

**Calendar No. 728**110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION**S. 2991**

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

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**IN THE SENATE OF THE UNITED STATES**

MAY 7, 2008

Mr. REID (for himself, Mr. SCHUMER, Mr. LEVIN, Mr. WYDEN, Mr. INOUE, Mr. CARDIN, Ms. STABENOW, Mr. BROWN, Mr. WHITEHOUSE, Mrs. FEINSTEIN, Mr. JOHNSON, Mr. KENNEDY, Ms. KLOBUCHAR, Mr. LAUTENBERG, Mr. LEAHY, Ms. MIKULSKI, Mrs. MURRAY, Mr. REED, Mrs. MCCASKILL, Mr. DURBIN, and Mr. KOHL) introduced the following bill; which was read the first time

MAY 8, 2008

Read the second time and placed on the calendar

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**A BILL**

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, 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,*

1 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

2 (a) **SHORT TITLE.**—This Act may be cited as the  
3 “Consumer-First Energy Act of 2008”.

4 (b) **TABLE OF CONTENTS.**—The table of contents of  
5 this Act is as follows:

Sec. 1. Short title; table of contents.

Sec. 2. Findings.

**TITLE I—TAX PROVISIONS RELATED TO OIL AND GAS**

Sec. 101. Denial of deduction for major integrated oil companies for income attributable to domestic production of oil, gas, or primary products thereof.

Sec. 102. Elimination of the different treatment of foreign oil and gas extraction income and foreign oil related income for purposes of the foreign tax credit.

Sec. 103. Windfall profits tax.

Sec. 104. Energy Independence and Security Trust Fund.

**TITLE II—PRICE GOUGING**

Sec. 201. Short title.

Sec. 202. Definitions.

Sec. 203. Energy emergency and additional price gouging enforcement.

Sec. 204. Presidential declaration of energy emergency.

Sec. 205. Enforcement by the Federal Trade Commission.

Sec. 206. Enforcement by State attorneys general.

Sec. 207. Penalties.

Sec. 208. Effect on other laws.

**TITLE III—STRATEGIC PETROLEUM RESERVE**

Sec. 301. Suspension of petroleum acquisition for Strategic Petroleum Reserve.

**TITLE IV—NO OIL PRODUCING AND EXPORTING CARTELS**

Sec. 401. No Oil Producing and Exporting Cartels Act of 2008.

**TITLE V—MARKET SPECULATION**

Sec. 501. Speculative limits and transparency for off-shore oil trading.

Sec. 502. Margin level for crude oil.

6 **SEC. 2. FINDINGS.**

7 Congress finds that—

8 (1) excessive prices for petroleum products have  
9 created, or imminently threaten to create, severe

1 economic dislocations and hardships, including the  
2 loss of jobs, business failures, disruption of economic  
3 activity, curtailment of vital public services, and  
4 price increases throughout the economy;

5 (2) those hardships and dislocations jeopardize  
6 the normal flow of commerce and constitute a na-  
7 tional energy and economic crisis that is a threat to  
8 the public health, safety, and welfare of the United  
9 States;

10 (3) consumers, workers, small businesses, and  
11 large businesses of the United States are particu-  
12 larly vulnerable to those price increase due to the  
13 failure of the President to aggressively develop alter-  
14 natives to petroleum and petroleum products and to  
15 promote efficiency and conservation;

16 (4) reliable and affordable supplies of crude oil  
17 and products refined from crude oil (including gaso-  
18 line, diesel fuel, heating oil, and jet fuel) are vital to  
19 the economic and national security of the United  
20 States given current energy infrastructure and tech-  
21 nology;

22 (5) the price of crude oil and products refined  
23 from crude oil (including gasoline, diesel fuel, heat-  
24 ing oil, and jet fuel) have skyrocketed to record lev-  
25 els and are continuing to rise;

1           (6) since 2001, oil prices have increased from  
2           \$29 per barrel to levels near \$120 per barrel and  
3           gasoline prices have more than doubled from \$1.47  
4           per gallon to more than \$3.50 per gallon;

5           (7) the record prices for crude oil and products  
6           refined from crude oil (including gasoline, diesel  
7           fuel, heating oil, and jet fuel)—

8                   (A) are hurting millions of consumers,  
9                   workers, small businesses, and large businesses  
10                  of the United States, and threaten long-term  
11                  damage to the economy and security of the  
12                  United States;

13                  (B) are partially due to—

14                          (i) the declining value of the dollar  
15                          and a widespread lack of confidence in the  
16                          management of economic and foreign pol-  
17                          icy by the President;

18                          (ii) the accumulation of national debt  
19                          and growing budget deficits under the  
20                          failed economic policies of the President;  
21                          and

22                          (iii) high levels of military expendi-  
23                          tures under the failed policies of the Presi-  
24                          dent in Iraq; and

1 (C) are no longer justified by traditional  
2 forces of supply and demand;

3 (8) rampant speculation in the markets for  
4 crude oil and products refined from crude oil has  
5 magnified the price increases and market volatility  
6 resulting from those underlying causes of price in-  
7 creases; and

8 (9) Congress must take urgent action to protect  
9 consumers, workers, and businesses of the United  
10 States from rampant speculation in the energy mar-  
11 kets and the price increases resulting from the failed  
12 domestic and foreign policies of the President.

