



General Assembly

February Session, 2012

Bill No. 457

LCO No. 2896

*02896 _____ *

Referred to Committee on No Committee

Introduced by:

SEN. WILLIAMS, 29th Dist.

REP. DONOVAN, 84th Dist.

**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:

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2 repealed and the following is substituted in lieu thereof (*Effective from*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

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

14 made from petroleum or a petroleum derivative; [(5)] (E) "first sale of
15 petroleum products within this state" means the initial sale of a
16 petroleum product delivered to a location in this state; [(6)] (F) "export"
17 or "exportation" means the conveyance of petroleum products from
18 within this state to a location outside this state for the purpose of sale
19 or use outside this state; and [(7)] (G) "sale for exportation" means a
20 sale of petroleum products to a purchaser which itself exports such
21 products.

22 (2) For purposes of this chapter, "gross earnings" means gross
23 earnings as defined in subdivision (1) of this subsection, except, with
24 respect to the first sale of gasoline or gasohol within this state, if the
25 consideration received from such first sale reflects a price of gasoline
26 or gasohol sold or used in this state in excess of three dollars per
27 gallon, gross earnings from such first sale shall be deemed to be three
28 dollars per gallon, and any consideration received that is derived from
29 that portion of the price of such gasoline or gasohol in excess of three
30 dollars per gallon shall be disregarded in the calculation of gross
31 earnings. Notwithstanding the provisions of this chapter, the
32 Commissioner of Revenue Services may suspend enforcement
33 activities with respect to this subdivision until all policies and
34 procedures necessary to implement the provision of this subdivision
35 are in place, but in no event shall such suspension extend beyond April
36 15, 2012.

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

43 (b) (1) In enforcing this section, the Commissioner of Consumer
44 Protection, in said commissioner's sole discretion, may undertake
45 investigations upon consideration of the information presented to the

46 Department of Consumer Protection, including, but not limited to, the
47 number of complaints, the geographic areas reporting possible
48 violations, an increase or decrease over time of the number of
49 complaints, the basis for each complaint, and the credibility of the
50 evidence presented of possible violations.

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

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

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

62 (a) As used in this section:

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

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

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

76 (4) "Margin" means, for each grade of product sold, the percentage
77 calculated by the following formula: One hundred multiplied by a
78 fraction, the numerator of which is the difference between the sales
79 price per gallon and the product price per gallon and the denominator
80 of which is the product price per gallon. For purposes of this
81 subdivision, "product price per gallon" includes all applicable taxes;

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

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

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

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

104 (2) (A) Notwithstanding the provisions of subdivision (1) of this
105 subsection, on or after ninety-one days from the effective date of this
106 section, an abnormal market disruption shall be deemed to occur

107 whenever the wholesale price of motor gasoline or gasohol increases
108 by an amount equal to or greater than fifteen per cent on any day over
109 such price on any prior day, provided any such prior day is not more
110 than ninety days prior to such increase, and such increase results in a
111 wholesale price for motor gasoline or gasohol that is in excess of three
112 dollars per gallon. The Commissioner of Energy and Environmental
113 Protection shall notify the Attorney General and the Commissioner of
114 Consumer Protection upon the occurrence of such increase for the
115 purposes of subparagraphs (B) and (C) of this subdivision.

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

128 (C) If, during an abnormal market disruption in existence pursuant
129 to this subdivision, the Commissioner of Energy and Environmental
130 Protection determines that the wholesale price of motor gasoline or
131 gasohol has increased by an amount equal to or greater than fifteen per
132 cent over such price on any day during the ninety-day period prior to
133 the day of such increase, a subsequent abnormal market disruption
134 shall be deemed to occur, said commissioner shall provide notice, as
135 described in subparagraph (A) of this subdivision, a new thirty-day
136 period shall be in effect, and the Attorney General and the
137 Commissioner of Consumer Protection shall proceed as described in
138 subparagraph (B) of this subdivision.

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

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

162 (f) In addition to any penalty imposed by chapter 735a or this
163 chapter, and in accordance with the procedures described in chapter
164 735a, the Commissioner of Consumer Protection may impose a fine of
165 not more than ten thousand dollars per violation on any large seller of
166 motor gasoline or gasohol that violates the provisions of this section.
167 For purposes of this subsection, "large seller" means a person engaged
168 in the wholesale or retail sale, or both, of petroleum products in this
169 state or in the wholesale sale of petroleum products for consumption
170 in this state who is required to register with the Commissioner of
171 Energy and Environmental Protection pursuant to section 16a-22d.

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

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

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

188 Sec. 4. *(Effective from passage)* The period from the effective date of
 189 this section to the date ninety calendar days after such effective date,
 190 inclusive, shall be deemed to be a period of abnormal market
 191 disruption, as defined in section 42-234 of the general statutes, as
 192 amended by this act, and the Attorney General shall post a notice in
 193 accordance with said section 42-234. All provisions of said section 42-
 194 234 shall apply during said period.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	12-587(a)
Sec. 2	<i>from passage</i>	New section
Sec. 3	<i>from passage</i>	42-234
Sec. 4	<i>from passage</i>	New section