



Senate Bill No. 457

Public Act No. 12-4

AN ACT CONCERNING A CAP ON THE PETROLEUM PRODUCTS GROSS EARNINGS TAX AND PENALTIES FOR ABNORMAL PRICE INCREASES IN CERTAIN PETROLEUM PRODUCTS.

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

Section 1. Subsection (a) of section 12-587 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) (1) As used in this chapter: ~~[(1)]~~ (A) "Company" includes a corporation, partnership, limited partnership, limited liability company, limited liability partnership, association, individual or any fiduciary thereof; ~~[(2)]~~ (B) "quarterly period" means a period of three calendar months commencing on the first day of January, April, July or October and ending on the last day of March, June, September or December, respectively; ~~[(3)]~~ (C) except as provided in subdivision (2) of this subsection, "gross earnings" means all consideration received from the first sale within this state of a petroleum product; ~~[(4)]~~ (D) "petroleum products" means those products which contain or are made from petroleum or a petroleum derivative; ~~[(5)]~~ (E) "first sale of petroleum products within this state" means the initial sale of a petroleum product delivered to a location in this state; ~~[(6)]~~ (F) "export" or "exportation" means the conveyance of petroleum products from

Senate Bill No. 457

within this state to a location outside this state for the purpose of sale or use outside this state; and [(7)] (G) "sale for exportation" means a sale of petroleum products to a purchaser which itself exports such products.

(2) For purposes of this chapter, "gross earnings" means gross earnings as defined in subdivision (1) of this subsection, except, with respect to the first sale of gasoline or gasohol within this state, if the consideration received from such first sale reflects a price of gasoline or gasohol sold or used in this state in excess of three dollars per gallon, gross earnings from such first sale shall be deemed to be three dollars per gallon, and any consideration received that is derived from that portion of the price of such gasoline or gasohol in excess of three dollars per gallon shall be disregarded in the calculation of gross earnings. Notwithstanding the provisions of this chapter, the Commissioner of Revenue Services may suspend enforcement activities with respect to this subdivision until all policies and procedures necessary to implement the provision of this subdivision are in place, but in no event shall such suspension extend beyond April 15, 2012.

Sec. 2. (NEW) (*Effective from passage*) (a) Any company subject to the tax imposed by chapter 227 of the general statutes shall not include in any billing with respect to the first sale of petroleum products in this state any amount representing the petroleum products gross earnings tax that is in excess of the tax liability imposed by section 12-587 of the general statutes, as amended by this act.

(b) (1) In enforcing this section, the Commissioner of Consumer Protection, in said commissioner's sole discretion, may undertake investigations upon consideration of the information presented to the Department of Consumer Protection, including, but not limited to, the number of complaints, the geographic areas reporting possible violations, an increase or decrease over time of the number of

Senate Bill No. 457

complaints, the basis for each complaint, and the credibility of the evidence presented of possible violations.

(2) The commissioner may require that complaints under this section be reported on the department's web site, or in such other way as the commissioner may determine will best serve the interests of the public and the department.

(c) On and after April 15, 2012, any violation of this section shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b of the general statutes. Such violation shall be in lieu of, and not in addition to, any penalty imposed by chapter 227 of the general statutes for the action described in this section.

Sec. 3. Section 42-234 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) As used in this section:

(1) "Energy resource" shall include, but not be limited to, middle distillate, residual fuel oil, motor gasoline, gasohol, propane, aviation gasoline and aviation turbine fuel, natural gas, electricity, coal and coal products, wood fuels, number 2 heating oil used exclusively for heating purposes and any other resource yielding energy;

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

(3) "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;

Senate Bill No. 457

(4) "Margin" means, for each grade of product sold, the percentage calculated by the following formula: One hundred 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. For purposes of this subdivision, "product price per gallon" includes all applicable taxes;

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

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

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

(d) (1) The Attorney General shall post a notice on the home page of the Internet web site of the office of the Attorney General announcing the inception and end date of any abnormal market disruption or the reasonable anticipation of any imminent abnormal market disruption.