13 **TITLE I—TAX PROVISIONS**  
14 **RELATED TO OIL AND GAS**

15 **SEC. 101. DENIAL OF DEDUCTION FOR MAJOR INTEGRATED**  
16 **OIL COMPANIES FOR INCOME ATTRIBUTABLE**  
17 **TO DOMESTIC PRODUCTION OF OIL, GAS, OR**  
18 **PRIMARY PRODUCTS THEREOF.**

19 (a) IN GENERAL.—Subparagraph (B) of section  
20 199(c)(4) (relating to exceptions) is amended by striking  
21 “or” at the end of clause (ii), by striking the period at  
22 the end of clause (iii) and inserting “, or”, and by insert-  
23 ing after clause (iii) the following new clause:

24 “(iv) in the case of any major inte-  
25 grated oil company (as defined in section

1           167(h)(5)(B)), the production, refining,  
2           processing, transportation, or distribution  
3           of oil, gas, or any primary product thereof  
4           during any taxable year described in sec-  
5           tion 167(h)(5)(B).”.

6           (b) PRIMARY PRODUCT.—Section 199(c)(4)(B) is  
7 amended by adding at the end the following flush sen-  
8 tence:

9           “For purposes of clause (iv), the term ‘primary  
10           product’ has the same meaning as when used in  
11           section 927(a)(2)(C), as in effect before its re-  
12           peal.”.

13          (c) EFFECTIVE DATE.—The amendments made by  
14 this section shall apply to taxable years beginning after  
15 December 31, 2008.

16 **SEC. 102. ELIMINATION OF THE DIFFERENT TREATMENT**  
17 **OF FOREIGN OIL AND GAS EXTRACTION IN-**  
18 **COME AND FOREIGN OIL RELATED INCOME**  
19 **FOR PURPOSES OF THE FOREIGN TAX CRED-**  
20 **IT.**

21          (a) IN GENERAL.—Subsections (a) and (b) of section  
22 907 of the Internal Revenue Code of 1986 (relating to  
23 special rules in case of foreign oil and gas income) are  
24 amended to read as follows:

1       “(a) REDUCTION IN AMOUNT ALLOWED AS FOREIGN  
2 TAX UNDER SECTION 901.—In applying section 901, the  
3 amount of any foreign oil and gas taxes paid or accrued  
4 (or deemed to have been paid) during the taxable year  
5 which would (but for this subsection) be taken into ac-  
6 count for purposes of section 901 shall be reduced by the  
7 amount (if any) by which the amount of such taxes ex-  
8 ceeds the product of—

9           “(1) the amount of the combined foreign oil  
10       and gas income for the taxable year,

11           “(2) multiplied by—

12               “(A) in the case of a corporation, the per-  
13       centage which is equal to the highest rate of tax  
14       specified under section 11(b), or

15               “(B) in the case of an individual, a frac-  
16       tion the numerator of which is the tax against  
17       which the credit under section 901(a) is taken  
18       and the denominator of which is the taxpayer’s  
19       entire taxable income.

20       “(b) COMBINED FOREIGN OIL AND GAS INCOME;  
21 FOREIGN OIL AND GAS TAXES.—For purposes of this sec-  
22 tion—

23           “(1) COMBINED FOREIGN OIL AND GAS IN-  
24       COME.—The term ‘combined foreign oil and gas in-

1       come’ means, with respect to any taxable year, the  
2       sum of—

3               “(A) foreign oil and gas extraction income,  
4               and  
5               “(B) foreign oil related income.

6               “(2) FOREIGN OIL AND GAS TAXES.—The term  
7       ‘foreign oil and gas taxes’ means, with respect to  
8       any taxable year, the sum of—

9               “(A) oil and gas extraction taxes, and  
10              “(B) any income, war profits, and excess  
11       profits taxes paid or accrued (or deemed to  
12       have been paid or accrued under section 902 or  
13       960) during the taxable year with respect to  
14       foreign oil related income (determined without  
15       regard to subsection (c)(4)) or loss which would  
16       be taken into account for purposes of section  
17       901 without regard to this section.”.

18       (b) RECAPTURE OF FOREIGN OIL AND GAS  
19       LOSSES.—Paragraph (4) of section 907(e) of the Internal  
20       Revenue Code of 1986 (relating to recapture of foreign  
21       oil and gas extraction losses by recharacterizing later ex-  
22       traction income) is amended to read as follows:

23               “(4) RECAPTURE OF FOREIGN OIL AND GAS  
24       LOSSES BY RECHARACTERIZING LATER COMBINED  
25       FOREIGN OIL AND GAS INCOME.—



1           “(A) IN GENERAL.—The combined foreign  
2 oil and gas income of a taxpayer for a taxable  
3 year (determined without regard to this para-  
4 graph) shall be reduced—

5                   “(i) first by the amount determined  
6                   under subparagraph (B), and

7                   “(ii) then by the amount determined  
8                   under subparagraph (C).

9           The aggregate amount of such reductions shall  
10 be treated as income (from sources without the  
11 United States) which is not combined foreign  
12 oil and gas income.

13           “(B) REDUCTION FOR PRE-2008 FOREIGN  
14 OIL EXTRACTION LOSSES.—The reduction  
15 under this paragraph shall be equal to the less-  
16 er of—

17                   “(i) the foreign oil and gas extraction  
18                   income of the taxpayer for the taxable year  
19                   (determined without regard to this para-  
20                   graph), or

21                   “(ii) the excess of—

22                           “(I) the aggregate amount of for-  
23                           eign oil extraction losses for preceding  
24                           taxable years beginning after Decem-

1 ber 31, 1982, and before January 1,  
2 2008, over

3 “(II) so much of such aggregate  
4 amount as was recharacterized under  
5 this paragraph (as in effect before  
6 and after the date of the enactment of  
7 the Consumer-First Energy Act of  
8 2008) for preceding taxable years be-  
9 ginning after December 31, 1982.

