

Calendar No. 373

117TH CONGRESS
2D SESSION

H. R. 7688

IN THE SENATE OF THE UNITED STATES

MAY 19 (legislative day, MAY 17), 2022

Received; read the first time

MAY 19, 2022

Read the second time and placed on the calendar

AN ACT

To protect consumers from price-gouging of consumer fuels,
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 “Consumer Fuel Price
5 Gouging Prevention Act”.

6 **SEC. 2. UNCONSCIONABLE PRICING OF CONSUMER FUELS**
7 **DURING EMERGENCIES.**

8 (a) UNCONSCIONABLE PRICING.—

9 (1) IN GENERAL.—It shall be unlawful for any
10 person to sell a consumer fuel, at wholesale or retail,

1 in an area and during a period of an energy emer-
2 gency covered by a proclamation issued under para-
3 graph (2) at a price that—

4 (A) is unconscionably excessive; and

5 (B) indicates the seller is exploiting the
6 circumstances related to an energy emergency
7 to increase prices unreasonably.

8 (2) ENERGY EMERGENCY PROCLAMATION.—

9 (A) IN GENERAL.—The President may
10 issue an energy emergency proclamation for any
11 area within the jurisdiction of the United
12 States, during which the prohibition in para-
13 graph (1) shall apply, that includes the geo-
14 graphic area covered, the consumer fuel cov-
15 ered, and the time period that such proclama-
16 tion shall be in effect.

17 (B) DURATION.—The proclamation—

18 (i) may not apply for a period of more
19 than 30 consecutive days, but may be re-
20 newed for such consecutive periods, each
21 not to exceed 30 days, as the President de-
22 termines appropriate; and

23 (ii) may include a period of time not
24 to exceed 1 week before a reasonably fore-
25 seeable emergency.

1 (3) FACTORS CONSIDERED.—

2 (A) IN GENERAL.—In determining whether
3 a person has violated paragraph (1), there shall
4 be taken into account, among other factors, the
5 aggravating factors described in subparagraph
6 (B) and the mitigating factor described in sub-
7 paragraph (C).

8 (B) AGGRAVATING FACTORS.—The aggra-
9 vating factors described in this subparagraph
10 are the following:

11 (i) Whether the amount charged by
12 such person grossly exceeds the average
13 price at which the consumer fuel was of-
14 fered for sale by such person during—

15 (I) the 30-day period before the
16 date on which the proclamation was
17 issued; or

18 (II) another appropriate bench-
19 mark period, as determined by the
20 Commission.

21 (ii) Whether the amount charged by
22 such person grossly exceeds the price at
23 which the same or a similar consumer fuel
24 was readily obtainable in the same area

1 from other sellers during the energy emer-
2 gency period.

3 (C) MITIGATING FACTOR.—The mitigating
4 factor described in this subparagraph is wheth-
5 er the quantity of any consumer fuel such per-
6 son produced, distributed, or sold in an area
7 covered by the proclamation during the 30-day
8 period following the date on which the procla-
9 mation was issued increased over the quantity
10 such person produced, distributed, or sold dur-
11 ing the 30-day period before the date on which
12 the proclamation was issued, taking into ac-
13 count any usual seasonal demand variation.

14 (b) AFFIRMATIVE DEFENSE.—It shall be an affirma-
15 tive defense in any civil action or administrative action to
16 enforce subsection (a), with respect to the sale, at whole-
17 sale or retail, of a consumer fuel by a person, that the
18 increase in the price of such consumer fuel reasonably re-
19 flects additional costs that were paid, incurred, or reason-
20 ably anticipated by such person, or reasonably reflects ad-
21 ditional risks taken by such person, to produce, distribute,
22 obtain, or sell such consumer fuel under the cir-
23 cumstances.

24 (c) RULE OF CONSTRUCTION.—This section may not
25 be construed to cover a transaction on a futures market.