(2) (A) Notwithstanding the provisions of subdivision (1) of this

Senate Bill No. 457

subsection, on or after ninety-one days from the effective date of this section, an abnormal market disruption shall be deemed to occur whenever the wholesale price of motor gasoline or gasohol increases by an amount equal to or greater than fifteen per cent on any day over such price on any prior day, provided any such prior day is not more than ninety days prior to such increase, and such increase results in a wholesale price for motor gasoline or gasohol that is in excess of three dollars per gallon. The Commissioner of Energy and Environmental Protection shall notify the Attorney General and the Commissioner of Consumer Protection upon the occurrence of such increase for the purposes of subparagraphs (B) and (C) of this subdivision.

(B) At any time when an abnormal market disruption is deemed to occur and the Commissioner of Energy and Environment Protection has provided notice to the Attorney General, as described in subparagraph (A) of this subdivision, the Attorney General shall post a notice, in accordance with the provisions of subdivision (1) of this subsection, provided such abnormal market disruption shall have its inception date on the day after the price increase described in said subparagraph (A), and its end date shall be thirty days after the date of such inception date. Upon the notice of such abnormal market disruption, the Attorney General or the Commissioner of Consumer Protection may immediately take any actions authorized by this section or any other section of the general statutes.

(C) If, during an abnormal market disruption in existence pursuant to this subdivision, the Commissioner of Energy and Environmental Protection determines that the wholesale price of motor gasoline or gasohol has increased by an amount equal to or greater than fifteen per cent over such price on any day during the ninety-day period prior to the day of such increase, a subsequent abnormal market disruption shall be deemed to occur, said commissioner shall provide notice, as described in subparagraph (A) of this subdivision, a new thirty-day

Senate Bill No. 457

period shall be in effect, and the Attorney General and the Commissioner of Consumer Protection shall proceed as described in subparagraph (B) of this subdivision.

(D) For purposes of this subdivision, the Commissioner of Energy and Environmental Protection shall determine the wholesale price on a daily basis by using the calendar day average price for gasoline published by the Oil Price Information Service. To determine whether a fifteen per cent increase has occurred in motor gasoline or gasohol prices during the ninety-day period described in this subdivision, said commissioner shall compare the higher of such calendar day average price at either "Hartford/Rocky Hill" or "New Haven" to the lowest of such calendar day average price at either "Hartford/Rocky Hill" or "New Haven".

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

(f) In addition to any penalty imposed by chapter 735a or this chapter, and in accordance with the procedures described in chapter 735a, the Commissioner of Consumer Protection may impose a fine of not more than ten thousand dollars per violation on any large seller of motor gasoline or gasohol that violates the provisions of this section.

Senate Bill No. 457

For purposes of this subsection, "large seller" means a person engaged in the wholesale or retail sale, or both, of petroleum products in this state or in the wholesale sale of petroleum products for consumption in this state who is required to register with the Commissioner of Energy and Environmental Protection pursuant to section 16a-22d.

(g) (1) In enforcing this section, the Commissioner of Consumer Protection, in said commissioner's sole discretion, may undertake investigations upon consideration of the information presented to the Department of Consumer Protection, including, but not limited to, the number of complaints, the geographic areas reporting possible violations, an increase or decrease over time of the number of complaints, the basis for each complaint, and the credibility of the evidence presented of possible violations.

(2) The commissioner may require that complaints under this section be reported on the department's web site, or in such other way as the commissioner may determine will best serve the interests of the public and the department.

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

Sec. 4. (*Effective from passage*) The period from the effective date of this section to the date ninety calendar days after such effective date, inclusive, shall be deemed to be a period of abnormal market disruption, as defined in section 42-234 of the general statutes, as amended by this act, and the Attorney General shall post a notice in accordance with said section 42-234. All provisions of said section 42-234 shall apply during said period.

Approved April 3, 2012