



House of Representatives

General Assembly

File No. 111

January Session, 2009

Substitute House Bill No. 6518

House of Representatives, March 19, 2009

The Committee on General Law reported through REP. SHAPIRO of the 144th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE FAIR PRICING OF GASOLINE.

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

1 Section 1. (NEW) (*Effective July 1, 2009*) (a) (1) Notwithstanding any
2 other provision of the general statutes, no person engaged in the
3 business of furnishing gasoline to a reseller or retail gas station in this
4 state shall use a pricing system under which the wholesale price paid
5 for such gasoline by such reseller or retail gas station is determined
6 based on the geographic location of such reseller or retail gas station or
7 any other pricing system that would prevent resellers or retail gas
8 stations from paying lower prices on an equal basis with other resellers
9 or retail gas stations in this state. No such person shall discriminate in
10 the price of such gasoline charged to a reseller or retail gas station in
11 this state, except to recover actual transportation costs. Such person
12 may offer volume discounts, as determined by such person from time
13 to time, provided if any such volume discounts are offered to one such
14 reseller or retail gas station for specified sales volumes, such volume
15 discounts shall be offered on equal terms and conditions by such

16 person to all of its resellers or retail gas stations who meet or exceed
17 such specified sales volumes. When offered, all such volume discounts
18 shall be disclosed, in writing, by such person to such reseller or retail
19 gas station and all such volume discounts, specified sales volumes and
20 the time period for which they are offered shall be listed as a separate
21 line item entry on each invoice to each reseller or retail gas station
22 accepting such offer.

23 (2) For purposes of this section, "reseller" means an individual,
24 partnership, corporation, limited liability company, association or
25 other entity, including, but not limited to, a manufacturer, refiner,
26 supplier, wholesaler, hauler, blender, agent, jobber or distributor who
27 supplies gasoline intended for immediate or eventual resale to
28 consumers in this state.

29 (3) For purposes of this section, "retail gas station" means an
30 individual, partnership, corporation, limited liability company,
31 association or other entity that sells gasoline directly to consumers
32 from a fixed physical location.

33 (4) A reseller may modify the price such reseller charges a retail gas
34 station for gasoline, without offering such price modification to other
35 retail gas stations, provided: (A) Such reseller provides a loan or other
36 financial accommodation for the construction, repair or maintenance of
37 capital improvements located at the retail gas station, including, but
38 not limited to, the construction, installation, repair, removal or
39 maintenance of underground gasoline tanks, overhead canopies,
40 gasoline pumps and the improvement or altering of the appearance
41 and functionality of any convenience store operated at the retail gas
42 station, (B) such loan or other financial accommodation is financed by
43 such retail gasoline station through payment to such reseller of a
44 modified price for gasoline purchased by such retail gas station, and
45 (C) such modified price for gasoline purchased by such retail gas
46 station solely and directly correlates to the amount of such loan or
47 other financial accommodation.

48 (5) In the event a reseller modifies a price the reseller charges a retail

49 gas station for gasoline pursuant to subdivision (4) of this subsection,
50 the reseller shall document the following, in writing: (A) The terms of
51 any associated loan or other financial accommodation between the
52 reseller and the retail gas station, (B) the purpose of the loan or other
53 financial accommodation, (C) evidence that the purpose of the loan or
54 other financial accommodation has been fulfilled, (D) the price the
55 retailer would have charged the retail gas station for the gasoline if the
56 loan or other financial accommodation had not been made to the retail
57 gas station, and (E) the price the retail gas station is paying for the
58 gasoline because the loan or other financial accommodation was made
59 to the retail gas station.

60 (b) Each person engaged in the business of furnishing gasoline
61 pursuant to subsection (a) of this section shall keep and maintain
62 written or electronic records for not less than five years for each sale of
63 gasoline to a reseller or retail gas station in this state. Such records
64 shall include, but not be limited to, the date and time of sale, name of
65 purchaser and seller, delivery or purchase location of such gasoline,
66 the amount, price and specified sales volume discount of all gasoline
67 sold to such reseller or retail gas station and any volume discounts
68 offered pursuant to subsection (a) of this section.