10 “(C) REDUCTION FOR POST-2008 FOREIGN  
11 OIL AND GAS LOSSES.—The reduction under  
12 this paragraph shall be equal to the lesser of—

13 “(i) the combined foreign oil and gas  
14 income of the taxpayer for the taxable year  
15 (determined without regard to this para-  
16 graph), reduced by an amount equal to the  
17 reduction under subparagraph (A) for the  
18 taxable year, or

19 “(ii) the excess of—

20 “(I) the aggregate amount of for-  
21 eign oil and gas losses for preceding  
22 taxable years beginning after Decem-  
23 ber 31, 2008, over

24 “(II) so much of such aggregate  
25 amount as was recharacterized under

1           this paragraph for preceding taxable  
2           years beginning after December 31,  
3           2008.

4           “(D) FOREIGN OIL AND GAS LOSS DE-  
5           FINED.—

6           “(i) IN GENERAL.—For purposes of  
7           this paragraph, the term ‘foreign oil and  
8           gas loss’ means the amount by which—

9                   “(I) the gross income for the tax-  
10                  able year from sources without the  
11                  United States and its possessions  
12                  (whether or not the taxpayer chooses  
13                  the benefits of this subpart for such  
14                  taxable year) taken into account in  
15                  determining the combined foreign oil  
16                  and gas income for such year, is ex-  
17                  ceeded by

18                   “(II) the sum of the deductions  
19                  properly apportioned or allocated  
20                  thereto.

21           “(ii) NET OPERATING LOSS DEDUC-  
22           TION NOT TAKEN INTO ACCOUNT.—For  
23           purposes of clause (i), the net operating  
24           loss deduction allowable for the taxable

1 year under section 172(a) shall not be  
2 taken into account.

3 “(iii) EXPROPRIATION AND CASUALTY  
4 LOSSES NOT TAKEN INTO ACCOUNT.—For  
5 purposes of clause (i), there shall not be  
6 taken into account—

7 “(I) any foreign expropriation  
8 loss (as defined in section 172(h) (as  
9 in effect on the day before the date of  
10 the enactment of the Revenue Rec-  
11 onciliation Act of 1990)) for the tax-  
12 able year, or

13 “(II) any loss for the taxable  
14 year which arises from fire, storm,  
15 shipwreck, or other casualty, or from  
16 theft,

17 to the extent such loss is not compensated  
18 for by insurance or otherwise.

19 “(iv) FOREIGN OIL EXTRACTION  
20 LOSS.—For purposes of subparagraph  
21 (B)(ii)(I), foreign oil extraction losses shall  
22 be determined under this paragraph as in  
23 effect on the day before the date of the en-  
24 actment of the Consumer-First Energy Act  
25 of 2008.”.

1 (c) CARRYBACK AND CARRYOVER OF DISALLOWED  
2 CREDITS.—Section 907(f) of the Internal Revenue Code  
3 of 1986 (relating to carryback and carryover of disallowed  
4 credits) is amended—

5 (1) by striking “oil and gas extraction taxes”  
6 each place it appears and inserting “foreign oil and  
7 gas taxes”, and

8 (2) by adding at the end the following new  
9 paragraph:

10 “(4) TRANSITION RULES FOR PRE-2009 AND  
11 2009 DISALLOWED CREDITS.—

12 “(A) PRE-2009 CREDITS.—In the case of  
13 any unused credit year beginning before Janu-  
14 ary 1, 2009, this subsection shall be applied to  
15 any unused oil and gas extraction taxes carried  
16 from such unused credit year to a year begin-  
17 ning after December 31, 2008—

18 “(i) by substituting ‘oil and gas ex-  
19 traction taxes’ for ‘foreign oil and gas  
20 taxes’ each place it appears in paragraphs  
21 (1), (2), and (3), and

22 “(ii) by computing, for purposes of  
23 paragraph (2)(A), the limitation under  
24 subparagraph (A) for the year to which  
25 such taxes are carried by substituting ‘for-

1           eign oil and gas extraction income’ for ‘for-  
2           eign oil and gas income’ in subsection (a).

3           “(B) 2009 CREDITS.—In the case of any  
4           unused credit year beginning in 2009, the  
5           amendments made to this subsection by the  
6           Consumer-First Energy Act of 2008 shall be  
7           treated as being in effect for any preceding year  
8           beginning before January 1, 2009, solely for  
9           purposes of determining how much of the un-  
10          used foreign oil and gas taxes for such unused  
11          credit year may be deemed paid or accrued in  
12          such preceding year.”.

13          (d) CONFORMING AMENDMENT.—Section 6501(i) of  
14          the Internal Revenue Code of 1986 is amended by striking  
15          “oil and gas extraction taxes” and inserting “foreign oil  
16          and gas taxes”.

17          (e) EFFECTIVE DATE.—The amendments made by  
18          this section shall apply to taxable years beginning after  
19          December 31, 2008.

20          **SEC. 103. WINDFALL PROFITS TAX.**

21          (a) IN GENERAL.—Subtitle E of the Internal Rev-  
22          enue Code of 1986 (relating to alcohol, tobacco, and cer-  
23          tain other excise taxes) is amended by adding at the end  
24          thereof the following new chapter:

1       **“CHAPTER 56—WINDFALL PROFITS ON**  
 2                                   **CRUDE OIL**

“Sec. 5896. Imposition of tax.

“Sec. 5897. Windfall profit; qualified investment.

“Sec. 5898. Special rules and definitions.

3       **“SEC. 5896. IMPOSITION OF TAX.**

4           “(a) IN GENERAL.—In addition to any other tax im-  
 5 posed under this title, there is hereby imposed on any ap-  
 6 plicable taxpayer an excise tax in an amount equal to 25  
 7 percent of the excess of—

8                   “(1) the windfall profit of such taxpayer, over

9                   “(2) the amount of the qualified investment of  
 10 such applicable taxpayer.

