

**PA10-176**

**HB5220**

General Law	415-421, 500-504, 555-559, 575-579	22
House	1583-1669	87
Senate	4111, 4125-4127	4
		113

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**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2010**

**VOL. 53  
PART 13  
3842 - 4128**

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SENATE

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SENATOR LOONEY:

Yes, Mr. President, calendar page 10, Calendar 483,  
House Bill 5244, move to place on the consent calendar.

THE CHAIR:

Motion is to place this item on consent. Seeing no

Recess, sir.

That item is on consent without objection.

SENATOR LOONEY:

Yes, thank you, Mr. President.

Moving to calendar page 11, Calendar 484, House Bill  
5383, move to place item on the consent calendar.

THE CHAIR:

Motion on the floor to place this item on consent.

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Calendar page 11, Calendar 487, House Bill 5220,  
move to place the item on the consent calendar.

THE CHAIR:

Motion on the floor to place item on consent.

Seeing no objection, so ordered.

SENATOR LOONEY:

Yes, thank you, Mr. President.

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Calendar page 10, Calendar 461, House Bill 5207;  
Calendar 483, House Bill 5244.

Calendar 484, on page 11, House Bill 5383; Calendar  
487, House Bill 5220; Calendar 488, House Bill 5297;  
Calendar 490, 5425 -- House; Calendar 496, House Bill  
5497; Calendar 509, House Bill 5126.

Calendar page 14, Calendar 511, House Bill 5527;  
Calendar 514, House Bill 5426; Calendar 516, House Bill  
5393.

Calendar page 15, Calendar 520, House Bill 5336;  
Calendar 521, House Bill 5424; Calendar 523, House Bill  
5223; Calendar 525, House Bill 5255.

Calendar page 16, Calendar 531, House Bill 5004.

Calendar page 17, Calendar 533, House Bill 5436;  
Calendar 540, House Bill 5494; Calendar 543, House Bill  
5399.

Calendar page 18, Calendar 544, House Bill 5434;  
Calendar 547, House Bill 5196; Calendar 548, House Bill  
5533; Calendar 549, House Bill 5387; Calendar 550, House  
Bill 5471; Calendar 551, House Bill 5413; Calendar 552,  
House Bill 5163; Calendar 553, House Bill 5159.

Calendar page 19, Calendar 554, House Bill 5164.

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Calendar page 20, Calendar 556, House Bill 5498;  
Calendar 557, House Bill 5270; 559, House Bill 5407; 562,  
House Bill 5253; and House Bill -- Calendar 563, House  
Bill 5340; Calendar 567, House Bill 5371; and Calendar  
573, House Bill 5371.

Mr. President, I believe that completes the items

THE CHAIR:

Mr. Clerk, could you please give me on Calendar 567,  
do you have 5516, sir?

THE CLERK:

What -- what calendar?

THE CHAIR:

567 on page 22.

THE CLERK:

It's 5516.

THE CHAIR:

Yes, sir. Okay.

Machine's open.

THE CLERK:

An immediate roll call vote has been ordered in the  
Senate on the consent calendar. Will all Senators please  
return to the chamber. Immediate roll call has been ordered in the Senate on the  
consent calendar. Will all Senators please return to the chamber.

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THE CHAIR:

Have all Senators voted? Please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

Motion is on adoption of Consent  
Calendar Number 2.

Total number voting	35
Necessary for Adoption	18
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Yes, Mr. President.

Mr. President -- Mr. President, before moving to adjourn, I would like to ensure the entire chamber will wish Laura Stefon, Senator McDonald's aide, my former intern, a happy birthday.

And with that -- and with that, Mr. President, I would move the Senate stand adjourn

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On page 19, Calendar 385 -- oh, I'm sorry, that was page 18, Calendar 385, Substitute for Senate Bill Number 127, AN ACT CONCERNING THE ACCOUNTING SYSTEM FOR REDEEMED BEVERAGE CONTAINERS, favorable report of the Committee on Finance Revenue and Bonding.

