



General Assembly

**Substitute Bill No. 521**

February Session, 2008

\* SB00521GL 031108 \*

**AN ACT CONCERNING PRICE GOUGING AND THE PETROLEUM PRODUCTS GROSS EARNINGS TAX.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-234 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective from passage*):

3 (a) As used in this section:

4 (1) "Energy resource" shall include, but not be limited to, middle  
5 distillate, residual fuel oil, motor gasoline, propane, aviation gasoline  
6 and aviation turbine fuel, natural gas, electricity, coal and coal  
7 products, wood fuels and any other resource yielding energy;

8 (2) "Seller" shall include, but not be limited to, a supplier,  
9 wholesaler, distributor or retailer involved in the sale or distribution in  
10 this state of an energy resource;

11 [(3) "Abnormal market disruption" refers to any stress to an energy  
12 resource market resulting from weather conditions, acts of nature,  
13 failure or shortage of a source of energy, strike, civil disorder, war,  
14 national or local emergency, oil spill or other extraordinary adverse  
15 circumstance.]

16 (3) "Additional costs" means all replacement and transportation  
17 costs and taxes incurred by a person within the chain of distribution;

18       (4) "Gross disparity" means an increase of more than fifteen per cent  
19       in the price of an energy resource;

20       (5) "Unconscionably excessive" means a price that represents a gross  
21       disparity between the price of an energy resource when compared to  
22       the highest price such energy resource was sold or offered for sale by  
23       the seller in the usual course of business during the seven days  
24       immediately prior to the declaration by the Governor of an energy  
25       resource market disruption emergency pursuant to subsection (e) of  
26       this section.

27       (b) No seller during any [period of abnormal market disruption]  
28       energy resource market disruption emergency declared by the  
29       Governor pursuant to subsection (e) of this section, or during any  
30       period in which [an imminent abnormal market disruption] such  
31       emergency is reasonably anticipated shall sell or offer to sell an energy  
32       resource for an amount that represents an unconscionably excessive  
33       price.

34       (c) Evidence that (1) the amount charged represents a gross  
35       disparity between the price of an energy resource that was the subject  
36       of the transaction and the price at which such energy resource was  
37       sold or offered for sale by the seller in the usual course of business  
38       immediately prior to [(A) the onset of an abnormal market disruption,  
39       or (B)] an energy resource market disruption emergency declared by  
40       the Governor pursuant to subsection (e) of this section, or any period  
41       in which [an imminent abnormal market disruption] such emergency  
42       is reasonably anticipated, and (2) the amount charged by the seller was  
43       not attributable to additional costs incurred by the seller in connection  
44       with the sale of such product, shall constitute prima facie evidence that  
45       a price is unconscionably excessive.

46       (d) This section shall not be construed to limit the ability of the  
47       Commissioner of Consumer Protection or the courts to establish  
48       certain acts or practices as unfair or unconscionable in the absence of  
49       [abnormal market disruptions] an energy resource market disruption

50 emergency declared by the Governor pursuant to subsection (e) of this  
51 section.

52 (e) In the event of a state-wide or regional shortage or threatened  
53 shortage of an energy resource due to an abnormal market disruption  
54 resulting from a natural disaster, weather conditions, acts of nature,  
55 strike, civil disorder, war, national or local emergency or other  
56 extraordinary adverse circumstance, the Governor may proclaim that  
57 an energy resource market disruption emergency exists. Upon the  
58 declaration of such emergency, the Governor may, in connection  
59 therewith, issue orders designating an energy resource to be in short  
60 supply or in danger of becoming in short supply in the state or in a  
61 specific region of the state and imposing price restrictions or rationing  
62 with respect thereto. Prior to the issuance of such an order, the  
63 Governor shall make written findings that there is an abnormal market  
64 disruption, that the energy resource is in short supply or is in danger  
65 of becoming in short supply due to such disruption, that the energy  
66 resource is essential to the health, safety and welfare of the people of  
67 the state, and that the imposition of price restrictions on the energy  
68 resource or rationing of such resource is necessary to assure the health,  
69 safety and welfare of the people of the state.