11       “(b) APPLICABLE TAXPAYER.—For purposes of this  
 12 chapter, the term ‘applicable taxpayer’ means any major  
 13 integrated oil company (as defined in section  
 14 167(h)(5)(B)).

15       **“SEC. 5897. WINDFALL PROFIT; QUALIFIED INVESTMENT.**

16       “(a) GENERAL RULE.—For purposes of this chapter,  
 17 the term ‘windfall profit’ means the excess of the adjusted  
 18 taxable income of the applicable taxpayer for the taxable  
 19 year over the reasonably inflated average profit for such  
 20 taxable year.

21       “(b) ADJUSTED TAXABLE INCOME.—For purposes of  
 22 this chapter, with respect to any applicable taxpayer, the  
 23 adjusted taxable income for any taxable year is equal to  
 24 the taxable income for such taxable year (within the mean-

1 ing of section 63 and determined without regard to this  
2 subsection)—

3 “(1) increased by any interest expense deduc-  
4 tion, charitable contribution deduction, and any net  
5 operating loss deduction carried forward from any  
6 prior taxable year, and

7 “(2) reduced by any interest income, dividend  
8 income, and net operating losses to the extent such  
9 losses exceed taxable income for the taxable year.

10 In the case of any applicable taxpayer which is a foreign  
11 corporation, the adjusted taxable income shall be deter-  
12 mined with respect to such income which is effectively con-  
13 nected with the conduct of a trade or business in the  
14 United States.

15 “(c) REASONABLY INFLATED AVERAGE PROFIT.—  
16 For purposes of this chapter, with respect to any applica-  
17 ble taxpayer, the reasonably inflated average profit for any  
18 taxable year is an amount equal to the average of the ad-  
19 justed taxable income of such taxpayer for taxable years  
20 beginning during the 2001–2005 taxable year period (de-  
21 termined without regard to the taxable year with the high-  
22 est adjusted taxable income in such period) plus 10 per-  
23 cent of such average.

24 “(d) QUALIFIED INVESTMENT.—For purposes of this  
25 chapter—



1           “(1) IN GENERAL.—The term ‘qualified invest-  
2           ment’ means, with respect to any applicable tax-  
3           payer, means any amount paid or incurred with re-  
4           spect to—

5                   “(A) section 263(c) costs,

6                   “(B) qualified refinery property (as defined  
7                   in section 179C(c) and determined without re-  
8                   gard to any termination date),

9                   “(C) any qualified facility described in  
10                  paragraph (1), (2), (3), or (4) of section 45(d)  
11                  (determined without regard to any placed in  
12                  service date), or

13                  “(D) any facility for the production renew-  
14                  able fuel or advanced biofuel (as defined in sec-  
15                  tion 211(o) of the Clean Air Act 942 U.S.C.  
16                  7545).

17           “(2) SECTION 263(c) COSTS.—For purposes of  
18           this subsection, the term ‘section 263(c) costs’  
19           means intangible drilling and development costs in-  
20           curred by the taxpayer which (by reason of an elec-  
21           tion under section 263(c)) may be deducted as ex-  
22           penses for purposes of this title (other than this  
23           paragraph). Such term shall not include costs in-  
24           curred in drilling a nonproductive well.

1 **“SEC. 5898. SPECIAL RULES AND DEFINITIONS.**

2       “(a) WITHHOLDING AND DEPOSIT OF TAX.—The  
3 Secretary shall provide such rules as are necessary for the  
4 withholding and deposit of the tax imposed under section  
5 5896.

6       “(b) RECORDS AND INFORMATION.—Each taxpayer  
7 liable for tax under section 5896 shall keep such records,  
8 make such returns, and furnish such information as the  
9 Secretary may by regulations prescribe.

10       “(c) RETURN OF WINDFALL PROFIT TAX.—The Sec-  
11 retary shall provide for the filing and the time of such  
12 filing of the return of the tax imposed under section 5896.

13       “(d) CRUDE OIL.—The term ‘crude oil’ includes  
14 crude oil condensates and natural gasoline.

15       “(e) BUSINESSES UNDER COMMON CONTROL.—For  
16 purposes of this chapter, all members of the same con-  
17 trolled group of corporations (within the meaning of sec-  
18 tion 267(f)) and all persons under common control (within  
19 the meaning of section 52(b) but determined by treating  
20 an interest of more than 50 percent as a controlling inter-  
21 est) shall be treated as 1 person.

22       “(f) REGULATIONS.—The Secretary shall prescribe  
23 such regulations as may be necessary or appropriate to  
24 carry out the purposes of this chapter.”.

1 (b) CLERICAL AMENDMENT.—The table of chapters  
 2 for subtitle E of the Internal Revenue Code of 1986 is  
 3 amended by adding at the end the following new item:

“CHAPTER 56. WINDFALL PROFIT ON CRUDE OIL.”.

4 (c) DEDUCTIBILITY OF WINDFALL PROFIT TAX.—  
 5 The first sentence of section 164(a) of the Internal Rev-  
 6 enue Code of 1986 (relating to deduction for taxes) is  
 7 amended by inserting after paragraph (5) the following  
 8 new paragraph:

9 “(6) The windfall profit tax imposed by section  
 10 5896.”.

11 (d) EFFECTIVE DATE.—The amendments made by  
 12 this section shall apply to taxable years beginning after  
 13 December 31, 2007.

