

118TH CONGRESS  
2D SESSION

# H. R. 7390

To make price gouging unlawful, to expand the ability of the Federal Trade Commission to seek permanent injunctions and equitable relief, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 15, 2024

Ms. SCHAKOWSKY (for herself, Mr. NADLER, Mr. KHANNA, Ms. PORTER, Ms. NORTON, Mr. JOHNSON of Georgia, Mr. TONKO, Ms. SCANLON, and Mr. TAKANO) introduced the following bill; which was referred to the Committee on Energy and Commerce, and in addition to the Committee on Financial Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

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## A BILL

To make price gouging unlawful, to expand the ability of the Federal Trade Commission to seek permanent injunctions and equitable relief, 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; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the  
5 “Price Gouging Prevention Act of 2024”.

6 (b) TABLE OF CONTENTS.—The table of contents for  
7 this Act is as follows:

Sec. 1. Short title; table of contents.  
Sec. 2. Definitions.  
Sec. 3. Prevention of price gouging.  
Sec. 4. Disclosures in SEC filings.  
Sec. 5. Funding.

1 **SEC. 2. DEFINITIONS.**

2 In this Act:

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

5 (2) CRITICAL TRADING PARTNER.—The term  
6 “critical trading partner” means a person that has  
7 the ability to restrict, impede, or foreclose access to  
8 the inputs, customers, partners, goods, services,  
9 technology, platform, facilities, or tools of such per-  
10 son in a way that harms competition or limits the  
11 ability of the customers or suppliers of such person  
12 to carry out business effectively.

13 (3) EXCEPTIONAL MARKET SHOCK.—The term  
14 “exceptional market shock” means any change or  
15 imminently threatened (as determined under guid-  
16 ance issued by the Commission) change in the mar-  
17 ket for a good or service resulting from a natural  
18 disaster, failure or shortage of electric power or  
19 other source of energy, concerted labor action, lock-  
20 out, civil disorder, war, military action, national or  
21 local emergency, public health emergency, or any  
22 other cause of an atypical disruption in such market.

1           (4) GOOD OR SERVICE.—The term “good or  
2           service” means any good or service offered in com-  
3           merce.

4           (5) STATE.—The term “State” means each of  
5           the several States, the District of Columbia, each  
6           commonwealth, territory, or possession of the United  
7           States, and each federally recognized Indian Tribe.

8           (6) ULTIMATE PARENT ENTITY.—The term “ul-  
9           timate parent entity” has the meaning given such  
10          term in section 801.1 of title 16, Code of Federal  
11          Regulations (or any successor regulation).

12 **SEC. 3. PREVENTION OF PRICE GOUGING.**

13          (a) IN GENERAL.—It shall be unlawful for a person  
14          to sell or offer for sale a good or service at a grossly exces-  
15          sive price, regardless of the person’s position in a supply  
16          chain or distribution network.

17          (b) AFFIRMATIVE DEFENSE.—

18                  (1) IN GENERAL.—Subsection (a) shall not  
19                  apply to the sale, or offering for sale, of a good or  
20                  service by a person if—

21                          (A) the person’s ultimate parent entity  
22                          earned less than \$100,000,000 in gross revenue  
23                          from goods or services provided in the United  
24                          States during the 12-month period preceding

1 the sale or offer that allegedly violates sub-  
2 section (a); and

3 (B) the person demonstrates by a prepon-  
4 derance of the evidence that the increase in the  
5 price of the good or service involved is directly  
6 attributable to additional costs that are—

7 (i) not within the control of the per-  
8 son; and

9 (ii) incurred by the person in pro-  
10 curing, acquiring, distributing, or pro-  
11 viding the good or service.

12 (2) INFLATION ADJUSTMENT.—Beginning on  
13 January 1, 2025, the Commission shall annually ad-  
14 just the amount specified in paragraph (1)(A) by the  
15 percentage change in the consumer price index for  
16 all urban consumers published by the Bureau of  
17 Labor Statistics for the 12-month period ending on  
18 December 31 of the previous year.