70 (f) Any proclamation or order issued pursuant to this section shall  
71 become effective upon its filing in the office of the Secretary of the  
72 State and with the clerks of the Senate and the House of  
73 Representatives. Such proclamation or order shall be published in full  
74 at least once in a newspaper having general circulation in each county,  
75 provided failure to publish shall not impair the validity of such  
76 proclamation or order. Unless disapproved in accordance with the  
77 provisions of subsection (g) of this section, any proclamation or order  
78 shall remain in effect until the Governor proclaims an end to the  
79 emergency or until ninety days after the date of the proclamation of  
80 the emergency, whichever occurs first.

81 (g) Any proclamation or order issued pursuant to this section may  
82 be disapproved by a majority vote of each house of the General

83 Assembly. Any such disapproval shall become effective upon filing  
84 notice of such action with the office of the Secretary of the State.

85 (h) Any natural person, trade association, corporation or other  
86 entity may register with the Commissioner of Consumer Protection as  
87 an agent for the purpose of being notified by said commissioner or  
88 said commissioner's agent in the event the Governor declares an  
89 energy resource market disruption emergency pursuant to subsection  
90 (e) of this section. Such natural person, trade association, corporation  
91 or other entity shall be notified of such emergency by said  
92 commissioner or said commissioner's agent in an expeditious manner  
93 when the Governor declares an energy resource market disruption  
94 emergency.

95 (i) A violation of the provisions of subsection (b) of this section shall  
96 be deemed an unfair or deceptive trade act or practice under  
97 subsection (a) of section 42-110b.

98 Sec. 2. Section 12-587 of the 2008 supplement to the general statutes  
99 is repealed and the following is substituted in lieu thereof (*Effective*  
100 *from passage*):

101 (a) As used in this chapter: (1) "Company" includes a corporation,  
102 partnership, limited partnership, limited liability company, limited  
103 liability partnership, association, individual or any fiduciary thereof;  
104 (2) "quarterly period" means a period of three calendar months  
105 commencing on the first day of January, April, July or October and  
106 ending on the last day of March, June, September or December,  
107 respectively; (3) "gross earnings" means all consideration received  
108 from the first sale within this state of a petroleum product; (4)  
109 "petroleum products" means those products which contain or are  
110 made from petroleum or a petroleum derivative; (5) "first sale of  
111 petroleum products within this state" means the initial sale of a  
112 petroleum product delivered to a location in this state; (6) "export" or  
113 "exportation" means the conveyance of petroleum products from  
114 within this state to a location outside this state for the purpose of sale

115 or use outside this state; and (7) "sale for exportation" means a sale of  
116 petroleum products to a purchaser which itself exports such products.

117 (b) (1) Except as otherwise provided in subdivision (2) of this  
118 subsection, any company which is engaged in the refining or  
119 distribution, or both, of petroleum products and which distributes  
120 such products in this state shall pay a quarterly tax on its gross  
121 earnings derived from the first sale of petroleum products within this  
122 state. Each company shall on or before the last day of the month next  
123 succeeding each quarterly period render to the commissioner a return  
124 on forms prescribed or furnished by the commissioner and signed by  
125 the person performing the duties of treasurer or an authorized agent or  
126 officer, including the amount of gross earnings derived from the first  
127 sale of petroleum products within this state for the quarterly period  
128 and such other facts as the commissioner may require for the purpose  
129 of making any computation required by this chapter. Except as  
130 otherwise provided in subdivision (3) of this subsection, the rate of tax  
131 shall be (A) five per cent with respect to calendar quarters prior to July  
132 1, 2005; (B) five and eight-tenths per cent with respect to calendar  
133 quarters commencing on or after July 1, 2005, and prior to July 1, 2006;  
134 (C) six and three-tenths per cent with respect to calendar quarters  
135 commencing on or after July 1, 2006, and prior to July 1, 2007; (D)  
136 seven per cent with respect to calendar quarters commencing on or  
137 after July 1, 2007, and prior to July 1, 2008; (E) seven and one-half per  
138 cent with respect to calendar quarters commencing on or after July 1,  
139 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent  
140 with respect to calendar quarters commencing on or after July 1, 2013.]