1 (d) ENFORCEMENT.—

2 (1) FEDERAL TRADE COMMISSION.—A violation
3 of subsection (a) shall be treated as a violation of a
4 rule defining an unfair or deceptive act or practice
5 prescribed under section 18(a)(1)(B) of the Federal
6 Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).
7 The Federal Trade Commission shall enforce this
8 section in the same manner, by the same means, and
9 with the same jurisdiction, powers, and duties as
10 though all applicable terms and provisions of the
11 Federal Trade Commission Act were incorporated
12 into and made a part of this section. In enforcing
13 subsection (a), the Commission shall give priority to
14 enforcement actions concerning companies with total
15 United States wholesale or retail sales of consumer
16 fuels in excess of \$500,000,000 per year.

17 (2) ENFORCEMENT AT RETAIL LEVEL BY
18 STATE ATTORNEYS GENERAL.—

19 (A) IN GENERAL.—If the chief law en-
20 forcement officer of a State, or an official or
21 agency designated by a State, has reason to be-
22 lieve that any person has violated or is violating
23 subsection (a) involving a retail sale, the attor-
24 ney general, official, or agency of the State, in
25 addition to any authority it may have to bring

1 an action in State court under its laws, may
2 bring a civil action in any appropriate United
3 States district court or in any other court of
4 competent jurisdiction to—

5 (i) enjoin further such violation by
6 such person;

7 (ii) enforce compliance with such sub-
8 section;

9 (iii) obtain civil penalties; and

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

13 (B) NOTICE.—The State shall serve writ-
14 ten notice to the Commission of any civil action
15 under subparagraph (A) before initiating such
16 civil action. The notice shall include a copy of
17 the complaint to be filed to initiate such civil
18 action, except that if it is not feasible for the
19 State to provide such prior notice, the State
20 shall provide such notice immediately upon in-
21 stituting such civil action.

22 (C) AUTHORITY TO INTERVENE.—Upon
23 receipt of the notice required by subparagraph
24 (B), the Commission may intervene in such civil
25 action and upon intervening—

1 (i) be heard on all matters arising in
2 such civil action; and

3 (ii) file petitions for appeal of a deci-
4 sion in such civil action.

5 (D) CONSTRUCTION.—For purposes of
6 bringing any civil action under subparagraph
7 (A), nothing in this paragraph shall prevent the
8 attorney general of a State from exercising the
9 powers conferred on the attorney general by the
10 laws of such State to conduct investigations or
11 to administer oaths or affirmations or to compel
12 the attendance of witnesses or the production of
13 documentary and other evidence.

14 (E) LIMITATION ON STATE ACTION WHILE
15 FEDERAL ACTION IS PENDING.—If the Commis-
16 sion has instituted a civil action or an adminis-
17 trative action for violation of subsection (a), a
18 State attorney general, or official or agency of
19 a State, may not bring an action under this
20 paragraph during the pendency of that action
21 against any defendant named in the complaint
22 of the Commission or another agency for any
23 violation of this Act alleged in the complaint.

24 (F) RULE OF CONSTRUCTION.—This para-
25 graph may not be construed to prohibit an au-

1 thorized State official from proceeding in State
2 court to enforce a civil or criminal statute of
3 such State.

4 (e) LOW INCOME ENERGY ASSISTANCE.—

5 (1) DEPOSIT OF FUNDS.—Amounts collected in
6 any penalty under subsection (d)(1) shall be depos-
7 ited in a separate fund in the Treasury to be known
8 as the Consumer Relief Trust Fund.

9 (2) USE OF FUNDS.—To the extent provided
10 for in advance in appropriations Acts, the amounts
11 deposited into the fund shall be used to provide as-
12 sistance under the Low Income Home Energy As-
13 sistance Program described in section 2602 of the
14 Low-Income Home Energy Assistance Act of 1981
15 (42 U.S.C. 8621) administered by the Secretary of
16 Health and Human Services and the Weatherization
17 Assistance Program established under part A of title
18 IV of the Energy Conservation and Production Act
19 (42 U.S.C. 6861 et seq.) administered by the Sec-
20 retary of Energy.

21 (f) EFFECT ON OTHER LAWS.—

22 (1) OTHER AUTHORITY OF COMMISSION.—
23 Nothing in this section may be construed to limit the
24 authority of the Commission under the Federal

1 Trade Commission Act (15 U.S.C. 41 et seq.) or any
2 other provision of law.

3 (2) STATE LAW.—Nothing in this section pre-
4 empts any State law.