14 **SEC. 104. ENERGY INDEPENDENCE AND SECURITY TRUST**  
 15 **FUND.**

16 (a) ESTABLISHMENT.—Subchapter A of chapter 98  
 17 of the Internal Revenue Code of 1986 (relating to trust  
 18 fund code) is amended by adding at the end the following  
 19 new section:

20 **“SEC. 9511. ENERGY INDEPENDENCE AND SECURITY TRUST**  
 21 **FUND.**

22 “(a) CREATION OF TRUST FUND.—There is estab-  
 23 lished in the Treasury of the United States a trust fund  
 24 to be known as ‘Energy Independence and Security Trust  
 25 Fund’ (referred to in this section as the ‘Trust Fund’),

1 consisting of such amounts as may be appropriated or  
2 credited to the Trust Fund as provided in this section or  
3 section 9602(b).

4 “(b) TRANSFERS TO TRUST FUND.—There is hereby  
5 appropriated to the Trust Fund an amount equivalent to  
6 the increase in the revenues received in the Treasury as  
7 the result of the amendments made by sections 101, 102,  
8 and 103 of the Consumer-First Energy Act of 2008.

9 “(c) DISTRIBUTION OF AMOUNTS IN TRUST FUND.—  
10 Amounts in the Trust Fund shall be available, as provided  
11 by appropriation Acts, for the purposes of reducing the  
12 dependence of the United States on foreign and  
13 unsustainable energy sources and reducing the risks of  
14 global warming through programs and measures that—

15 “(1) reduce the burdens on consumers of rising  
16 energy prices;

17 “(2) diversify and expand the use of secure, ef-  
18 ficient, and environmentally friendly energy supplies  
19 and technologies;

20 “(3) result in net reductions in emissions of  
21 greenhouse gases; and

22 “(4) prevent energy price gouging, profiteering,  
23 and market manipulation.”.

1 (b) CLERICAL AMENDMENT.—The table of sections  
 2 for subchapter A of chapter 98 of such Code is amended  
 3 by adding at the end the following new item:

“Sec. 9511. Energy Independence and Security Trust Fund.”.

4 (c) EFFECTIVE DATE.—The amendments made by  
 5 this section shall take effect on the date of the enactment  
 6 of this Act.

## 7 **TITLE II—PRICE GOUGING**

### 8 **SEC. 201. SHORT TITLE.**

9 This title may be cited as the “Petroleum Consumer  
 10 Price Gouging Protection Act”.

### 11 **SEC. 202. DEFINITIONS.**

12 In this title:

13 (1) AFFECTED AREA.—The term “affected  
 14 area” means an area covered by a Presidential dec-  
 15 laration of energy emergency.

16 (2) SUPPLIER.—The term “supplier” means  
 17 any person engaged in the trade or business of sell-  
 18 ing or reselling, at retail or wholesale, or distributing  
 19 crude oil, gasoline, petroleum distillates, or biofuel.

20 (3) PRICE GOUGING.—The term “price  
 21 gouging” means the charging of an unconscionably  
 22 excessive price by a supplier in an affected area.

23 (4) UNCONSCIONABLY EXCESSIVE PRICE.—The  
 24 term “unconscionably excessive price” means an av-  
 25 erage price charged during an energy emergency de-

1       clared by the President in an area and for a product  
2       subject to the declaration, that—

3               (A)(i)(I) constitutes a gross disparity from  
4               the average price at which it was offered for  
5               sale in the usual course of the supplier’s busi-  
6               ness during the 30 days prior to the President’s  
7               declaration of an energy emergency; and

8               (II) grossly exceeds the prices at which the  
9               same or similar crude oil, gasoline, petroleum  
10              distillates, or biofuel was readily obtainable by  
11              purchasers from other suppliers in the same rel-  
12              evant geographic market within the affected  
13              area; or

14              (ii) represents an exercise of unfair lever-  
15              age or unconscionable means on the part of the  
16              supplier, during a period of declared energy  
17              emergency; and

18              (B) is not attributable to increased whole-  
19              sale or operational costs, including replacement  
20              costs, outside the control of the supplier, in-  
21              curred in connection with the sale of crude oil,  
22              gasoline, petroleum distillates, or biofuel, and is  
23              not attributable to local, regional, national, or  
24              international market conditions.

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

3 **SEC. 203. ENERGY EMERGENCY AND ADDITIONAL PRICE**  
4 **GOUGING ENFORCEMENT.**

5           (a) IN GENERAL.—During any energy emergency de-  
6 clared by the President under section 204 of this title, it  
7 is unlawful for any supplier to sell, or offer to sell crude  
8 oil, gasoline, petroleum distillates, or biofuel subject to  
9 that declaration in, or for use in, the area to which that  
10 declaration applies at an unconscionably excessive price.

11          (b) FACTORS CONSIDERED.—In determining whether  
12 a violation of subsection (a) has occurred, there shall be  
13 taken into account, among other factors, whether—

14           (1) the price charged was a price that would  
15 reasonably exist in a competitive and freely func-  
16 tioning market; and

17           (2) the amount of gasoline, other petroleum dis-  
18 tillates, or biofuel the seller produced, distributed, or  
19 sold during the period the Proclamation was in ef-  
20 fect increased over the average amount during the  
21 preceding 30 days.

22 **SEC. 204. PRESIDENTIAL DECLARATION OF ENERGY EMER-**  
23 **GENCY.**

24           (a) IN GENERAL.—If the President finds that the  
25 health, safety, welfare, or economic well-being of the citi-

1 zens of the United States is at risk because of a shortage  
2 or imminent shortage of adequate supplies of crude oil,  
3 gasoline, petroleum distillates, or biofuel due to a disrup-  
4 tion in the national distribution system for crude oil, gaso-  
5 line, petroleum distillates, or biofuel (including such a  
6 shortage related to a major disaster (as defined in section  
7 102(2) of the Robert T. Stafford Disaster Relief and  
8 Emergency Assistance Act (42 U.S.C. 5122(2))), or sig-  
9 nificant pricing anomalies in national energy markets for  
10 crude oil, gasoline, petroleum distillates, or biofuel the  
11 President may declare that a Federal energy emergency  
12 exists.

