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(Original Signature of Member)

118TH CONGRESS
2D SESSION

H. R. _____

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.

IN THE HOUSE OF REPRESENTATIVES

Ms. SCHAKOWSKY introduced the following bill; which was referred to the Committee on _____

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.