 (1) CIVIL ACTION.—In any case in which the
7 attorney general of a State has reason to believe
8 that an interest of the residents of that State has
9 been or is threatened or adversely affected by any
10 person who violates subsection (a), the attorney gen-
11 eral, as *parens patriae*, may bring a civil action on
12 behalf of the residents of the State in a district
13 court of the United States of appropriate jurisdic-
14 tion—

15 (A) to enjoin further violation of such sec-
16 tion by the defendant;

17 (B) to compel compliance with such sec-
18 tion; or

19 (C) to impose a civil penalty under sub-
20 section (e).

21 (2) INTERVENTION BY THE FTC.—

22 (A) NOTICE AND INTERVENTION.—The
23 State shall provide prior written notice of any
24 action under paragraph (1) to the Federal
25 Trade Commission and provide the Commission

1 with a copy of its complaint, except in any case
2 in which such prior notice is not feasible, in
3 which case the State shall serve such notice im-
4 mediately upon instituting such action. The
5 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 (B) LIMITATION ON STATE ACTION WHILE
11 FEDERAL ACTION IS PENDING.—If the Commis-
12 sion has instituted a civil action for violation of
13 this Act, no attorney general of a State may
14 bring an action under this subsection during
15 the pendency of that action against any defend-
16 ant named in the complaint of the Commission
17 for any violation of this Act alleged in the com-
18 plaint.

19 (3) CONSTRUCTION WITH RESPECT TO POWERS
20 CONFERRED BY STATE LAW.—For purposes of
21 bringing any civil action under paragraph (1), noth-
22 ing in this Act shall be construed to prevent an at-
23 torney general of a State from exercising the powers
24 conferred on the attorney general by the laws of that
25 State.

1 (e) CIVIL PENALTY.—

2 (1) IN GENERAL.—Notwithstanding any civil
3 penalty that otherwise applies to a violation of a rule
4 referred to in subsection (c)(1), any person who vio-
5 lates subsection (a) shall be liable for a civil penalty
6 under this subsection.

7 (2) AMOUNT.—The amount of a civil penalty
8 under this subsection shall be an amount equal to—

9 (A) in the case of a wholesale sale in viola-
10 tion of subsection (a), the sum of—

11 (i) 3 times the difference between—

12 (I) the total amount charged in
13 the wholesale sale; and

14 (II) the total amount that would
15 be charged in such a wholesale sale
16 made at the wholesale fair market
17 price; plus

18 (ii) an amount not to exceed
19 \$3,000,000 per day of a continuing viola-
20 tion; or

21 (B) in the case of a retail sale in violation
22 of subsection (a), 3 times the difference be-
23 tween—

24 (i) the total amount charged in the
25 sale; and

1 (ii) the total amount that would be
2 charged in such a sale at the fair market
3 price for such a sale.

4 (3) DEPOSIT.—Of the amount of any civil pen-
5 alty imposed under this section with respect to any
6 sale in violation of subsection (a) to a person that
7 resides in a State, the portion of such amount that
8 is determined under subparagraph (A)(i) or (B) (or
9 both) of paragraph (2) shall be deposited into—

10 (A) any account or fund established under
11 the laws of the State and used for paying com-
12 pensation to consumers for violations of State
13 consumer protection laws; or

14 (B) in the case of a State for which no
15 such account or fund is establish by State law,
16 into the general fund of the State treasury.

17 (f) CRIMINAL PENALTY.—

18 (1) IN GENERAL.—In addition to any other
19 penalty that applies, a violation of subsection (a) is
20 punishable—

21 (A) in the case of a wholesale sale in viola-
22 tion of subsection (a), by a fine of not more
23 than \$150,000,000, imprisonment for not more
24 than 2 years, or both; or

1 (B) in the case of a retail sale in violation
2 of subsection (a), by a fine of not more than
3 \$2,000,000, imprisonment for not more than 2
4 years, or both.

5 (2) ENFORCEMENT.—The criminal penalty pro-
6 vided by paragraph (1) may be imposed only pursu-
7 ant to a criminal action brought by the Attorney
8 General or other officer of the Department of Jus-
9 tice, or any attorney specially appointed by the At-
10 torney General, in accordance with section 515 of
11 title 28, United States Code.

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