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 SENATE OF THE UNITED STATES

Ms. Warren (for herself, Ms. Baldwin, Mr. Casey, Mr. Whitehouse, Mr. Sanders, Mr. Markey, Mr. Merkley, Mr. Blumenthal, Ms. Duckworth, and Mrs. Feinstein) introduced the following bill; which was read twice and 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.

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Price Gouging Prevention Act of 2022”.

(b) TABLE OF CONTENTS.—The table of contents for 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.

SEC. 2. DEFINITIONS.

In this Act:

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

(2) CRITICAL TRADING PARTNER.—The term “critical trading partner” means a person that has the ability to restrict, impede, or foreclose access to its inputs, customers, partners, goods, services, technology, platform, facilities, or tools in a way that harms competition or limits the ability of the customers or suppliers of the person to carry out business effectively.

(3) EXCEPTIONAL MARKET SHOCK.—The term “exceptional market shock” means any change or imminently threatened (as determined under guidance issued by the Commission) change in the market for a good or service resulting from a natural disaster, failure or shortage of electric power or other source of energy, strike, civil disorder, war, military action, national or local emergency, public-health emergency, or any other cause of an atypical disruption in such market.
(4) GOOD OR SERVICE.—The term “good or service” means any good or service offered in commerce.

(5) 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.

(6) ULTIMATE PARENT ENTITY.—The term “ultimate parent entity” has the meaning given the term in section 801.1 of title 16, Code of Federal Regulations (or any successor regulation).

SEC. 3. PREVENTION OF PRICE GOUGING.

(a) IN GENERAL.—It shall be unlawful for a person to sell or offer for sale a good or service at an unconscionably excessive price during an exceptional market shock, regardless of the person’s position in a supply chain or distribution network.

(b) AFFIRMATIVE DEFENSE.—

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

   (A) the person’s ultimate parent entity earned less than $100,000,000 in gross United States revenue during the preceding 12-month period; and
(B) the person demonstrates by a preponderance of the evidence that the increase in the price of the good or service involved is directly attributable to additional costs that are not within the control of the person and are incurred by the person in procuring, acquiring, distributing, or providing the good or service.

(2) INFLATION ADJUSTMENT.—Starting in calendar year 2023, the Commission shall annually adjust the amount specified in paragraph (1)(A) to reflect the change in the consumer price index for all urban consumers published by the Bureau of Labor Statistics.

(e) PRESUMPTIVE VIOLATIONS.—A person shall be presumed to be in violation of subsection (a) if, during an exceptional market shock, it is shown by a preponderance of the evidence that the person—

(1)(A) has unfair leverage; or

(B) is using the effects or circumstances related to the exceptional market shock as a pretext to increase prices; and

(2) regardless of the person’s position in a supply chain or distribution network, sells or offers for sale a good or service at an excessive price compared to—
(A) the average price at which the good or service was sold or offered for sale by all competing sellers in the market during the 120-day period preceding such exceptional market shock; or

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

(d) Rebuttal.—A person may rebut a presumption under subsection (c) if the person demonstrates by clear and convincing evidence that the increase in the price of the good or service involved is directly attributable to additional costs that are not within the control of the person and are incurred by the person in procuring, acquiring, distributing, or providing the good or service.

(e) Unfair Leverage.—

(1) In general.—For purposes of subsection (c), a person has unfair leverage if the person—

(A) earned at least $1,000,000,000 in gross United States revenue during the preceding 12-month period;

(B) discriminates between otherwise equal trading partners in the same market by applying differential prices or conditions;

(C) is a critical trading partner; or
(D) has a characteristic described in a rule promulgated by the Commission that further defines unfair leverage.

(2) Inflation Adjustment.—Starting in calendar year 2023, the Commission shall annually adjust the amount specified in paragraph (1)(A) to reflect the change in the consumer price index for all urban consumers published by the Bureau of Labor Statistics.

(f) Enforcement by FTC.—

(1) Unfair or Deceptive Acts or Practices.—A violation of this section or a regulation promulgated under this section shall be treated as a violation of a rule defining an unfair or deceptive act or practice prescribed under section 18(a)(1)(B) of the Federal Trade Commission Act (15 U.S.C. 57a(a)(1)(B)).

(2) Powers of the Commission.—Except as otherwise provided, the Commission shall enforce this section 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 this section shall be
subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act.

(3) INDEPENDENT LITIGATION AUTHORITY.—If the Commission has reason to believe that a person has violated this section, the Commission may bring a civil action in any appropriate United States district court to—

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

(B) enforce compliance with this section;

(C) obtain a permanent, temporary, or preliminary injunction;

(D) obtain civil penalties;

(E) obtain damages, restitution, or other compensation on behalf of aggrieved consumers;

or

(F) obtain any other appropriate equitable relief.