5 (g) DEFINITIONS.—In this section:

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

8 (2) CONSUMER FUEL.—The term “consumer
9 fuel” includes gasoline, distillate fuel oil, jet fuel, liq-
10 uid propane, aviation gasoline, compressed natural
11 gas, and biofuel (including ethanol, biomass-based
12 diesel, and renewable blending components) used for
13 transportation fuels, and home heating oil and liquid
14 propane used for residential heating or residential
15 energy generation.

16 (3) RETAIL.—The term “retail”, with respect
17 to the sale of a consumer fuel, includes all sales to
18 end users such as motorists as well as all direct
19 sales to other end users such as agriculture, indus-
20 try, residential, and commercial consumers.

21 (4) WHOLESALE.—The term “wholesale”, with
22 respect to the sale of a consumer fuel, means sale
23 to any person for resale.

1 **SEC. 3. AMENDMENTS TO THE PROHIBITIONS ON MARKET**
2 **MANIPULATION AND FALSE INFORMATION**
3 **PROVISIONS OF THE ENERGY INDEPEND-**
4 **ENCE AND SECURITY ACT OF 2007.**

5 (a) APPLICATION TO TRANSPORTATION FUEL.—Sub-
6 title B of title VIII of the Energy Independence and Secu-
7 rity Act of 2007 (42 U.S.C. 17301 et seq.) is amended—

8 (1) in section 811, by striking “gasoline or pe-
9 troleum distillates” and inserting “or transportation
10 fuel”;

11 (2) in section 812—

12 (A) in the matter preceding paragraph (1),
13 by striking “gasoline or petroleum distillates”
14 and inserting “or transportation fuel”; and

15 (B) in paragraph (3), by striking “, gaso-
16 line, or petroleum distillates” and inserting “or
17 transportation fuel”; and

18 (3) by adding at the end the following new sec-
19 tion:

20 **“SEC. 816. DEFINITION OF TRANSPORTATION FUEL.**

21 “In this subtitle, the term ‘transportation fuel’ in-
22 cludes gasoline, distillate fuels (including heating oil), jet
23 fuel, aviation gasoline, and biofuel (including ethanol, bio-
24 mass-based diesel and distillates, and renewable blending
25 components).”.

1 (b) PROHIBITION ON FALSE INFORMATION.—Section
2 812 of the Energy Independence and Security Act of 2007
3 (42 U.S.C. 17302) is amended—

4 (1) in the matter preceding paragraph (1)—

5 (A) by striking “wholesale” and inserting
6 “supply of, operational actions related to, out-
7 put related to, or wholesale”; and

8 (B) by striking “to a Federal department
9 or agency”;

10 (2) in paragraph (1), by adding “and” at the
11 end;

12 (3) by striking paragraph (2) and redesignating
13 paragraph (3), as amended by subsection (a), as
14 paragraph (2); and

15 (4) in paragraph (2), as so redesignated, by
16 striking “the person intended the false or misleading
17 data to affect data compiled by the department or
18 agency” and inserting “the false or misleading infor-
19 mation reported by the person affected analyses or
20 data compiled by a Federal department or agency or
21 a private sector price-reporting agency”.

22 (c) ENFORCEMENT.—Section 813(a) of the Energy
23 Independence and Security Act of 2007 (42 U.S.C.
24 17303(a)) is amended by striking “This subtitle” and in-

1 serting “Except as otherwise provided in section 814, this
2 subtitle”.

3 (d) PENALTIES.—Section 814 of the Energy Inde-
4 pendence and Security Act of 2007 (42 U.S.C. 17304) is
5 amended—

6 (1) in subsection (a), by striking “\$1,000,000”
7 and inserting “\$2,000,000”; and

8 (2) in subsection (b), by striking “section 5 of
9 the Federal Trade Commission Act (15 U.S.C. 45)”
10 and inserting “section 5(m)(1)(A) of the Federal
11 Trade Commission Act (15 U.S.C. 45(m)(1)(A))”.

