To prohibit price gouging in connection with the public health emergency resulting from COVID–19, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 1, 2021

Ms. SCHAKOWSKY (for herself, Mr. PALLONE, Mr. NADLER, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To prohibit price gouging in connection with the public health emergency resulting from COVID–19, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This title may be cited as the “COVID–19 Price Gouging Prevention Act”.

SEC. 2. PREVENTION OF PRICE GOUGING.

(a) IN GENERAL.—For the duration of a public health emergency declared pursuant to section 319 of the Public Health Service Act (42 U.S.C. 247d) as a result
of confirmed cases of 2019 novel coronavirus (COVID–19), including any renewal thereof, it shall be unlawful for any person to sell or offer for sale a good or service at a price that—

(1) is unconscionably excessive; and

(2) indicates the seller is using the circumstances related to such public health emergency to increase prices unreasonably.

(b) FACTORS FOR CONSIDERATION.—In determining whether a person has violated subsection (a), there shall be taken into account, with respect to the price at which such person sold or offered for sale the good or service, factors that include the following:

(1) Whether such price grossly exceeds the average price at which the same or a similar good or service was sold or offered for sale by such person—

(A) during the 90-day period immediately preceding January 31, 2020; or

(B) during the period that is 45 days before or after the date that is one year before the date such good or service is sold or offered for sale under subsection (a).

(2) Whether such price grossly exceeds the average price at which the same or a similar good or
service was readily obtainable from other similarly situated competing sellers before January 31, 2020.

(3) Whether such price reasonably reflects additional costs, not within the control of such person, that were paid, incurred, or reasonably anticipated by such person, or reasonably reflects the profitability of forgone sales or additional risks taken by such person, to produce, distribute, obtain, or sell such good or service under the circumstances.

(c) Enforcement.—

(1) Enforcement by Federal Trade Commission.—

(A) Unfair or Deceptive Acts or Practices.—A violation of subsection (a) shall be treated as a violation of a regulation under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)) regarding unfair or deceptive acts or practices.

(B) Powers of Commission.—The Commission shall enforce subsection (a) in the same manner, by the same means, and with the same jurisdiction, powers, and duties as though all applicable terms and provisions of the Federal Trade Commission Act (15 U.S.C. 41 et seq.) were incorporated into and made a part of this
section. Any person who violates such subsection shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(2) EFFECT ON OTHER LAWS.—Nothing in this section shall be construed in any way to limit the authority of the Commission under any other provision of law.

(3) ENFORCEMENT BY STATE ATTORNEYS GENERAL.—

(A) IN GENERAL.—If the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating subsection (a), the attorney general, official, or agency of the State, in addition to any authority it may have to bring an action in State court under its laws, may bring a civil action in any appropriate United States district court or in any other court of competent jurisdiction, including a State court, to—

(i) enjoin further such violation by such person;

(ii) enforce compliance with such subsection;
(iii) obtain civil penalties; and

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

(B) NOTICE AND INTERVENTION BY THE FTC.—The attorney general of a State shall provide prior written notice of any action under subparagraph (A) to the Commission and provide the Commission with a copy of the complaint in the action, except in any case in which such prior notice is not feasible, in which case the attorney general shall serve such notice immediately upon instituting such action. The Commission shall have the right—

(i) to intervene in the action;

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

(iii) to file petitions for appeal.

(C) LIMITATION ON STATE ACTION WHILE FEDERAL ACTION IS PENDING.—If the Commission has instituted a civil action for violation of this section, no State attorney general, or official or agency of a State, may bring an action under this paragraph during the pendency of that action against any defendant named in the
complaint of the Commission for any violation
of this section alleged in the complaint.

(D) RELATIONSHIP WITH STATE-LAW
CLAIMS.—If the attorney general of a State has
authority to bring an action under State law di-
rected at acts or practices that also violate this
section, the attorney general may assert the
State-law claim and a claim under this section
in the same civil action.

(4) SAVINGS CLAUSE.—Nothing in this section
shall preempt or otherwise affect any State or local
law.

(d) DEFINITIONS.—In this section:

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

(2) GOOD OR SERVICE.—The term “good or
service” means a good or service offered in com-
merce, including—

(A) food, beverages, water, ice, a chemical,
or a personal hygiene product;

(B) any personal protective equipment for
protection from or prevention of contagious dis-
cases, filtering facepiece respirators, medical
equipment and supplies (including medical test-
ing supplies), a drug as defined in section
201(g)(1) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321(g)(1)), cleaning supplies, disinfectants, sanitizers; or

(C) any healthcare service, cleaning service, or delivery service.

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