SPEAKER DONOVAN:

Representative Olson.

REP. OLSON (46th):

Good afternoon, Mr. Speaker.

Mr. Speaker, I rise to move some items to today's consent calendar. They are Calendar Numbers 385, 388 and 389. And I move those to be added to our -- today's consent calendar. SB127 SB133  
SB137

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Without objection, so ordered.

Will the Clerk please call Calendar 95.

THE CLERK:

On page 28, Calendar 95, Substitute for House Bill Number 5220, AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL INDUSTRY, favorable report of the Committee on Judiciary.

SPEAKER DONOVAN:

The distinguished Chair of the General Law

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Committee, Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

Mr. Speaker, I move acceptance of the joint committee's favorable report and passage of the bill.

SPEAKER DONOVAN:

The question is on acceptance of the joint committee's favorable report and passage of the bill.

Will you remark?

REP. SHAPIRO (144th):

Yes. Thank you, Mr. Speaker.

Mr. Speaker, the bill does two things. First, the bill would provide an opportunity to the State of Connecticut regulators to receive the same information that federal regulators do upon a merger or acquisition of very large size in the motor fuel industry, and helping Connecticut enforce its laws in a more efficient and cost-effective manner.

Secondly, the bill deals with gouging during times of urgencies. It would provide consumers protection from getting gouged at the pumps during these abnormal market disruptions, but it would also provide businesses with the clarity to know when they are complying with the law as they have been seeking

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for a number of years.

The bill has received bipartisan support, support from the industry, gasoline stations, wholesalers, even big oil isn't grumbling too much.

And so, Mr. Speaker, the Clerk is in possession of an amendment, LCO 3865. I ask him to call it and I be permitted to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 3865, which will be designated House Amendment Schedule "A."

THE CLERK:

LCO Number 3865, House "A," offered, by Representatives Shapiro, Taborsak, Tong and Senator Gomes, et al.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to summarize the amendment. Is there objection? Hearing none, Representative Shapiro, you may proceed.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

Mr. Speaker, the amendment does several things. They are mostly technical in nature. It advances the effective date of the gouging provision to July 1st to be there in time for hurricane season. It clarifies

that the kinds of acquisitions we're talking about are only those major acquisitions in compliance with Hart-Scott-Rodino filings that was already the case in the bill, but we're clarifying it so everyone is perfectly clear about our intentions.

It also allows for changes in the formula by which we judge market concentration to mirror the federal standard in case it gets changed. We only want one standard out there. We're not trying to create more work for businesses or people. Whatever the federal government standard changes to, Connecticut would also change to automatically.

It amends the failure to provide documents, the penalty for failure to what it already is in our antitrust statute, which is \$2,000 and it removes a CUPA violation because the failure to provide documents is not an unfair trade practice. It is the failure to provide documents and we wanted to acknowledge that.

And finally, we clarify the definition in the anti-gouging provision. Of margin, just so everyone is clear, we're talking about cost and applicable taxes and not anything else loaded in. Because of that, Mr. Speaker, and these are largely clarifying

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and technical amendments, I urge adoption of this amendment.

SPEAKER DONOVAN:

The question is on adoption.

Would you remark further? Would you remark further on the amendment?

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

I do have questions and concerns, but I will save them to discuss on the bill as amended. Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Would you care to remark further on the amendment? Would you care to remark further on the amendment? If not, I'll try with your minds. All those in favor of the amendment, please signify by saying, aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Representative Shapiro.

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REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

Now to summarize the bill as amended for everyone. As I said before, the bill provides that any company who is conducting business in Connecticut in the motor fuel industry and engages in a large merger/acquisition and has to make a federal filing because of that, would have to just send a copy of that along to the State of Connecticut so that we could review it in accordance with Connecticut antitrust laws, as the federal government is doing with their's.

After getting the filing, the Attorney General's office would have the option of running it through an index, also used by the federal government, to judge market concentration. They wouldn't have to do this, but it would -- they would be permitted to.