13 (b) SCOPE AND DURATION.—The emergency declara-  
14 tion shall specify—

15 (1) the period, not to exceed 30 days, for which  
16 the declaration applies;

17 (2) the circumstance or condition necessitating  
18 the declaration;

19 (3) the area or region to which it applies which  
20 may not be limited to a single State; and

21 (4) the product or products to which it applies.

22 (c) EXTENSIONS.—The President may—

23 (1) extend a declaration under subsection (a)  
24 for a period of not more than 30 days;



1           (2) extend such a declaration more than once;  
2           and  
3           (3) discontinue such a declaration before its ex-  
4           piration.

5 **SEC. 205. ENFORCEMENT BY THE FEDERAL TRADE COM-**  
6 **MISSION.**

7           (a) ENFORCEMENT.—This title shall be enforced by  
8 the Federal Trade Commission in the same manner, by  
9 the same means, and with the same jurisdiction as though  
10 all applicable terms of the Federal Trade Commission Act  
11 were incorporated into and made a part of this title. In  
12 enforcing section 203 of this title, the Commission shall  
13 give priority to enforcement actions concerning companies  
14 with total United States wholesale or retail sales of crude  
15 oil, gasoline, petroleum distillates, and biofuel in excess  
16 of \$500,000,000 per year but shall not exclude enforce-  
17 ment actions against companies with total United States  
18 wholesale sales of \$500,000,000 or less per year.

19           (b) VIOLATION IS TREATED AS UNFAIR OR DECEP-  
20 TIVE ACT OR PRACTICE.—The violation of any provision  
21 of this title shall be treated as an unfair or deceptive act  
22 or practice proscribed under a rule issued under section  
23 18(a)(1)(B) of the Federal Trade Commission Act (15  
24 U.S.C. 57a(a)(1)(B)).

1           (c) COMMISSION ACTIONS.—Following the declara-  
2 tion of an energy emergency by the President under sec-  
3 tion 204 of this title, the Commission shall—

4           (1) maintain within the Commission—

5                   (A) a toll-free hotline that a consumer may  
6 call to report an incident of price gouging in the  
7 affected area; and

8                   (B) a program to develop and distribute to  
9 the public informational materials to assist resi-  
10 dents of the affected area in detecting, avoid-  
11 ing, and reporting price gouging;

12           (2) consult with the Attorney General, the  
13 United States Attorney for the districts in which a  
14 disaster occurred (if the declaration is related to a  
15 major disaster), and State and local law enforcement  
16 officials to determine whether any supplier in the af-  
17 fected area is charging or has charged an uncon-  
18 scionably excessive price for crude oil, gasoline, pe-  
19 troleum distillates, or biofuel in the affected area;  
20 and

21           (3) conduct investigations as appropriate to de-  
22 termine whether any supplier in the affected area  
23 has violated section 203 of this title, and upon such  
24 finding, take any action the Commission determines  
25 to be appropriate to remedy the violation.

1 **SEC. 206. ENFORCEMENT BY STATE ATTORNEYS GENERAL.**

2 (a) IN GENERAL.—A State, as *parens patriae*, may  
3 bring a civil action on behalf of its residents in an appro-  
4 priate district court of the United States to enforce the  
5 provisions of section 203 of this title, or to impose the  
6 civil penalties authorized by section 207 for violations of  
7 section 203, whenever the attorney general of the State  
8 has reason to believe that the interests of the residents  
9 of the State have been or are being threatened or adversely  
10 affected by a supplier engaged in the sale or resale, at  
11 retail or wholesale, or distribution of crude oil, gasoline,  
12 petroleum distillates, or biofuel in violation of section 203  
13 of this title.

14 (b) NOTICE.—The State shall serve written notice to  
15 the Commission of any civil action under subsection (a)  
16 prior to initiating the action. The notice shall include a  
17 copy of the complaint to be filed to initiate the civil action,  
18 except that if it is not feasible for the State to provide  
19 such prior notice, the State shall provide such notice im-  
20 mediately upon instituting the civil action.

21 (c) AUTHORITY TO INTERVENE.—Upon receiving the  
22 notice required by subsection (b), the Commission may in-  
23 tervene in the civil action and, upon intervening—

24 (1) may be heard on all matters arising in such  
25 civil action; and

1           (2) may file petitions for appeal of a decision in  
2           such civil action.

3           (d) CONSTRUCTION.—For purposes of bringing any  
4           civil action under subsection (a), nothing in this section  
5           shall prevent the attorney general of a State from exer-  
6           cising the powers conferred on the Attorney General by  
7           the laws of such State to conduct investigations or to ad-  
8           minister oaths or affirmations or to compel the attendance  
9           of witnesses or the production of documentary and other  
10          evidence.

11          (e) VENUE; SERVICE OF PROCESS.—In a civil action  
12          brought under subsection (a)—

13                (1) the venue shall be a judicial district in  
14                which—

15                    (A) the defendant operates;

16                    (B) the defendant was authorized to do  
17                    business; or

18                    (C) where the defendant in the civil action  
19                    is found;

20                (2) process may be served without regard to the  
21                territorial limits of the district or of the State in  
22                which the civil action is instituted; and

23                (3) a person who participated with the defend-  
24                ant in an alleged violation that is being litigated in

1 the civil action may be joined in the civil action with-  
2 out regard to the residence of the person.