12 **SEC. 4. TRANSPORTATION FUEL MARKET TRANSPARENCY.**

13 Section 205 of the Department of Energy Organiza-
14 tion Act (42 U.S.C. 7135) is amended by adding at the
15 end the following:

16 “(n) TRANSPORTATION FUEL MARKET TRANS-
17 PARENCY.—

18 “(1) DEFINITIONS.—In this subsection:

19 “(A) ENERGY COMPANY.—The term ‘en-
20 ergy company’ means a person (as defined in
21 section 11(e) of the Energy Supply and Envi-
22 ronmental Coordination Act of 1974 (15 U.S.C.
23 796(e))) that—

1 “(i) owns or controls commercial
2 amounts of crude oil or transportation
3 fuel; or

4 “(ii) is engaged in—

5 “(I) exploration for, or develop-
6 ment of, crude oil;

7 “(II) extraction of crude oil;

8 “(III) refining or otherwise proc-
9 essing crude oil or transportation fuel;

10 “(IV) commercial storage of
11 crude oil or transportation fuel;

12 “(V) transportation by any
13 means of commercial amounts of
14 crude oil or transportation fuel; or

15 “(VI) wholesale or retail distribu-
16 tion of crude oil or transportation
17 fuel.

18 “(B) TRANSPORTATION FUEL.—The term
19 ‘transportation fuel’ means—

20 “(i) gasoline;

21 “(ii) distillate fuels, including heating
22 oil;

23 “(iii) jet fuel;

24 “(iv) aviation gasoline; and

1 “(v) biofuel, including ethanol, bio-
2 mass-based diesel and distillates, and re-
3 newable blending components.

4 “(2) PURPOSE.—The purpose of this subsection
5 is to collect data necessary to facilitate transparent
6 and competitive transportation fuel markets, deter-
7 mine adherence to relevant international sanctions,
8 and protect consumers.

9 “(3) SURVEYS.—

10 “(A) IN GENERAL.—The Administrator
11 shall conduct surveys of energy companies to
12 collect detailed and timely information on
13 United States crude oil and transportation fuel
14 markets.

15 “(B) EXEMPTION.—The Administrator
16 shall exempt an energy company from partici-
17 pating in the surveys conducted under subpara-
18 graph (A) if the energy company has a de mini-
19 mis market presence or impact, as determined
20 by the Administrator.

21 “(4) DATA COLLECTED.—

22 “(A) IN GENERAL.—The surveys con-
23 ducted under paragraph (3) shall collect infor-
24 mation on a national, regional, State, and en-
25 ergy company basis.

1 “(B) INFORMATION.—The surveys con-
2 ducted under paragraph (3) shall collect the fol-
3 lowing information with respect to crude oil and
4 transportation fuel, as applicable:

5 “(i) The quantity of crude oil and
6 transportation fuel imported and exported.

7 “(ii) The quantity of crude oil and
8 transportation fuel refined, stored, and
9 transported.

10 “(iii) The quantity of crude oil and
11 transportation fuel entering final retail and
12 commercial commerce.

13 “(iv) The quantity of crude oil and
14 transportation fuel purchased and sold at
15 any upstream point between energy compa-
16 nies, including off-exchange bilateral sales
17 and sales between subsidiaries of the same
18 energy company.

19 “(v) Market price data for the trans-
20 actions described in clauses (i) through
21 (iv).

22 “(vi) Submissions to relevant price re-
23 porting entities.

24 “(vii) Any other such data, analyses,
25 or evaluations that the Administrator de-

1 termines is necessary to achieve the pur-
2 pose described in paragraph (2).

3 “(C) ORIGIN OF FUEL.—In obtaining the
4 information described in subparagraph (B), the
5 Administrator shall, to the maximum extent
6 practicable, track and publish the country of
7 original production of crude oil and transpor-
8 tation fuel that may have been resold, refined,
9 blended, stored, or otherwise been exchanged or
10 sold before being imported or exported into the
11 United States.

12 “(D) OTHER SOURCES.—The Adminis-
13 trator may, when practicable and determined
14 reliable by the Administrator, obtain informa-
15 tion described in subparagraph (B) from pri-
16 vate price publishers and providers of trade
17 processing services.