And as we said in the amendment, if the market concentration level changes, if the formula changes pursuant to the federal government, it would change in Connecticut. The purpose of this is that no one in the state, not consumers, not gas stations, not suppliers and not big oil companies wants to see a monopoly takeover the business and send prices through

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the roof.

Everybody wants to see a level playing field. The industry is consolidating right now. You can see it on our highway stations. You can see it with the distributors. We know that it's changing and this will put a watchful set of eyes on it. The federal government can't always be there and there are limited resources. We may take greater interest in Connecticut in something that the federal government does not and therefore, the Attorney General would be able to look at this.

The office would keep the information private and confidential. It is sensitive by its very nature and therefore, we would not want it getting out into the public and it would be maintained confidential as such. And that's the first part of the bill.

In addition, just so we can mention, this does not expand our antitrust ability at all. It doesn't grant the AG new powers under the antitrust laws. It simply provides additional information.

Finally, the anti-gouging provision, which everyone has been looking for for several years, will protect consumers in times of trouble, emergencies and will provide clarity to the businesses. And I urge

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passage of the bill as amended, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Mr. Speaker, I understand and I appreciate that everyone wants to protect their constituents and all the residents in the state of Connecticut from potentially rising gasoline prices.

But I was surprised when I read in the file information on this bill that one of the reasons for the bill was listed as, in order to lower retail motor fuel prices.

I was somewhat confused when I read that because my understanding of this bill is that it addresses what would trigger a filing with the AG office. Could the chairman of General Law just confirm my understanding that this bill is not about lowering the retail price of gasoline? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

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And through you to the good Representative, and my ranking member, who has taken great time to become familiar with this bill. Yes, you are correct.

I believe the summary was a little overzealous in saying it addressed current prices. The bill is designed by its nature to address future prices and keep them from going up because someone would accrete too much power through a monopoly and it is unlikely to affect existing prices.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

I'm glad that we have established then that this bill does not affect the retail price of gasoline. I think there was some confusion about that.

This bill is really about providing information, in my opinion, to the Attorney General's office. And obviously if we're doing this bill there must be something that has happened in the past five or ten years, or in recent history that would lead one to believe that we needed these increased disclosures.

Through you, Mr. Speaker, has anything taken

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place that has triggered the need for this bill?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you to Representative Bacchiochi, yes. The experience of Connecticut's oil industry and gasoline industry has been one of great change over the past few years.

There has been consolidation. The old bosses have been moving out. The major oil companies, to some extent, have been divesting themselves. But we've been seeing the growth of distributors as extremely large and powerful players and becoming the new boss to the extent they're grabbing great market share.

And so, A, we want to keep a very watchful eye on that. And B, there's still the ability of a number of oil companies, major ones, and some of them foreign, like a Lukoil, to come in and have major acquisitions and affect market share and pricing right away if they spend enough money as they have done in other markets. And we wanted to be very watchful of that.

Through you, Mr. Speaker.

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SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Has a merger or an acquisition actually taken place that has violated antitrust laws here in Connecticut? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, I'm not aware of one currently under investigation and that's precisely one of the reasons you want to provide information out there to the Attorney General; additional information that is cheaper so that they could test this in the market.

They haven't been able to see this in a cost-effective way and we'd like to know ahead of time if anyone is approaching that threshold.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you. Thank you, Mr. Speaker.

So just to be clear, no mergers or acquisitions

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that you are aware of have taken place in the last five or ten years, or in our recent history that have violated the antitrust laws regarding the gasoline industry in Connecticut. I guess we would know that because the Attorney General must have some powers now to look into this matter.

Through you, Mr. Speaker, what does the Attorney General do now if he wants to determine if antitrust violations are taking place?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, the Speaker does, as you have -- as the good Representative has said, have antitrust powers today and they have been used in a variety of other industries, although not the motor fuel industry, yet.

