



House of Representatives

File No. 658

General Assembly

February Session, 2010

(Reprint of File No. 143)

Substitute House Bill No. 5220
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 28, 2010

**AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL
INDUSTRY.**

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

1 Section 1. (NEW) (*Effective July 1, 2010*) (a) Any person conducting
2 business in the motor fuel industry in this state that files merger,
3 acquisition or any other information regarding market concentration in
4 the motor fuel industry in this state with the Federal Trade
5 Commission or the United States Department of Justice, in compliance
6 with the Hart-Scott-Rodino Antitrust Improvements Act, 15 USC 18a,
7 shall simultaneously file a copy of the same information with the
8 Attorney General of this state. For purposes of this section, "motor
9 fuel" shall have the same meaning as defined in section 14-327a of the
10 general statutes and "person" shall have the same meaning as used in
11 subsection (k) of section 1-1 of the general statutes.

12 (b) After reviewing information filed pursuant to subsection (a) of
13 this section, the Attorney General may measure the market
14 concentration and changes in market concentration in the motor fuel
15 industry in this state due to such merger, acquisition or any other

16 information. Such measurement shall include the use of the
17 Herfindahl-Hirschman Index.

18 (c) If the Herfindahl-Hirschman Index score determined pursuant to
19 subsection (b) of this section is: (1) Between one thousand and one
20 thousand eight hundred points and increases by more than one
21 hundred points due to information disclosed pursuant to subsection
22 (a) of this section, or (2) equal to or greater than one thousand eight
23 hundred points and increases by more than fifty points due to
24 information disclosed pursuant to subsection (a) of this section, the
25 Attorney General may issue in writing and cause to be served upon
26 any person, by subpoena duces tecum, a demand requiring such
27 person to submit to him or her documentary material relevant to the
28 scope of the Attorney General's investigation. For the purposes of this
29 section, "documentary material" includes, but is not limited to, any
30 information in a written, recorded or electronic form. In the event that
31 the Federal Trade Commission or the United States Department of
32 Justice utilize different Herfindahl-Hirshman Index scores than the
33 specific scores cited in this subsection to measure market concentration
34 and changes in market concentration in the motor fuel industry, the
35 Attorney General shall utilize such different scores when determining
36 if he or she will issue a written demand requiring the submission of
37 documentary material pursuant to this subsection.

38 (d) Such demand shall (1) state the nature of the investigation, (2)
39 describe the class or classes of documentary material to be reproduced
40 with such definiteness and certainty as to be accurately identified, and
41 (3) prescribe a date that allows a reasonable time to assemble such
42 documentary material for compliance.

43 (e) (1) All documentary material furnished to the Attorney General,
44 his or her deputy or any assistant attorney general designated by the
45 Attorney General, pursuant to a demand issued under subsection (c) of
46 this section, shall be held in the custody of the Attorney General, or the
47 Attorney General's designee, and shall not be available to the public.
48 Such documentary material shall be returned to the person furnishing

49 such documentary material upon the termination of the Attorney
50 General's investigation or final determination of any action or
51 proceeding commenced thereunder.

52 (2) All documentary material or other information furnished
53 voluntarily to the Attorney General, his or her deputy or any assistant
54 attorney general designated by the Attorney General that relates to an
55 investigation of the Attorney General pursuant to this section and the
56 identity of the person furnishing such documentary material or other
57 information shall be held in the custody of the Attorney General, or the
58 Attorney General's designee, and shall not be available to the public.
59 Such documentary material or other information shall be returned to
60 the person furnishing such documentary material or other information
61 upon the termination of the Attorney General's investigation or final
62 determination of any action or proceeding commenced thereunder.

63 (f) No such demand shall require the submission of any
64 documentary material, the contents of which would be privileged or
65 precluded from disclosure if demanded in a grand jury investigation.

66 (g) The Attorney General, his or her deputy or any assistant
67 attorney general designated by the Attorney General may, during the
68 course of an investigation of any antitrust violations by any person, (1)
69 issue in writing and cause to be served upon any person, by subpoena,
70 a demand that such person appear before him or her and give
71 testimony as to any matters relevant to the scope of the alleged
72 violations. Such appearance shall be under oath and a written
73 transcript made of the same, a copy of which shall be furnished to such
74 person appearing and shall not be available for public disclosure; and
75 (2) issue written interrogatories prescribing a return date that allows a
76 reasonable time to respond, which responses shall be under oath and
77 shall not be available for public disclosure.

78 (h) In the event any person fails to comply with the provisions of
79 subsection (a) of this section or subsections (c) to (g), inclusive, of this
80 section, (1) the Attorney General, his or her deputy or any assistant

81 attorney general designated by the Attorney General may apply to the
82 superior court for the judicial district of Hartford for compliance,
83 which court may, upon notice to such person, issue an order requiring
84 such compliance, which shall be served upon such person; and (2) the
85 Attorney General, his or her deputy or any assistant attorney general
86 designated by the Attorney General may also apply to the superior
87 court for the judicial district of Hartford for an order, which court may,
88 after notice to such person and hearing thereon, issue an order
89 requiring the payment of civil penalties to the state in an amount not to
90 exceed two thousand dollars.