18 “(5) MINIMIZING REPORTING BURDENS.—The
19 Administrator shall seek to minimize any burdens on
20 energy companies in reporting information to the
21 Administrator, including by automating data sub-
22 mission practices for data collected under the sur-
23 veys conducted under paragraph (3).

24 “(6) PUBLIC DISTRIBUTION.—

1 “(A) IN GENERAL.—To the maximum ex-
2 tent practicable, subject to this paragraph, the
3 Administrator shall consistently and promptly
4 make publicly available analyses of the results
5 of the data collected pursuant to this subsection
6 in a form and manner easily adaptable for pub-
7 lic use and machine analysis.

8 “(B) GEOGRAPHICAL SPECIFICITY.—Anal-
9 yses published under subparagraph (A)—

10 “(i) shall be geographically specific
11 enough to provide meaningful differentia-
12 tion between fuel markets; and

13 “(ii) shall not organize geographical
14 data in the form of Petroleum Administra-
15 tion for Defense Districts or other geo-
16 graphic aggregations lacking sufficient res-
17 olution to ascertain regionally specific mar-
18 ket trends or disparities.

19 “(C) NONDISCLOSURE.—Any analysis pub-
20 lished under subparagraph (A) shall not dis-
21 close matters exempted from mandatory disclo-
22 sure under section 552(b) of title 5, United
23 States Code.

24 “(7) DATA-SHARING AGREEMENTS.—

1 “(A) FEDERAL TRADE COMMISSION.—Not-
2 withstanding subchapter III of chapter 35 of
3 title 44, United States Code (commonly known
4 as the ‘Confidential Information Protection and
5 Statistical Efficiency Act of 2018’), not later
6 than 1 year after the date of enactment of this
7 subsection, the Administrator shall enter into a
8 data-sharing agreement with the Federal Trade
9 Commission that shall allow any information
10 collected pursuant to this subsection to be re-
11 quested by and transferred to the Federal
12 Trade Commission without limitation or delay.

13 “(B) OTHER FEDERAL AGENCIES.—The
14 Administrator may enter into data-sharing
15 agreements with other Federal agencies that
16 have energy-related policy decision-making re-
17 sponsibilities, including the Commodity Futures
18 Trading Commission, the Federal Energy Regu-
19 latory Commission, and the Securities and Ex-
20 change Commission.

21 “(8) AUTHORIZATION OF APPROPRIATIONS.—
22 There are authorized to be appropriated to the Ad-
23 ministrator to carry out this section such sums as
24 are necessary for each of fiscal years 2022 through
25 2027.”.

1 **SEC. 5. FTC INVESTIGATION AND REPORT ON GASOLINE**
2 **PRICES.**

3 (a) INVESTIGATION.—

4 (1) IN GENERAL.—The Federal Trade Commis-
5 sion shall conduct an investigation to determine if
6 the price of gasoline is being manipulated by reduc-
7 ing refinery capacity or by any other form of market
8 manipulation or artificially increased by price
9 gouging practices.

10 (2) CONSIDERATION.—In conducting the inves-
11 tigation under paragraph (1), the Federal Trade
12 Commission may consider the impact of mergers and
13 acquisitions in the oil and gas industry, including
14 mergers and acquisitions involving producers, refin-
15 ers, transporters, and gas stations.

16 (b) REPORT.—Not later than 270 days after the date
17 of the enactment of this Act, the Federal Trade Commis-
18 sion shall submit to Congress a report on the investigation
19 conducted under subsection (a), including a long-term
20 strategy for the Commission and Congress to address ma-
21 nipulation of oil and gas markets during times of national
22 or international crisis or emergency.

23 (c) EXEMPTION FROM PAPERWORK REDUCTION
24 ACT.—Chapter 35 of title 44, United States Code, shall
25 not apply to the collection of information under subsection
26 (a).

1 (d) AUTHORIZATION OF APPROPRIATIONS.—There is
2 authorized to be appropriated to the Federal Trade Com-
3 mission to carry out this section \$1,000,000 for fiscal year
4 2023.