141 (2) Gross earnings derived from the first sale of the following  
142 petroleum products within this state shall be exempt from tax: (A) Any  
143 petroleum products sold for exportation from this state for sale or use  
144 outside this state; (B) the product designated by the American Society  
145 for Testing and Materials as "Specification for Heating Oil D396-69",  
146 commonly known as number 2 heating oil, to be used exclusively for  
147 heating purposes or to be used in a commercial fishing vessel, which  
148 vessel qualifies for an exemption pursuant to section 12-412 of the 2008

149 supplement to the general statutes; (C) kerosene, commonly known as  
150 number 1 oil, to be used exclusively for heating purposes, provided  
151 delivery is of both number 1 and number 2 oil, and via a truck with a  
152 metered delivery ticket to a residential dwelling or to a centrally  
153 metered system serving a group of residential dwellings; (D) the  
154 product identified as propane gas, to be used exclusively for heating  
155 purposes; (E) bunker fuel oil, intermediate fuel, marine diesel oil and  
156 marine gas oil to be used in any vessel having a displacement  
157 exceeding four thousand dead weight tons; (F) for any first sale  
158 occurring prior to July 1, 2008, propane gas to be used as a fuel for a  
159 motor vehicle; (G) for any first sale occurring on or after July 1, 2002,  
160 grade number 6 fuel oil, as defined in regulations adopted pursuant to  
161 section 16a-22c, to be used exclusively by a company which, in  
162 accordance with census data contained in the Standard Industrial  
163 Classification Manual, United States Office of Management and  
164 Budget, 1987 edition, is included in code classifications 2000 to 3999,  
165 inclusive, or in Sector 31, 32 or 33 in the North American Industrial  
166 Classification System United States Manual, United States Office of  
167 Management and Budget, 1997 edition; (H) for any first sale occurring  
168 on or after July 1, 2002, number 2 heating oil to be used exclusively in a  
169 vessel primarily engaged in interstate commerce, which vessel  
170 qualifies for an exemption under section 12-412 of the 2008 supplement  
171 to the general statutes; (I) for any first sale occurring on or after July 1,  
172 2000, paraffin or microcrystalline waxes; (J) for any first sale occurring  
173 prior to July 1, 2008, petroleum products to be used as a fuel for a fuel  
174 cell, as defined in subdivision (113) of section 12-412 of the 2008  
175 supplement to the general statutes; (K) a commercial heating oil blend  
176 containing not less than ten per cent of alternative fuels derived from  
177 agricultural produce, food waste, waste vegetable oil or municipal  
178 solid waste, including, but not limited to, biodiesel or low sulfur dyed  
179 diesel fuel; or (L) for any first sale occurring on or after July 1, 2007,  
180 diesel fuel other than diesel fuel to be used in an electric generating  
181 facility to generate electricity.

182 (3) The rate of tax on gross earnings derived from the first sale of

183 grade number 6 fuel oil, as defined in regulations adopted pursuant to  
184 section 16a-22c, to be used exclusively by a company which, in  
185 accordance with census data contained in the Standard Industrial  
186 Classification Manual, United States Office of Management and  
187 Budget, 1987 edition, is included in code classifications 2000 to 3999,  
188 inclusive, or in Sector 31, 32 or 33 in the North American Industrial  
189 Classification System United States Manual, United States Office of  
190 Management and Budget, 1997 edition, or number 2 heating oil used  
191 exclusively in a vessel primarily engaged in interstate commerce,  
192 which vessel qualifies for an exemption under section 12-412 of the  
193 2008 supplement to the general statutes shall be: (A) Four per cent with  
194 respect to calendar quarters commencing on or after July 1, 1998, and  
195 prior to July 1, 1999; (B) three per cent with respect to calendar  
196 quarters commencing on or after July 1, 1999, and prior to July 1, 2000;  
197 (C) two per cent with respect to calendar quarters commencing on or  
198 after July 1, 2000, and prior to July 1, 2001; and (D) one per cent with  
199 respect to calendar quarters commencing on or after July 1, 2001, and  
200 prior to July 1, 2002.