91 (i) The Attorney General shall cooperate with officials of the federal
92 government and the several states, including, but not limited to, the
93 sharing and disclosure of information and evidence obtained under
94 the purview of this section.

95 (j) Service of subpoenas ad testificandum, subpoenas duces tecum,
96 notices of deposition and written interrogatories, as provided in this
97 section, may be made by: (1) Personal service or service at the usual
98 place of abode; or (2) registered or certified mail, return receipt
99 requested, a duly executed copy thereof addressed to the person to be
100 served at such person's principal place of business in this state or, if
101 such person has no principal place of business in this state, at such
102 person's principal office or such person's residence.

103 Sec. 2. Section 42-234 of the general statutes is repealed and the
104 following is substituted in lieu thereof (*Effective July 1, 2010*):

105 (a) As used in this section:

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

110 (2) "Seller" shall include, but not be limited to, a supplier,
111 wholesaler, distributor or retailer involved in the sale or distribution in

112 this state of an energy resource;

113 (3) "Abnormal market disruption" refers to any stress to an energy
114 resource market resulting from weather conditions, acts of nature,
115 failure or shortage of a source of energy, strike, civil disorder, war,
116 national or local emergency, oil spill or other extraordinary adverse
117 circumstance;

118 (4) "Margin" means, for each grade of product sold, the percentage
119 calculated by the following formula: One hundred multiplied by a
120 fraction, the numerator of which is the difference between the sales
121 price per gallon and the product price per gallon and the denominator
122 of which is the product price per gallon. For purposes of this
123 subdivision, "product price per gallon" includes all applicable taxes;

124 (5) "Notice" means a posting made by the Attorney General
125 pursuant to subsection (d) of this section announcing the inception and
126 end date of any abnormal market disruption or the reasonable
127 anticipation of any imminent abnormal market disruption.

128 (b) No seller during any period of abnormal market disruption or
129 during any period in which an imminent abnormal market disruption
130 is reasonably anticipated shall sell or offer to sell an energy resource
131 for an amount that represents an unconscionably excessive price.

132 (c) Evidence that (1) the amount charged represents a gross
133 disparity between the price of an energy resource that was the subject
134 of the transaction and the price at which such energy resource was
135 sold or offered for sale by the seller in the usual course of business
136 immediately prior to (A) the onset of an abnormal market disruption,
137 or (B) any period in which an imminent abnormal market disruption is
138 reasonably anticipated, and (2) the amount charged by the seller was
139 not attributable to additional costs incurred by the seller in connection
140 with the sale of such product, shall constitute prima facie evidence that
141 a price is unconscionably excessive.

142 (d) The Attorney General shall post a notice on the home page of the

143 Internet web site of the office of the Attorney General announcing the
 144 inception and end date of any abnormal market disruption or the
 145 reasonable anticipation of any imminent abnormal market disruption.

146 (e) Notwithstanding the provisions of subsections (b) and (c) of this
 147 section, it shall not be a violation of this section if a seller sells or offers
 148 to sell motor gasoline during an abnormal market disruption or any
 149 period in which an imminent abnormal market disruption is
 150 reasonably anticipated if the seller's average margin for such motor
 151 gasoline during the longer of the following: (1) Any such period of
 152 abnormal market disruption or imminent abnormal market disruption,
 153 or (2) thirty days following the date notice was provided by the
 154 Attorney General pursuant to subsection (d) of this section, is not
 155 greater than such seller's maximum margin on the sale of such motor
 156 gasoline during the ninety-day period prior to the onset of the
 157 abnormal market disruption or period in which an imminent abnormal
 158 market disruption is reasonably anticipated.

159 [(d)] (f) This section shall not be construed to limit the ability of the
 160 Commissioner of Consumer Protection or the courts to establish
 161 certain acts or practices as unfair or unconscionable in the absence of
 162 abnormal market disruptions.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2010	New section
Sec. 2	July 1, 2010	42-234

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 11 \$	FY 12 \$
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a potential revenue gain to the state due to potential violations of the Connecticut Unfair Trade Practices Act (CUTPA) associated with the submittal of information concerning market concentration.

House "A" (LCO 3865) is technical and clarifying in nature and results in no fiscal impact

The Out Years

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

OLR Bill Analysis**sHB 5220 (as amended by House "A")******AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL INDUSTRY.*****SUMMARY:**

This bill requires any person conducting business in the motor fuel industry that files merger, acquisition, or any other information regarding market concentration in this state with the Federal Trade Commission (FTC) or the U.S. Department of Justice (US DOJ) to simultaneously provide the same information to the attorney general in compliance with the federal Hart-Scott-Rodino Antitrust Improvements Act (HSR Act) (see BACKGROUND).

It authorizes the attorney general to measure the market concentration due to mergers or acquisitions with the Herfindahl-Hirschman Index (HHI) (see BACKGROUND). If the HHI score raises market concentration concerns, the attorney general can request more information, which must remain confidential.