69 (c) The records kept and maintained pursuant to subsection (b) of
70 this section may, from time to time and within available resources and
71 upon prior written request, be inspected by the Commissioner of
72 Consumer Protection and the Attorney General or by their duly
73 authorized representatives. If a person fails to supply such records
74 within five business days after receiving a written request for such
75 records pursuant to this subsection, such person shall forfeit and pay
76 to the state a civil penalty of not more than one thousand dollars per
77 day for each day the submission of such records is refused or delayed.
78 The Attorney General, acting in the name of the state, may petition for
79 recovery of such penalties.

80 (d) Records provided pursuant to subsection (c) of this section shall
81 be considered confidential and proprietary trade secret information

82 and shall be held in confidence by the Commissioner of Consumer
83 Protection and the office of the Attorney General and shall not be
84 released to third parties except by court order or with the written
85 consent of the person who kept and maintained such records.

86 (e) The Attorney General may bring a civil action in the superior
87 court for the judicial district of Hartford against any person who
88 violates any provision of this section to recover a civil penalty of not
89 more than twenty-five thousand dollars per violation and such
90 equitable relief as the court deems appropriate.

91 Sec. 2. Section 42-234 of the general statutes is repealed and the
92 following is substituted in lieu thereof (*Effective October 1, 2009*):

93 (a) As used in this section:

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

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

101 (3) "Abnormal market disruption" refers to any stress to an energy
102 resource market resulting from weather conditions, acts of nature,
103 failure or shortage of a source of energy, strike, civil disorder, war,
104 national or local emergency, oil spill or other extraordinary adverse
105 circumstance; and

106 (4) "Margin" means the excess percentage of a motor gasoline seller's
107 selling price for such gasoline over the price such seller paid for such
108 gasoline.

109 (b) No seller during any period of abnormal market disruption or
110 during any period in which an imminent abnormal market disruption
111 is reasonably anticipated shall sell or offer to sell an energy resource

112 for an amount that represents an unconscionably excessive price.

113 (c) Evidence that (1) the amount charged represents a gross
 114 disparity between the price of an energy resource that was the subject
 115 of the transaction and the price at which such energy resource was
 116 sold or offered for sale by the seller in the usual course of business
 117 immediately prior to (A) the onset of an abnormal market disruption,
 118 or (B) any period in which an imminent abnormal market disruption is
 119 reasonably anticipated, and (2) the amount charged by the seller was
 120 not attributable to additional costs incurred by the seller in connection
 121 with the sale of such product, shall constitute prima facie evidence that
 122 a price is unconscionably excessive.

123 (d) Notwithstanding the provisions of subsections (b) and (c) of this
 124 section, it shall not be a violation of this section if a seller sells or offers
 125 to sell motor gasoline during an abnormal market disruption or any
 126 period in which an imminent abnormal market disruption is
 127 reasonably anticipated if the seller's margin for such motor gasoline is
 128 equal to or not greater than such seller's maximum margin on the sale
 129 of such motor gasoline during the ninety-day period prior to the onset
 130 of the abnormal market disruption or period in which an imminent
 131 abnormal market disruption is reasonably anticipated.

132 [(d)] (e) This section shall not be construed to limit the ability of the
 133 Commissioner of Consumer Protection or the courts to establish
 134 certain acts or practices as unfair or unconscionable in the absence of
 135 abnormal market disruptions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2009	New section
Sec. 2	October 1, 2009	42-234

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - None	None	None
Attorney General	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a potential revenue gain to the state as it authorizes a civil action by the Office of the Attorney General against violators of the provisions of the bill with civil penalties up to \$25,000. Both the Office of the Attorney General and the Department of Consumer Protection can meet the requirements contained in the bill with existing resources. It is assumed in this analysis that the Department of Consumer Protection would not have to act upon complaints received by the public and would only act on complaints from gasoline retailers.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis

sHB 6518

AN ACT CONCERNING THE FAIR PRICING OF GASOLINE.