They've been used in the insurance industry where there's been bid rigging. There's -- they've been used in the industry where you're looking at ratings agencies who have charged insurance, driven up bonds costs for municipalities and cost taxpayers a number of dollars.

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So it has happened in other areas. It has not yet happened in this, but what they -- the powers they do have are to investigate and they have to send out subpoenas, but it's a much longer and much more expensive process. It often causes them to hire outside counsel even just to know the extent of a problem, or if there is a problem.

Whereas under this bill, they would have easy access to important information that would come much cheaper for the Connecticut taxpayer.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

Through you, Mr. Speaker, I think there was a study commissioned by the attorney general offices from Mass, Maine, New Hampshire, New York and Vermont in 2007. Is the good chairman familiar at all with this study, through you, Mr. Speaker, regarding -- it is regarding the concentration of market share in the fuel industry in New England?

SPEAKER DONOVAN:

Representative Shapiro.

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REP. SHAPIRO (144th):

Through you, Mr. Speaker, I have seen the report tangentially. I would not call myself an expert on the report.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

That report, which was commissioned by the attorney general's offices in the surrounding states outside of Connecticut in 2007, determined that the soaring gas prices at that time were resulting from market conditions and not from any antitrust violations.

And since the good chairman from General Law has also stated that there have been no known antitrust violations in the gasoline industry, I'm wondering if we're not a bit of a problem looking for a solution. Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

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The study which did come out in 2007 samples data from years prior to that. And we were in a very different situation in the marketplace in 2004/2005 than we are today. These things can change quite rapidly.

There are people in the industry who feel that the problem is on the rise, which is why you saw both wholesalers and gas station retail stations testify in favor of this because they feel that something is brewing.

So while I understand there haven't been existing violations in this area, I don't think we should wait until there are to get the best tools to deal with them. People who are, you know, very knowledgeable in this industry in this state feel that something is coming and we should be taking a look at it.

Through you, Mr. Speaker..

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Through you, Mr. Speaker, does the State of Connecticut require by statute currently that any other industry provide their DOJ or FTC filings to the AG's office?

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SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, I'm not aware of any other industries for which we do this.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

And through you, Mr. Speaker, does any other state in the country require that the filings for the gasoline industry that are being filed with the federal government also be filed with their state's attorney general's office?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, to be honest, I'm not certain. I wouldn't be surprised if, after we did this, others asked for that if they haven't already since it's a simple, cost-efficient way to do it and all members of the industry are supportive of it. But

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I couldn't say whether others are doing it or not.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

My research has indicated that no other state in the entire country, not one requires that the gasoline industry file with their attorney general offices after they have been triggered to file with the federal government.

A few states do require filings within the insurance markets. I think there's about five, but again, those five states and all the other states in the United States do not do what we're attempting to do here today.

And I'm wondering, is there a reason why Connecticut should be the first state in the country to require this information?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

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And through you, this is my opinion, but I feel it's better to lead in this area than to follow, to have knowledge of the industry before problems arise and to be at the head of the curve with this.

I would hate for us to wake up one morning, see a monopoly exists that we could have prevented or could have put eyes on ahead of time and feel that we were behind the curve.

We have always been a leader in consumer protection issues, that Connecticut is very proud of that heritage and I am proud of that as a member of the General Law Committee. And this is another good example of where Connecticut is taking the bull by the horns.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

So, you know, just to summarize a bit, we've had no known cases in the gasoline interest rate of antitrust violations in the past five, ten years or in any recent history. If we do pass this, Connecticut is going to be the very first state in the country to

require filings of this nature be made with the Attorney General's office.

We've already substantiated that the Attorney General's office already has all of the powers necessary to obtain this information and does so on a regular basis without the passage of this bill.

In fact, I was reading in the local newspaper over the weekend that the Attorney General was working with his federal counterparts with concerns he had here in Connecticut about the two largest retail mall operators.