3 (f) **LIMITATION ON STATE ACTION WHILE FEDERAL**  
4 **ACTION IS PENDING.**—If the Commission has instituted  
5 a civil action or an administrative action for violation of  
6 this title, a State attorney general, or official or agency  
7 of a State, may not bring an action under this section  
8 during the pendency of that action against any defendant  
9 named in the complaint of the Commission or the other  
10 agency for any violation of this title alleged in the Com-  
11 mission’s civil or administrative action.

12 (g) **NO PREEMPTION.**—Nothing contained in this  
13 section shall prohibit an authorized State official from pro-  
14 ceeding in State court to enforce a civil or criminal statute  
15 of that State.

16 **SEC. 207. PENALTIES.**

17 (a) **CIVIL PENALTY.**—

18 (1) **IN GENERAL.**—In addition to any penalty  
19 applicable under the Federal Trade Commission Act,  
20 any supplier—

21 (A) that violates section 203 of this title is  
22 punishable by a civil penalty of not more than  
23 \$1,000,000; and

24 (B) that violates section 203 of this title is  
25 punishable by a civil penalty of—

1 (i) not more than \$500,000, in the  
2 case of an independent small business mar-  
3 keter of gasoline (within the meaning of  
4 section 324(e) of the Clean Air Act (42  
5 U.S.C. 7625(c))); and

6 (ii) not more than \$5,000,000 in the  
7 case of any other supplier.

8 (2) METHOD.—The penalties provided by para-  
9 graph (1) shall be obtained in the same manner as  
10 civil penalties imposed under section 5 of the Fed-  
11 eral Trade Commission Act (15 U.S.C. 45).

12 (3) MULTIPLE OFFENSES; MITIGATING FAC-  
13 TORS.—In assessing the penalty provided by sub-  
14 section (a)—

15 (A) each day of a continuing violation shall  
16 be considered a separate violation; and

17 (B) the court shall take into consideration,  
18 among other factors, the seriousness of the vio-  
19 lation and the efforts of the person committing  
20 the violation to remedy the harm caused by the  
21 violation in a timely manner.

22 (b) CRIMINAL PENALTY.—Violation of section 203 of  
23 this title is punishable by a fine of not more than  
24 \$5,000,000, imprisonment for not more than 5 years, or  
25 both.

1 **SEC. 208. EFFECT ON OTHER LAWS.**

2 (a) OTHER AUTHORITY OF THE COMMISSION.—  
 3 Nothing in this title shall be construed to limit or affect  
 4 in any way the Commission’s authority to bring enforce-  
 5 ment actions or take any other measure under the Federal  
 6 Trade Commission Act (15 U.S.C. 41 et seq.) or any other  
 7 provision of law.

8 (b) STATE LAW.—Nothing in this title preempts any  
 9 State law.

10 **TITLE III—STRATEGIC**  
 11 **PETROLEUM RESERVE**

12 **SEC. 301. SUSPENSION OF PETROLEUM ACQUISITION FOR**  
 13 **STRATEGIC PETROLEUM RESERVE.**

14 (a) IN GENERAL.—Except as provided in subsection  
 15 (b) and notwithstanding any other provision of law, during  
 16 the period beginning on the date of enactment of this Act  
 17 and ending on December 31, 2008—

18 (1) the Secretary of the Interior shall suspend  
 19 acquisition of petroleum for the Strategic Petroleum  
 20 Reserve through the royalty-in-kind program; and

21 (2) the Secretary of Energy shall suspend ac-  
 22 quisition of petroleum for the Strategic Petroleum  
 23 Reserve through any other acquisition method.

24 (b) RESUMPTION.—Not earlier than 30 days after  
 25 the date on which the President notifies Congress that the  
 26 President has determined that the weighted average price

1 of petroleum in the United States for the most recent 90-  
2 day period is \$75 or less per barrel—

3 (1) the Secretary of the Interior may resume  
4 acquisition of petroleum for the Strategic Petroleum  
5 Reserve through the royalty-in-kind program; and

6 (2) the Secretary of Energy may resume acqui-  
7 sition of petroleum for the Strategic Petroleum Re-  
8 serve through any other acquisition method.

9 (c) EXISTING CONTRACTS.—In the case of any oil  
10 scheduled to be delivered to the Strategic Petroleum Re-  
11 serve pursuant to a contract entered into by the Secretary  
12 of Energy prior to, and in effect on, the date of enactment  
13 of this Act, the Secretary shall, to the maximum extent  
14 practicable, negotiate a deferral of the delivery of the oil  
15 for a period of not less than 1 year, in accordance with  
16 procedures of the Department of Energy in effect on the  
17 date of enactment of this Act for deferrals of oil.

18 **TITLE IV—NO OIL PRODUCING**  
19 **AND EXPORTING CARTELS**

20 **SEC. 401. NO OIL PRODUCING AND EXPORTING CARTELS**  
21 **ACT OF 2008.**

22 (a) SHORT TITLE.—This section may be cited as the  
23 “No Oil Producing and Exporting Cartels Act of 2008”  
24 or “NOPEC”.



1 (b) SHERMAN ACT.—The Sherman Act (15 U.S.C.  
2 1 et seq.) is amended by adding after section 7 the fol-  
3 lowing:

4 **“SEC. 7A. OIL PRODUCING CARTELS.**

5 “(a) IN GENERAL.—It shall be illegal and a violation  
6 of this Act for any foreign state, or any instrumentality  
7 or agent of any foreign state, to act collectively or in com-  
8 bination with any other foreign state, any instrumentality  
9 or agent of any other foreign state, or any other person,  
10 whether by cartel or any other association or form of co-  
11 operation or joint action—

12 “(1) to limit the production or distribution of  
13 oil, natural gas, or any other petroleum product;

14 “(2) to set or maintain the price of oil, natural  
15 gas, or any petroleum product; or

16 “(3) to otherwise take any action in restraint of  
17 trade for oil, natural gas, or any petroleum product;  
18 when such action, combination, or collective action has a  
19 direct, substantial, and reasonably foreseeable effect on  
20 the market, supply, price, or distribution of oil, natural  
21 gas, or other petroleum product in the United States.

