

BASSMAN, MITCHELL & ALFANO

ATTORNEYS AT LAW
1707 L STREET, N.W.
SUITE 560
WASHINGTON, D.C. 20036-4223

TELEPHONE (202) 466-6502
TELEFAX (202) 331-7510

February 26, 2009

MEMORANDUM

TO: Connecticut General Law Committee
FROM: Attorney Bob Bassman

RE: Amendment to Section 1 of Raised Bill 6518

I have reviewed the above-enumerated Bill. This memo only contains my comments and suggested amendments to Section 1.

Comments

As an initial matter, the language in Section 1, as well as the Statement of Purpose at the end, "To ban the practice of gasoline zone pricing . . .," is troubling. This is because both the goal and the legislative language to accomplish it seem to have no legitimate state purpose. Nothing in the Bill appears to attempt to assure that Connecticut consumers receive adequate supplies of fuels at fair prices. Unlike the federal, Robinson-Patman Act (15 U.S.C. § 13), there is no allowance for meeting competition. Thus, the Bill, rendering it impossible to grant a lower price to one retail dealer in order to retain him as a customer in light of a better competitive offer from another seller, may well be preempted as a violation of the Supremacy Clause of the United States Constitution.

The goal of the Bill appears to simply be to keep the selling prices to one of Connecticut's 1,400 service stations in one part of the state identical to that of another in another part of the state. This does not seem to fit under the police power because it does not serve any legitimate state purpose. It would thus be a violation of the Due Process Clause of the 14th Amendment.

Section 1. (NEW) (*Effective July 1, 2009*) (a) (1) Notwithstanding any other provision of the general statutes to the contrary, no person engaged in the business of furnishing gasoline to a person that sells gasoline at retail in this state shall use a pricing system under which the wholesale price paid for such gasoline by such retail seller is determined based solely on the geographic location of such retail seller in any geographic zone in this state, or any other pricing system that would prevent retail sellers of gasoline from paying lower prices on an equal basis with other retail sellers of gasoline in this state. Nothing in this Section shall prohibit a seller of petroleum products to a person that sells gasoline at retail from computing said selling price by computing factors including, but not limited to, the cost of such motor fuels, the transportation costs, labor costs, taxes, other governmental imposed fees and costs, and the competitive situation of both parties as that competitive situation changes from time to time. If any discounts or rebates are offered to one such retail seller, all such discounts or rebates shall be disclosed in writing by such person to such retail seller.

(2) The provisions of this section shall apply to an individual, partnership, corporation, limited liability company, association or other entity, including, but not limited to, a manufacturer, refiner, supplier, wholesaler, hauler, blender, agent, jobber, consignment agent or distributor who supplies gasoline intended for immediate or eventual resale to consumers in this state.

(b) Each person engaged in the business of furnishing gasoline pursuant to subsection (a) of this section shall keep and maintain written or electronic records for not less than five years for each sale of gasoline to a person that sells gasoline at retail in this state. Such records shall include, but not be limited to, the date and time of sale, name of purchaser, delivery or purchase location of such gasoline, the amount and price of all gasoline sold to such retail seller of gasoline and any discounts or rebates offered pursuant to subsection (a) of this section.

(c) The records kept and maintained pursuant to subsection (b) of this section may, from time to time and within available resources and upon prior written request, be inspected by the Commissioner of Consumer Protection and the Attorney General or by their duly authorized representatives within 10 days of receipt of a written request.