And I thought, well, he's doing it on many other industries, with retail, real estate and with insurance and I'm not sure why we are singling out the gasoline industry in this bill.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, and I believe we touched lightly on this area before, but this is an area we know to be in flux. We know that it's an area we may have to look at in the future, that the federal government may

or may not do it because of their priorities and just because we're teaming with them in one area doesn't mean they'll share our priority in another.

Connecticut residents take their gas prices very seriously. They're some of the highest in the nation and that leads us to be at the forefront of looking into these kinds of issues.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Because this antitrust stuff is so riveting, I thought we could dig into that just a little bit. Could you explain to the Chamber what would trigger a company to have to provide the filings to the AG office under this bill?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Yes. Thank you, Mr. Speaker and I'm sure everyone will be wrapped with attention as I describe the Hart-Scott-Rodino Act, but as -- the bill as

amended to clarify that it only pertains to mergers or acquisitions of a certain size that would be -- that would require a filing under the federal Hart-Scott-Rodino Act, which means when it was started it was mergers of a size with one player of a hundred million dollars or more in sales or assets. Now I believe it's 126 million.

It would also have to affect commerce, which means you would really have to change the game for either consumers or other businesses. It wouldn't be one mom and pop buying another.

I believe there's one more standard, but the gist of it is that the filing only takes place at the federal level for the largest of mergers that could really affect commerce and that is the way it would be applied in the state.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

So this, when we're talking about the motor fuel industry, in line 2 of the bill, it refers to the motor fuel industry, would we be looking at mergers

and acquisitions strictly for a segment of the motor fuel industry or the distributors, the suppliers, all segments of the industry?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, it would be through all segments of the industry. It's anyone in there because they can all affect prices.

The wholesalers could have a monopoly on business. There could be retail stations if they were all owned by one person; could be a monopoly. And then also the manufacturers, if it was all by one company, could show an excessively high market concentration. So it could happen throughout the industry under this bill, as it could today under existing Connecticut law.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Through you, Mr. Speaker, I'm a little bit unsure, believe it or not, when it comes to mergers

and acquisitions of this size. It seems from my readings that the DOJ and the FTC look at market concentration by segment and what the bill is proposing is to look at market concentration by combining a variety of segments within the motor fuel industry. Would my understanding be correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, I couldn't describe the FTC or DOJ process, but in Connecticut, this bill would allow, I believe, either way to look at it.

You could look at it individually through a market segment or you could look at it's affecting the industry as a whole, but typically, the acquisitions would occur within one of the segments. You would typically have a retailer buy another retailer, but it is possible to have a wholesaler who also has retail stations buying more retail stations and one would want to look at that under this analysis.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

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REP. BACCHIOCHI (52nd):

Thank you.

If we go back and look at how we define antitrust violation, I read the National Association of Attorney General's Horizontal Merger Guidelines using the HHI as the primary tool for the attorney generals to determine whether horizontal mergers would adversely affect competition.

But no other state applies the HHI by statute to the gasoline industry. It's the Attorney General's Association that leads the way for Attorney General's to use the HHI, not by state statute.

So to clarify, I believe we're going to be the first state again, in the country, not only to require these types of filings with the attorney generals, but also to mandate by state statute that the HHI be used to determine market concentration. Would you say that understanding is correct?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, it seems partially correct, in that we are not requiring the Attorney

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General's office to actually make any HHI analysis here. It is permissive and it permits the Attorney General to do it, but it's within the Attorney General's discretion.

He may see that the merger has taken place and say, you know what? We don't think there's a problem there. We're not going to perform the analysis under HHI or anything else.

And so that part still remains within the Attorney General's discretion. However, if he is going to use the filing to address market concentration, then yes, he would be required to use the HHI index and we did that on purpose because we wanted the state standard to match federal standards.

So we were all talking about the same thing so we're not unduly straining business with different standards. And our Attorney General was quite comfortable with this and has signed off on that provision.

So through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

The Department of Justice and the Federal Trade Commission lay out a process in how the filings that are currently made with the federal government are currently shared with the Attorney General's office. It's called the Protocol for Coordination and Merger Investigations Between the Federal Enforcement Agencies and the State Attorneys General.