(4) CIVIL PENALTIES.—In addition to any other penalties as may be prescribed by law, each violation of this section shall carry a civil penalty not to exceed—
(A) if the person who committed the violation does not have unfair leverage, the lesser of—

(i) $25,000; or

(ii) 5 percent of the revenues earned by the person’s ultimate parent entity during the preceding 12-month period; or

(B) if the person who committed the violation has unfair leverage, 5 percent of the revenues earned by the person’s ultimate parent entity during the preceding 12-month period.

(5) RULEMAKING.—

(A) IN GENERAL.—The Commission may promulgate in accordance with section 553 of title 5, United States Code, such rules as may be necessary to carry out this Act, including the guidance required under subparagraph (B), guidance regarding an exceptional market shock, or additional characteristics that demonstrate unfair leverage.

(B) REQUIRED GUIDANCE.—Not later than 180 days after the date of enactment of this Act, the Commission shall promulgate regulations regarding violations of this Act, which shall include guidelines on what constitutes a
market, an unconscionably excessive price for a
good or service, and an excessive price for a
good or service.

(6) Effect on Other Laws.—Nothing in this
section shall be construed in any way to limit the
authority of the Commission under any other provi-
sion of law.

(g) Enforcement by State Attorneys Gen-
eral.—

(1) In General.—If the attorney general of a
State, or another official or agency designated by a
State, has reason to believe that any person has vi-o-
lated or is violating this section, the attorney gen-
eral, 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—

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

(B) enforce compliance with this section;

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

(D) obtain civil penalties;
(E) obtain damages, restitution, or other compensation on behalf of residents of the State; or

(F) obtain any other appropriate equitable relief.

(2) Notice.—Before filing an action under paragraph (1), the attorney general, official, or agency of the State involved shall provide to the Commission a written notice of such action and a copy of the complaint for such action. If the attorney general, official, or agency determines that it is not feasible to provide the notice described in this paragraph before the filing of the action, the attorney general, official, or agency shall provide written notice of the action and a copy of the complaint to the Commission immediately upon the filing of the action.

(3) Limitation on State action while Federal action is pending.—If the Commission has instituted a civil action for a 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.

(4) Relationship with state-law claims.—

If the attorney general of a State has authority to bring an action under State law directed 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.

(h) Savings Clause.—Nothing in this section shall preempt or otherwise affect any State or local law.

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

(a) Definitions.—In this section:

(1) Covered issuer.—The term “covered issuer” means an issuer that—

(A) has a covered quarter; and

(B) in the quarter following the covered quarter described in subparagraph (A), is required to submit Form 10–Q or Form 10–K.

(2) Covered quarter.—The term “covered quarter” means a quarter during which there is an exceptional market shock.

(3) Form 10–K.—The term “Form 10–K” means the form described in section 249.310 of title 17, Code of Federal Regulations, or any successor regulation.
(4) Form 10–Q.—The term “Form 10–Q” means the form described in section 240.15d–13 of title 17, Code of Federal Regulations, or any successor regulation.

(5) Issuer.—The term “issuer” has the meaning given the term in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)).

(b) Inclusion in Filing.—Each covered issuer, in each Form 10–K or Form 10–Q that the covered issuer is required to file in a quarter following a covered quarter, shall include in the filing the following information with respect to that covered quarter, as compared with the quarter preceding that covered quarter:

(1) The percentage change in the volume of goods or services sold, and the percentage change in the average sales price of those goods or services, which shall be broken down by material product categories, when relevant, and presented in a tabular format.

(2) The gross margins of the covered issuer, which shall be broken down by material product categories, when relevant, and presented in a tabular format.
(3) Presented in tabular format, the share of
the increase in revenue of the covered issuer that is
attributable to—

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

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

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

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

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

   (A) an explanation for any increase in the
gross margins of material product categories,
including all material causes for such an in-
crease, an explanation of how each such mate-
rial cause affected such an increase, and a de-
scription of the relative importance of each such
material cause with respect to such an increase;
(B) an explanation for the decisions made by the covered issuer with respect to the prices of goods or services sold by the covered issuer; 
(C) if the covered issuer increased prices at a rate that was greater than the rate at which the costs incurred by the covered issuer increased, the rationale and objectives for increasing prices in such a manner; and 
(D) a description of conditions under which the covered issuer plans to modify pricing after the date on which the covered issuer submits the filing.

e) Regulations.—Not later than 180 days after the date of enactment of this Act, the Securities and Exchange Commission shall issue final regulations, or amend existing regulations of the Commission, to carry out this section.

(d) Effective Date.—This section shall take effect on the date on which the Securities and Exchange Commission issues final regulations under subsection (e) or completes the amendments required under that subsection, as applicable.

SEC. 5. FUNDING.

In addition to amounts otherwise available, there is appropriated to the Commission for fiscal year 2023, out
of any money in the Treasury not otherwise appropriated,

$1,000,000,000, to remain available until September 30,

2032, for carrying out work of the Commission.