201 (c) (1) Any company which imports or causes to be imported into  
202 this state petroleum products for sale, use or consumption in this state,  
203 other than a company subject to and having paid the tax on such  
204 company's gross earnings from first sales of petroleum products  
205 within this state, which earnings include gross earnings attributable to  
206 such imported or caused to be imported petroleum products, in  
207 accordance with subsection (b) of this section, shall pay a quarterly tax  
208 on the consideration given or contracted to be given for such  
209 petroleum product if the consideration given or contracted to be given  
210 for all such deliveries during the quarterly period for which such tax is  
211 to be paid exceeds three thousand dollars. Except as otherwise  
212 provided in subdivision (3) of this subsection, the rate of tax shall be  
213 (A) five per cent with respect to calendar quarters commencing prior to  
214 July 1, 2005; (B) five and eight-tenths per cent with respect to calendar  
215 quarters commencing on or after July 1, 2005, and prior to July 1, 2006;  
216 (C) six and three-tenths per cent with respect to calendar quarters

217 commencing on or after July 1, 2006, and prior to July 1, 2007; (D)  
218 seven per cent with respect to calendar quarters commencing on or  
219 after July 1, 2007. ], and prior to July 1, 2008; (E) seven and one-half per  
220 cent with respect to calendar quarters commencing on or after July 1,  
221 2008, and prior to July 1, 2013; and (F) eight and one-tenth per cent  
222 with respect to calendar quarters commencing on or after July 1, 2013.  
223 Fuel in the fuel supply tanks of a motor vehicle, which fuel tanks are  
224 directly connected to the engine, shall not be considered a delivery for  
225 the purposes of this subsection.]

226 (2) Consideration given or contracted to be given for petroleum  
227 products, gross earnings from the first sale of which are exempt from  
228 tax under subdivision (2) of subsection (b) of this section, shall be  
229 exempt from tax.

230 (3) The rate of tax on consideration given or contracted to be given  
231 for grade number 6 fuel oil, as defined in regulations adopted  
232 pursuant to section 16a-22c, to be used exclusively by a company  
233 which, in accordance with census data contained in the Standard  
234 Industrial Classification Manual, United States Office of Management  
235 and Budget, 1987 edition, is included in code classifications 2000 to  
236 3999, inclusive, or in Sector 31, 32 or 33 in the North American  
237 Industrial Classification System United States Manual, United States  
238 Office of Management and Budget, 1997 edition, or number 2 heating  
239 oil used exclusively in a vessel primarily engaged in interstate  
240 commerce, which vessel qualifies for an exemption under section 12-  
241 412 of the 2008 supplement to the general statutes shall be: (A) Four  
242 per cent with respect to calendar quarters commencing on or after July  
243 1, 1998, and prior to July 1, 1999; (B) three per cent with respect to  
244 calendar quarters commencing on or after July 1, 1999, and prior to  
245 July 1, 2000; (C) two per cent with respect to calendar quarters  
246 commencing on or after July 1, 2000, and prior to July 1, 2001; and (D)  
247 one per cent with respect to calendar quarters commencing on or after  
248 July 1, 2001, and prior to July 1, 2002.

249 (d) The amount of tax reported to be due on such return shall be

250 due and payable on or before the last day of the month next  
251 succeeding the quarterly period. The tax imposed under the provisions  
252 of this chapter shall be in addition to any other tax imposed by this  
253 state on such company.

254 (e) For the purposes of this chapter, the gross earnings of any  
255 producer or refiner of petroleum products operating a service station  
256 along the highways or interstate highways within the state pursuant to  
257 a contract with the Department of Transportation or operating a  
258 service station which is used as a training or test marketing center  
259 under the provisions of subsection (b) of section 14-344d, shall be  
260 calculated by multiplying the volume of petroleum products delivered  
261 by any producer or refiner to any such station by such producer's or  
262 refiner's dealer tank wagon price or dealer wholesale price in the area  
263 of the service station.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	42-234
Sec. 2	<i>from passage</i>	12-587

**GL**            *Joint Favorable Subst.*