19 (c) PRESUMPTIVE VIOLATIONS.—A person shall be  
20 presumed to be in violation of subsection (a) if, during  
21 an exceptional market shock, it is shown by a preponder-  
22 ance of the evidence that the person—

23 (1)(A) has unfair leverage; or

1 (B) is using the effects or circumstances related  
2 to an exceptional market shock as a pretext to in-  
3 crease prices; and

4 (2) regardless of the person's position in a sup-  
5 ply chain or distribution network, sells or offers for  
6 sale a good or service at an excessive price compared  
7 to—

8 (A) the average price at which the good or  
9 service was sold or offered for sale by all com-  
10 peting sellers in the market during the 120-day  
11 period preceding such exceptional market shock;  
12 or

13 (B) the average price at which the good or  
14 service was sold or offered for sale by the per-  
15 son in the market during the 120-day period  
16 preceding such exceptional market shock.

17 (d) REBUTTAL.—A person may rebut a presumption  
18 under subsection (c) if the person demonstrates by clear  
19 and convincing evidence that the increase in the price of  
20 the good or service involved is directly attributable to addi-  
21 tional costs that are—

22 (1) not within the control of the person; and

23 (2) incurred by the person in procuring, acquir-  
24 ing, distributing, or providing the good or service.

25 (e) UNFAIR LEVERAGE.—

1 (1) IN GENERAL.—

2 (A) CHARACTERISTICS OF UNFAIR LEVER-  
3 AGE.—For purposes of subsection (c), a person  
4 has unfair leverage if the person—

5 (i) earned at least \$1,000,000,000 in  
6 gross revenue from goods or services pro-  
7 vided in the United States during the 12-  
8 month period preceding the sale or offer  
9 that allegedly violates subsection (a);

10 (ii) discriminates between otherwise  
11 equal trading partners in the same market  
12 by applying differential prices or condi-  
13 tions;

14 (iii) is a critical trading partner;

15 (iv) engages in unfair, deceptive, or  
16 abusive acts or practices;

17 (v) has a dominant position in—

18 (I) the conduct of any business,  
19 trade or commerce;

20 (II) any labor market; or

21 (III) the furnishing of any serv-  
22 ice; or

23 (vi) has a characteristic described in a  
24 rule promulgated by the Commission that  
25 further defines unfair leverage.

1 (B) PRESUMPTION OF A DOMINANT POSI-  
2 TION.—For purposes of subparagraph (A)(v), a  
3 person shall be presumed to have a dominant  
4 position if—

5 (i) evidence shows that the person is  
6 not constrained by meaningful competitive  
7 pressures; or

8 (ii) the person—

9 (I) has a share of 40 percent or  
10 greater of a relevant market as a sell-  
11 er; or

12 (II) has a share of 30 percent or  
13 greater of a relevant market as a  
14 buyer.

15 (2) INFLATION ADJUSTMENT.—Beginning on  
16 January 1, 2025, the Commission shall annually ad-  
17 just the amount specified in paragraph (1)(A)(i) by  
18 the percentage change in the consumer price index  
19 for all urban consumers published by the Bureau of  
20 Labor Statistics for the 12-month period ending on  
21 December 31 of the previous year.

22 (f) ENFORCEMENT BY THE COMMISSION.—

23 (1) UNFAIR OR DECEPTIVE ACTS OR PRAC-  
24 TICES.—A violation of this section or a regulation  
25 promulgated under this section shall be treated as a

1 violation of a rule defining an unfair or deceptive act  
2 or practice prescribed under section 18(a)(1)(B) of  
3 the Federal Trade Commission Act (15 U.S.C.  
4 57a(a)(1)(B)).

5 (2) POWERS OF THE COMMISSION.—

6 (A) IN GENERAL.—Except as provided by  
7 subparagraphs (D) and (E), the Commission  
8 shall enforce this section in the same manner,  
9 by the same means, and with the same jurisdic-  
10 tion, powers, and duties as though all applicable  
11 terms and provisions of the Federal Trade  
12 Commission Act (15 U.S.C. 41 et seq.) were in-  
13 corporated into and made a part of this section.