22 “(b) SOVEREIGN IMMUNITY.—A foreign state en-  
23 gaged in conduct in violation of subsection (a) shall not  
24 be immune under the doctrine of sovereign immunity from

1 the jurisdiction or judgments of the courts of the United  
2 States in any action brought to enforce this section.

3 “(c) INAPPLICABILITY OF ACT OF STATE DOC-  
4 TRINE.—No court of the United States shall decline,  
5 based on the act of state doctrine, to make a determina-  
6 tion on the merits in an action brought under this section.

7 “(d) ENFORCEMENT.—The Attorney General of the  
8 United States may bring an action to enforce this section  
9 in any district court of the United States as provided  
10 under the antitrust laws.”.

11 (e) SOVEREIGN IMMUNITY.—Section 1605(a) of title  
12 28, United States Code, is amended—

13 (1) in paragraph (6), by striking “or” after the  
14 semicolon;

15 (2) in paragraph (7), by striking the period and  
16 inserting “; or”; and

17 (3) by adding at the end the following:

18 “(8) in which the action is brought under sec-  
19 tion 7A of the Sherman Act.”.

20 **TITLE V—MARKET**  
21 **SPECULATION**

22 **SEC. 501. SPECULATIVE LIMITS AND TRANSPARENCY FOR**  
23 **OFF-SHORE OIL TRADING.**

24 Section 4 of the Commodity Exchange Act (7 U.S.C.  
25 6) is amended by adding at the end the following:

1 “(e) FOREIGN BOARDS OF TRADE.—

2 “(1) IN GENERAL.—In the case of any foreign  
3 board of trade for which the Commission has grant-  
4 ed or is considering an application to grant a board  
5 of trade located outside of the United States relief  
6 from the requirement of subsection (a) to become a  
7 designated contract market, derivatives transaction  
8 execution facility, or other registered entity, with re-  
9 spect to an energy commodity that is physically de-  
10 livered in the United States, prior to continuing to  
11 or initially granting the relief, the Commission shall  
12 determine that the foreign board of trade—

13 “(A) applies comparable principles or re-  
14 quirements regarding the daily publication of  
15 trading information and position limits or ac-  
16 countability levels for speculators as apply to a  
17 designated contract market, derivatives trans-  
18 action execution facility, or other registered en-  
19 tity trading energy commodities physically deliv-  
20 ered in the United States; and

21 “(B) provides such information to the  
22 Commission regarding the extent of speculative  
23 and nonspeculative trading in the energy com-  
24 modity that is comparable to the information  
25 the Commission determines necessary to publish

1 a Commitment of Traders report for a des-  
2 ignated contract market, derivatives transaction  
3 execution facility, or other registered entity  
4 trading energy commodities physically delivered  
5 in the United States.

6 “(2) EXISTING FOREIGN BOARDS OF TRADE.—  
7 During the period beginning 1 year after the date of  
8 enactment of this subsection and ending 18 months  
9 after the date of enactment of this subsection, the  
10 Commission shall determine whether to continue to  
11 grant relief in accordance with paragraph (1) to any  
12 foreign board of trade for which the Commission  
13 granted relief prior to the date of enactment of this  
14 subsection.”.

15 **SEC. 502. MARGIN LEVEL FOR CRUDE OIL.**

16 (a) IN GENERAL.—Section 2(a)(1) of the Commodity  
17 Exchange Act (7 U.S.C. 2(a)(1)) is amended by adding  
18 at the end the following:

19 “(G) MARGIN LEVEL FOR CRUDE OIL.—  
20 Not later than 90 days after the date of enact-  
21 ment of this subparagraph, the Commission  
22 shall promulgate regulations to set a substantial  
23 increase in margin levels for crude oil traded on  
24 any trading facility or as part of any agree-  
25 ment, contract, or transaction covered by this

1 Act in order to reduce excessive speculation and  
2 protect consumers.”.

3 (b) STUDIES.—

4 (1) STUDY RELATING TO EFFECT OF CERTAIN  
5 REGULATIONS.—Not later than 1 year after the date  
6 of enactment of this Act, the Commodity Futures  
7 Trading Commission shall submit to the appropriate  
8 committees of Congress a report describing the ef-  
9 fect of the amendment made by subsection (a) on  
10 any trading facilities and agreements, contracts, and  
11 transactions covered by the Commodity Exchange  
12 Act (7 U.S.C. 1 et seq.).

13 (2) STUDY RELATING TO EFFECTS OF CHANGES  
14 IN MARGIN LEVELS.—Not later than 180 days after  
15 the date of enactment of this Act, the Comptroller  
16 General of the United States shall submit to the ap-  
17 propriate committees of Congress a report describing  
18 the effect (including any effect relating to trade vol-  
19 ume or volatility) of any change of a margin level  
20 that occurred during the 10-year period ending on  
21 the date of enactment of this Act.

**Calendar No. 728**

110<sup>TH</sup> CONGRESS  
2<sup>D</sup> SESSION

**S. 2991**

**A BILL**

To provide energy price relief and hold oil companies and other entities accountable for their actions with regard to high energy prices, and for other purposes.

MAY 8, 2008

Read the second time and placed on the calendar