Failure to provide merger, acquisition, or other market concentration documents to the attorney general or failing to comply with his or her investigation could result in civil penalties or court orders for compliance.

The bill requires the state to cooperate in its investigation with the federal government and other states, including sharing information and evidence it obtains. It prescribes the acceptable methods of serving the legal documents.

It also sets conditions on gasoline sales during abnormal market disruptions created by weather conditions, emergencies, and other

adverse conditions.

*House Amendment "A" (1) changes the effective date from January 1, 2011 to July 1, 2010; (2) requires information filed with the attorney general regarding mergers, acquisitions, or other market concentration information to be the same as is required to comply with the HSR Act; (3) requires the attorney general to follow the federal government market concentration standard if it changes; (4) lowers the maximum civil penalty from \$5,000 to \$2,000; (5) changes the penalty for failing to provide information to the attorney general from a CUTPA violation to a civil fine of up to \$2,000; and (6) makes minor and technical changes.

EFFECTIVE DATE: July 1, 2010

HHI

Under the bill, if the HHI score is (1) between 1,000 and 1,800 and increases by more than 100 points or (2) equal to or greater than 1,800 and increases by more than 50 points, the attorney general may ask for more information.

If, in the future, the FTC or US DOJ uses different HHI scores to measure market concentration and its changes, the attorney general must use the new scores to determine whether to investigate.

ATTORNEY GENERAL INVESTIGATION

The attorney general may demand by subpoena, documentary material that includes written, recorded, or electronic information. The demand must state: (1) the nature of the investigation; (2) the types of documentary material to be reproduced, specific enough to allow the material to be accurately identified; and (3) a date that allows reasonable time to assemble materials for compliance. The attorney general cannot require any information that would be privileged or precluded from disclosure if demanded in a grand jury investigation.

The material submitted to the attorney general, whether by subpoena or voluntarily, must be held in the attorney general's custody and not be disclosed to the public. The material must be

returned when the investigation ends or on final determination of any action or proceeding.

Under the bill, during an antitrust investigation, the attorney general may subpoena individuals to testify in matters relevant to the scope of the alleged violations. Their appearance must be under oath, with a written transcript made. The transcript must be furnished to the person appearing, but not be publically disclosed. The attorney general may also issue written interrogatories with a reasonable time for response. These interrogatories must also be answered under oath and not made public.

If a person fails to provide merger, acquisition, or other market concentration documents or does not comply with the investigation, the attorney general may apply to Hartford Superior Court for an order (1) requiring compliance or (2) imposing a civil penalty of up to \$2,000. The court may order compliance upon notifying, and serving the order on, the person. It may impose the penalty after giving notice and conducting a hearing.

Subpoenas, notices of deposition, and written interrogatories may be served (1) on the person or at his usual residence or (2) by registered or certified mail, return receipt requested, with a copy addressed to the person to be served at his or her (a) principal place of business in Connecticut, (b) principal office, or (c) home.

ABNORMAL MARKET DISRUPTION

The bill requires the attorney general to post a notice on the office's website announcing the beginning and end of any abnormal market disruption or a reasonably anticipated imminent abnormal market disruption.

By law, 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.

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 when the price is grossly disparate to the price charged in the usual course of business immediately before the disruption or anticipated disruption, and the price increase is not attributable to the seller's costs related to sale of the product.

Under the bill, a seller may sell gasoline during an abnormal market disruption or when an abnormal market disruption is reasonably anticipated if his average margin during the longer of either (1) the abnormal market disruption or imminent disruption or (2) 30 days following the attorney general's notice date, is no greater than the seller's maximum margin during the 90 days prior to the abnormal disruption or imminent disruption.

The bill defines "margin" to mean, for each grade of product sold, the percentage calculated by the following formula: 100 multiplied by a fraction, the numerator of which is the difference between the sales price per gallon and the product price per gallon and the denominator of which is the product price per gallon. Product price per gallon includes all applicable taxes.

BACKGROUND

HHI

The HHI is a commonly accepted measure of market concentration. It takes into account the relative size and distribution of the firms in a market and approaches zero when a market consists of a large number of firms of relatively equal size. The HHI increases both as the number of firms in the market decreases and as the disparity in size between those firms increases, with a maximum score of 10,000, which is a pure monopoly (U.S. Department of Justice and the Federal Trade Commission, *Horizontal Merger Guidelines* § 1.151 (1997)).

Markets in which the HHI is between 1000 and 1800 points are considered moderately concentrated, and those in which the HHI is in excess of 1800 are considered concentrated. Transactions that increase the HHI by more than 100 points in moderately concentrated markets and 50 points in concentrated markets raise antitrust concerns.

HSR Act

The HSR Act provides that before certain mergers and acquisitions can close, parties must file forms with the FTC and the US DOJ (15 USC 18a). The filing requirement is triggered if the transaction value exceeds certain monetary thresholds, which are adjusted over time.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 19 Nay 0 (03/16/2010)

Judiciary Committee

Joint Favorable
Yea 40 Nay 0 (04/12/2010)