14 (B) PRIVILEGES AND IMMUNITIES.—Any  
15 person who violates this section or a regulation  
16 promulgated under this section shall be subject  
17 to the penalties and entitled to the privileges  
18 and immunities provided in the Federal Trade  
19 Commission Act (15 U.S.C. 41 et seq.).

20 (C) AUTHORITY PRESERVED.—Nothing in  
21 this section shall be construed to limit the au-  
22 thority of the Commission under any other pro-  
23 vision of law.

24 (D) INDEPENDENT LITIGATION AUTHOR-  
25 ITY.—If the Commission has reason to believe



1 that a person has violated this section, the  
2 Commission may bring a civil action in any ap-  
3 propriate United States district court to—

4 (i) enjoin any further such violation  
5 by such person;

6 (ii) enforce compliance with this sec-  
7 tion;

8 (iii) obtain a permanent, temporary,  
9 or preliminary injunction;

10 (iv) obtain civil penalties;

11 (v) obtain damages, restitution, or  
12 other compensation on behalf of aggrieved  
13 consumers; or

14 (vi) obtain any other appropriate equi-  
15 table relief.

16 (E) CIVIL PENALTIES.—In addition to any  
17 other penalties as may be prescribed by law,  
18 each violation of this section shall carry a civil  
19 penalty not to exceed—

20 (i) if the person who committed the  
21 violation does not have unfair leverage (as  
22 described in subsection (e)), the lesser of—

23 (I) \$25,000; or

24 (II) 5 percent of the revenues  
25 earned by the person's ultimate par-

1 ent entity during the preceding 12-  
2 month period; or

3 (ii) if the person who committed the  
4 violation has unfair leverage, 5 percent of  
5 the revenues earned by the person's ulti-  
6 mate parent entity during the preceding  
7 12-month period.

8 (F) RULEMAKING.—

9 (i) IN GENERAL.—The Commission  
10 may promulgate in accordance with section  
11 553 of title 5, United States Code, such  
12 rules as may be necessary to carry out this  
13 section, including guidelines regarding  
14 what constitutes an exceptional market  
15 shock or that provide for additional char-  
16 acteristics that demonstrate that a person  
17 has unfair leverage.

18 (ii) REQUIRED GUIDANCE.—Not later  
19 than 180 days after the date of enactment  
20 of this Act, the Commission shall promul-  
21 gate regulations regarding violations of  
22 this section, which shall include guidelines  
23 on, for the purposes of this Act, what con-  
24 stitutes a market, a grossly excessive price

1 for a good or service, and an excessive  
2 price for a good or service.

3 (iii) DEFINITION OF GROSSLY EXCES-  
4 SIVE PRICE.—

5 (I) IN GENERAL.—For purposes  
6 of subsection (a) and the guidance de-  
7 scribed in clause (ii), the Commission  
8 shall define the term “grossly exces-  
9 sive price”, which shall include—

10 (aa) subject to subclause  
11 (II), a price for a good or service  
12 that is equal to an amount not  
13 less than 20 percent greater than  
14 the average price for such good  
15 or service in the market during  
16 the 6-month period preceding the  
17 sale or offer that allegedly vio-  
18 lates subsection (a); and

19 (bb) any other metric identi-  
20 fied by the Commission.

21 (II) DISCRETION OF THE COM-  
22 MISSION.—For purposes of defining  
23 “grossly excessive price”, the Commis-  
24 sion may reduce the percentage de-

1                   scribed in matter (aa) at its discre-  
2                   tion.

3           (g) ENFORCEMENT BY STATE ATTORNEYS GEN-  
4 ERAL.—

5           (1) IN GENERAL.—If the attorney general of a  
6 State has reason to believe that any person has vio-  
7 lated or is violating this section, the attorney gen-  
8 eral, in addition to any authority it may have to  
9 bring an action in State court under the laws of  
10 such State, may bring a civil action in any appro-  
11 priate United States district court or in any other  
12 court of competent jurisdiction, including a State  
13 court, to—

14                   (A) enjoin any further such violation by  
15 such person;

16                   (B) enforce compliance with this section;

17                   (C) obtain a permanent, temporary, or pre-  
18 liminary injunction;

19                   (D) obtain civil penalties;

20                   (E) obtain damages, restitution, or other  
21 compensation on behalf of residents of the  
22 State; or

23                   (F) obtain any other appropriate equitable  
24 relief.

