

110TH CONGRESS
1ST SESSION

H. R. 2335

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 15, 2007

Mrs. WILSON of New Mexico 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 2007”.

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

7 (a) UNLAWFUL CONDUCT.—

8 (1) UNFAIR AND DECEPTIVE ACT OR PRAC-
9 TICE.—It shall be an unfair or deceptive act or prac-
10 tice in violation of section 5 of the Federal Trade

1 Commission Act for any person to sell crude oil, gas-
2 oline, diesel fuel, home heating oil, or any biofuel at
3 a price that constitutes price gouging as defined by
4 rule pursuant to subsection (b).

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

13 (b) PRICE GOUGING.—

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

20 (2) CONTENTS.—Such rules—

21 (A) shall define “price gouging”, “retail
22 sale”, and “wholesale sale” for purposes of this
23 Act; and

24 (B) shall be consistent with the require-
25 ments for declaring unfair acts or practices in

1 section 5(n) of the Federal Trade Commission
2 Act (15 U.S.C. 45(n)).

3 (c) ENFORCEMENT.—

4 (1) IN GENERAL.—Except as provided in sub-
5 section (d), a violation of subsection (a) shall be
6 treated as a violation of a rule defining an unfair or
7 deceptive act or practice prescribed under section
8 18(a)(1)(B) of the Federal Trade Commission Act
9 (15 U.S.C. 57a(a)(1)(B)). The Federal Trade Com-
10 mission shall enforce this Act in the same manner,
11 by the same means, and with the same jurisdiction
12 as though all applicable terms and provisions of the
13 Federal Trade Commission Act were incorporated
14 into and made a part of this Act.

15 (2) EXCLUSIVE ENFORCEMENT.—Notwith-
16 standing any other provision of law, no person,
17 State, or political subdivision of a State, other than
18 the Federal Trade Commission or the Attorney Gen-
19 eral of the United States to the extent provided for
20 in section 5 of the Federal Trade Commission Act
21 or the attorney general of a State as provided by
22 subsection (d), shall have any authority to enforce
23 this Act or any rule prescribed pursuant to this Act.

24 (d) ENFORCEMENT BY STATE ATTORNEYS GEN-
25 ERAL.—

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

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

12 (B) to compel compliance with such sec-
13 tion; or

14 (C) to impose a civil penalty under sub-
15 section (e).

16 (2) INTERVENTION BY THE FTC.—

17 (A) NOTICE AND INTERVENTION.—The
18 State shall provide prior written notice of any
19 action under paragraph (1) to the Federal
20 Trade Commission and provide the Commission
21 with a copy of its complaint, except in any case
22 in which such prior notice is not feasible, in
23 which case the State shall serve such notice im-
24 mediately upon instituting such action. The
25 Commission shall have the right—

- 1 (i) to intervene in the action;
2 (ii) upon so intervening, to be heard
3 on all matters arising therein; and
4 (iii) to file petitions for appeal.

5 (B) LIMITATION ON STATE ACTION WHILE
6 FEDERAL ACTION IS PENDING.—If the Commis-
7 sion has instituted a civil action for violation of
8 this Act, no attorney general of a State may
9 bring an action under this subsection during
10 the pendency of that action against any defend-
11 ant named in the complaint of the Commission
12 for any violation of this Act alleged in the com-
13 plaint.

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

21 (e) CIVIL PENALTY.—

22 (1) IN GENERAL.—Notwithstanding any civil
23 penalty that otherwise applies to a violation of a rule
24 referred to in subsection (c)(1), any person who vio-

1 lates subsection (a) shall be liable for a civil penalty
2 under this subsection.

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

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

7 (i) 3 times the difference between—

8 (I) the total amount charged in
9 the wholesale sale; and

10 (II) the total amount that would
11 be charged in such a wholesale sale
12 made at the wholesale fair market
13 price; plus

14 (ii) an amount not to exceed
15 \$3,000,000 per day of a continuing viola-
16 tion; or

17 (B) in the case of a retail sale in violation
18 of subsection (a), 3 times the difference be-
19 tween—

20 (i) the total amount charged in the
21 sale; and

22 (ii) the total amount that would be
23 charged in such a sale at the fair market
24 price for such a sale.

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

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

11 (B) in the case of a State for which no
12 such account or fund is established by State
13 law, into the general fund of the State treasury.

14 (f) CRIMINAL PENALTY.—

15 (1) IN GENERAL.—In addition to any other
16 penalty that applies, a violation of subsection (a) is
17 punishable—

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

22 (B) in the case of a retail sale in violation
23 of subsection (a), by a fine of not more than
24 \$2,000,000, imprisonment for not more than 2
25 years, or both.

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

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