SUMMARY:

With a few exceptions, this bill prohibits, businesses furnishing gasoline to resellers or retail gas stations from setting prices based on geographic location or using a system preventing them from setting equal prices across the state. The exceptions are price modifications for transportation costs, volume discounts, and loans or financial accommodations to a station.

The bill requires businesses furnishing gasoline to maintain written or electronic records for at least five years and allows the Department of Consumer Protection (DCP) commissioner or the attorney general to inspect them. The records must include the dates and times of sales, names of sellers and purchasers, delivery or purchase locations, and volume discounts.

The bill authorizes the attorney general to bring a civil action against violators to recover civil penalties up to \$25,000 per violation and equitable relief.

The bill also sets parameters allowing gasoline suppliers to adjust their prices during an “abnormal market disruption,” allowing sellers to price their product during the disruption so that the seller’s margin is less than or equal to the margin in the 90 days before the disruption. An “abnormal market disruption” refers to any stress to an energy resource market resulting from weather conditions, acts of nature, failure or shortage of a source of energy, strike, civil disorder, war, national or local emergency, oil spill, or other extraordinary adverse circumstance.

EFFECTIVE DATE: July 1, 2009, except for the section on abnormal market disruption, which is effective on October 1, 2009.

PRICING SYSTEMS

Geographic Pricing Prohibition

This bill prohibits businesses furnishing gasoline to resellers or retail gas stations from using a pricing system based on geographic location or any system preventing resellers or retail gas stations from paying prices on an equal basis with the rest of the state. The bill defines a reseller as an individual, partnership, corporation, limited liability company (LLC), association, or entity. It includes manufacturers, refiners, suppliers, wholesalers, haulers, blenders, agents, jobbers, and distributors supplying gasoline for resale to consumers in the state. A retail gas station is defined as an individual, partnership, corporation, LLC, association, or other entity selling gasoline directly to customers from a fixed location.

Volume Discounts

Gasoline suppliers may not discriminate on price except to recover transportation costs. But they may offer volume discounts for specialized volumes offered equally to all resellers or retail gas stations meeting or exceeding the specified volume. These discounts must be disclosed in writing and the discount, specified sales volume, and time period of the discount must be included as a separate line item on invoices.

Price Modifications

The bill sets conditions under which resellers can modify prices charged to retail gas stations, specifically if (1) the reseller is providing a loan or financial accommodation to the station, (2) the loan or accommodation is financed through the modified price, and (3) the modified price solely and directly correlates to the loan. The parties must document in writing (1) the terms and purpose of the loan or accommodation, (2) evidence the purpose was fulfilled, (3) the price of gas if the loan or accommodation had not been made, and (4) the price paid because the loan was made.

Record Maintenance

The bill also requires anyone in the business of furnishing gasoline to resellers or retail gas stations to keep and maintain written or electronic records for inspection by the attorney general or the DCP commissioner upon written request. Failure to supply the records within five days may result in a civil penalty of \$1,000 per day, which the attorney general may petition to recovery. The records must include, at least, the date and time of sales, names of the seller and purchaser, delivery or purchase location, and volume discount details for at least five years. The records are confidential and proprietary trade secrets and may only be released by court order or written consent of the person who kept and maintained the records.

Penalties

The bill authorizes the attorney general to bring a civil action against violators to recover civil penalties up to \$25,000 per violation and equitable relief the court considers appropriate.

ABNORMAL MARKET DISRUPTION

Under current law, sellers may not sell gasoline for an unconscionably excessive price during a period of abnormal market disruption or reasonably anticipated period of abnormal disruption. Prima facie evidence that a price is unconscionably excessive exists where the price is grossly disparate to the price in the usual course of business immediately before the disruption or anticipated disruption started, and the price is not attributable to the seller's costs related to sale of the product. Under this bill, a seller does not violate this prohibition if, in offers to sell gasoline during or in anticipation of a market disruption, the seller's margin is less than or equal to the seller's margin in the 90 days before the onset of the disruption. The bill defines "margin" as the excess percentage of a motor gasoline seller's selling price over the price the seller paid.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 11 Nay 6 (03/05/2009)