25           (2) RIGHTS OF THE COMMISSION.—

1 (A) NOTICE TO THE COMMISSION.—

2 (i) IN GENERAL.—Except as provided  
3 in clause (ii), before initiating a civil action  
4 under paragraph (1), the attorney general  
5 of the State involved shall provide to the  
6 Commission a written notice of such action  
7 and a copy of the complaint for such ac-  
8 tion.

9 (ii) EXCEPTION.—If the attorney gen-  
10 eral determines that it is not feasible to  
11 provide the notice described in clause (i)  
12 before initiating a civil action under this  
13 subsection, the attorney general shall pro-  
14 vide written notice of the action and a copy  
15 of the complaint to the Commission imme-  
16 diately upon initiating the civil action.

17 (B) INTERVENTION.—The Commission  
18 may—

19 (i) intervene in any civil action  
20 brought by the attorney general, official, or  
21 agency of a State under this subsection;  
22 and

23 (ii) upon intervening—

24 (I) be heard on all matters aris-  
25 ing in the civil action; and

1 (II) file petitions for appeal of a  
2 decision in the civil action.

3 (3) INVESTIGATORY POWERS.—Nothing in this  
4 subsection may be construed to prevent the attorney  
5 general of a State from exercising the powers con-  
6 ferred on the attorney general by the laws of the  
7 State to conduct investigations, to administer oaths  
8 or affirmations, or to compel the attendance of wit-  
9 nesses or the production of documentary or other  
10 evidence.

11 (4) LIMITATION ON STATE ACTION WHILE FED-  
12 ERAL ACTION IS PENDING.—If the Commission has  
13 instituted a civil action for a violation of this section,  
14 no State attorney general may bring an action under  
15 this subsection during the pendency of that action  
16 against any defendant named in the complaint of the  
17 Commission for any violation of this section alleged  
18 in the complaint.

19 (5) RELATIONSHIP WITH STATE-LAW CLAIMS.—  
20 If the attorney general of a State has authority to  
21 bring an action under State law directed at acts or  
22 practices that also violate this section, the attorney  
23 general may assert a claim under State law and a  
24 claim under this section in the same civil action.

25 (6) VENUE; SERVICE OF PROCESS.—

1 (A) VENUE.—Any action brought under  
2 paragraph (1) may be brought in—

3 (i) the district court of the United  
4 States that meets applicable requirements  
5 relating to venue under section 1391 of  
6 title 28, United States Code; or

7 (ii) another court of competent juris-  
8 diction.

9 (B) SERVICE OF PROCESS.—In an action  
10 brought under paragraph (1), process may be  
11 served in any district in which—

12 (i) the defendant is an inhabitant,  
13 may be found, or transacts business; or

14 (ii) venue is proper under section  
15 1391 of title 28, United States Code.

16 (7) ACTIONS BY OTHER STATE OFFICIALS.—

17 (A) IN GENERAL.—In addition to civil ac-  
18 tions brought by an attorney general under  
19 paragraph (1), any other officer of a State who  
20 is authorized by the State to do so may bring  
21 a civil action under paragraph (1), subject to  
22 the same requirements and limitations that  
23 apply under this subsection to civil actions  
24 brought by attorneys general.

1 (B) SAVINGS PROVISION.—Nothing in this  
2 subsection may be construed to prohibit an au-  
3 thorized official of a State from initiating or  
4 continuing any proceeding in a court of the  
5 State for a violation of any civil or criminal law  
6 of the State.

7 (8) EFFECT ON STATE LAWS.—Nothing in this  
8 section shall preempt or otherwise affect any State  
9 or local law.