5 **SEC. 6. TRANSPORTATION FUEL MONITORING AND EN-**
6 **FORCEMENT WITHIN THE FEDERAL TRADE**
7 **COMMISSION.**

8 (a) ESTABLISHMENT OF THE TRANSPORTATION
9 FUEL MONITORING AND ENFORCEMENT UNIT.—

10 (1) IN GENERAL.—The Commission shall estab-
11 lish within the Commission the Transportation Fuel
12 Monitoring and Enforcement Unit (in this section
13 referred to as the “Unit”).

14 (2) DUTIES OF THE UNIT.—

15 (A) PRIMARY RESPONSIBILITY.—The pri-
16 mary responsibility of the Unit shall be to assist
17 the Commission in protecting the public interest
18 by continuously and comprehensively collecting,
19 monitoring, and analyzing crude oil and trans-
20 portation fuel market data in order to—

21 (i) support transparent and competi-
22 tive market practices;

23 (ii) identify any market manipulation,
24 reporting of false information, use of mar-

ket power to disadvantage consumers, or
other unfair method of competition; and

(iii) facilitate enforcement of penalties
against persons in violation of relevant
statutory prohibitions.

(B) SPECIFIC DUTIES.—In order to carry
out the responsibility under subparagraph (A),
the Unit shall assist the Commission in car-
rying out the following duties:

(i) Receiving, compiling, and ana-
lyzing relevant buying and selling activity
in order to identify and investigate anoma-
lous market trends and suspicious behav-
ior.

(ii) Determining whether excessive
concentration or exclusive control of en-
ergy-related infrastructure may allow or
result in anti-competitive behaviors.

(iii) Gathering evidence of wrongdoing
against any person in violation of the stat-
utory prohibitions on market manipulation
and false information established in, and
consistent with, subtitle B of title VIII of
the Energy Independence and Security Act
of 2007 or any other applicable provisions

1 of the Federal Trade Commission Act (15
2 U.S.C. 45 et seq.).

3 (iv) Obtaining a data-sharing agree-
4 ment with the Energy Information Admin-
5 istration that includes the data collected in
6 accordance with section 205(n) of the De-
7 partment of Energy Organization Act (42
8 U.S.C. 7135).

9 (v) Obtaining data-sharing agree-
10 ments with the Commodities Futures
11 Trading Commission, the Federal Energy
12 Regulatory Commission, and as necessary
13 and practicable, State energy offices or
14 commissions, and relevant public and pri-
15 vate data sources that will allow the Com-
16 mission to receive and archive information
17 on—

18 (I) crude oil and transportation
19 fuel buying and selling activity;

20 (II) individual physical and fi-
21 nancial market positions of market
22 participants regarding crude oil and
23 transportation fuel;

1 (III) refinery output, capacity,
2 and inventory levels of crude oil and
3 transportation fuel;

4 (IV) imports and exports of
5 crude oil and transportation fuel with-
6 in regions and at levels that could im-
7 pact prices faced by consumers;

8 (V) public announcements by en-
9 ergy companies of planned pricing or
10 output decisions regarding crude oil
11 and transportation fuel; and

12 (VI) other relevant market infor-
13 mation that will facilitate the gath-
14 ering of evidence described in clause
15 (iii), including sufficient market infor-
16 mation necessary to monitor for cross-
17 market manipulations that may in-
18 clude multiple financial and physical
19 market positions.

20 (vi) Any other information determined
21 appropriate by the Commission to carry
22 out the responsibility under subparagraph
23 (A).

24 (b) DEFINITIONS.—In this section:

(2) TRANSPORTATION FUEL.—The term “transportation fuel” includes gasoline, distillate fuels (including heating oil), jet fuel, aviation gasoline, and biofuel (including ethanol, biomass-based diesel and distillates, and renewable blending components).

9 (c) REGULATIONS.—Not later than 90 days after the
10 date of enactment of this Act, the Commission shall pro-
11 mulgate regulations to carry out this section.

(d) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated to the Commission such sums as may be necessary for each of fiscal years 2022 through 2027 to carry out this section.

Passed the House of Representatives May 19, 2022.

Attest: **CHERYL L. JOHNSON,**
Clerk.

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