10 **SEC. 4. DISCLOSURES IN SEC FILINGS.**

11 (a) DEFINITIONS.—In this section:

12 (1) COVERED ISSUER.—The term “covered  
13 issuer” means an issuer that—

14 (A) has a covered quarter; and

15 (B) in the quarter following the covered  
16 quarter described in subparagraph (A), is re-  
17 quired to submit Form 10–Q or Form 10–K.

18 (2) COVERED QUARTER.—The term “covered  
19 quarter” means a quarter during which there is an  
20 exceptional market shock.

21 (3) FORM 10–K.—The term “Form 10–K”  
22 means the form described in section 249.310 of title  
23 17, Code of Federal Regulations, or any successor  
24 regulation.



1           (4) FORM 10-Q.—The term “Form 10-Q”  
2 means the form described in section 240.15d-13 of  
3 title 17, Code of Federal Regulations, or any suc-  
4 cessor regulation.

5           (5) ISSUER.—The term “issuer” has the mean-  
6 ing given the term in section 3(a) of the Securities  
7 Exchange Act of 1934 (15 U.S.C. 78c(a)).

8           (b) INCLUSION IN FILING.—Each covered issuer, in  
9 each Form 10-K or Form 10-Q that the covered issuer  
10 is required to file in a quarter following a covered quarter,  
11 shall include in the filing the following information with  
12 respect to that covered quarter, as compared with the  
13 quarter preceding that covered quarter:

14           (1) The percentage change in the volume of  
15 goods or services sold, and the percentage change in  
16 the average sales price of those goods or services,  
17 which shall be broken down by material product cat-  
18 egories, when relevant, and presented in a tabular  
19 format.

20           (2) The gross margins of the covered issuer,  
21 which shall be broken down by material product cat-  
22 egories, when relevant, and presented in a tabular  
23 format.

1           (3) Presented in tabular format, the share of  
2 the increase in revenue of the covered issuer that is  
3 attributable to—

4                   (A) a change in the cost of goods or serv-  
5 ices sold by the covered issuer; and

6                   (B) a change in the volume of goods or  
7 services sold by the covered issuer.

8           (4) The percentage change in the costs of the  
9 covered issuer, which shall be broken down by cat-  
10 egory and presented in tabular format.

11           (5) In dollars, the change in the costs of the  
12 covered issuer and the revenue of the covered issuer,  
13 which shall be presented in tabular format.

14           (6) A detailed narrative disclosure of the pric-  
15 ing strategy of the covered issuer, which shall in-  
16 clude—

17                   (A) an explanation for any increase in the  
18 gross margins of material product categories,  
19 including all material causes for such an in-  
20 crease, an explanation of how each such mate-  
21 rial cause affected such an increase, and a de-  
22 scription of the relative importance of each such  
23 material cause with respect to such an increase;

1 (B) an explanation for the decisions made  
2 by the covered issuer with respect to the prices  
3 of goods or services sold by the covered issuer;

4 (C) if the covered issuer increased prices at  
5 a rate that was greater than the rate at which  
6 the costs incurred by the covered issuer in-  
7 creased, the rationale and objectives for increas-  
8 ing prices in such a manner; and

9 (D) a description of conditions under  
10 which the covered issuer plans to modify pricing  
11 after the date on which the covered issuer sub-  
12 mits the filing.

13 (c) REGULATIONS.—Not later than 180 days after  
14 the date of enactment of this Act, the Securities and Ex-  
15 change Commission shall issue final regulations, or amend  
16 existing regulations of the Commission, to carry out this  
17 section.

18 (d) EFFECTIVE DATE.—This section shall take effect  
19 on the date on which the Securities and Exchange Com-  
20 mission issues final regulations under subsection (c) or  
21 completes the amendments required under that sub-  
22 section, as applicable.

23 **SEC. 5. FUNDING.**

24 In addition to amounts otherwise available, there is  
25 appropriated to the Commission for fiscal year 2024, out

1 of any money in the Treasury not otherwise appropriated,  
2 \$1,000,000,000, to remain available until September 30,  
3 2032, for carrying out work of the Commission.

○