So the point I'm trying to make is there's a very clear written process that the federal government currently has with all of the other states in the country. And I feel somewhat concerned that we're creating a process that will separate us from the other states. Do you share any of these concerns?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, not with respect to that, because under the existing statute we don't change the protocols of how they would share information. The Attorney General would still share information with his federal counterparts in the same way as they do today.

This just opens an avenue for the Attorney

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General to get information of his own that probably the federal government already has if they're pursuing this. And if they're not pursuing this, then the federal government could ask for the information that we have received, but it would all be disseminated under existing statute and through the protocols.

So I don't share the concern that we would be singling Connecticut out. I believe we would be operating under the same manner.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

And that's somewhat interesting to me, what the good chairman just said. That we are going to be basically doing the exact same thing under this bill that we have the power to do right now, where the Attorney General can currently access all of this information without the passage of this bill.

It sort of wraps me back to my -- one of my very first questions of the day which was, why do we really need to do this for the Attorney General's office when he already has all of the powers to access all of this

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information?

Through you, Mr. Speaker, is there a fiscal note on the bill is amended?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, yes. There is and it states that it has no fiscal impact.

Through you.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

I was amazed to find out that the companies that are filing the DOJ and the FTC filings, that we are going to be requiring them to file with the Attorney General's office, are paying a very substantial fee to make those filings to the federal government.

Through you, Mr. Speaker, could the chairman of General Law outline, if he could, the amount of filing fees that these merging companies pay to the federal government?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, if memory serves, the fees that the federal government charges them depend upon the size of the merger and the complexity. And they can range anywhere from the tens of thousands of dollars up to 300 or more thousand dollars for the largest mergers or acquisitions. If Microsoft was going to acquire Oracle, that would cost them a chunk of change.

But we are not making any such charges or filing fees in the State of Connecticut. All we are asking them to do is if they are currently filing with the federal government, send us a copy. We're not charging the filing fees that the federal government is. We're not trying to take anything out of business. We're simply trying to get information.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

I find it somewhat odd that if the federal government can charge between \$45,000 and \$300,000 to

accept a filing from these merging companies in Connecticut, that our attorney -- our policy is going to be that they file it for free.

Given the fiscal climate that we're in, if this is such an important package of information for the Attorney General to have, and if the Attorney General has already stated in front of our committee regarding other bills that his staff is fully occupied; it cannot take on any new business without a fiscal note, without a fiscal impact to that office, why are we accepting monumental applications for free?

Through you, Mrs. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, and I'm going to assume I didn't hear a proposed amendment to charge fees from Representative Bacchiochi.

But for the simple reason they are not filing with us. They are mandated to file with the federal government under the Hart-Scott-Rodino Act. They are simply sending us a copy of the information and we are not obligated to handle it in the same way the federal government is where there is a federal stay of 30 days

on the merger acquisition while the government investigates this.

Our Attorney General simply gets the copy and may or may not look at it. There is no stay available and so this is not an expensive proposition for us to look at that information.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you.

Mr. Speaker, I did not understand that there was a difference between what we're doing here, which I don't know what you're calling it, if it's not a filing, and what they do with the federal government, which I guess is a filing.

So what is it called under this bill when we just ask for information? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, I believe the exact language just requires them to send a copy. In line 6, it says, shall simultaneously file a copy of the

same information with the Attorney General of this State. And by that, we mean, send us a copy as opposed to the federal formal Hart-Scott-Rodino filing, which brings with it all of that other baggage.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Mr. Speaker, how will the companies that are intending to enter into the merger and acquisition know that the copy that they have sent to the Attorney General's office has been accepted or received? Is there some requirement that it be hand delivered or sent certified mail?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, we don't have a return-receipt-requested policy or anything like that in this bill. There are a number of places where information in our statutes is required to give where

you don't necessarily receive a receipt.

If they would like one they can certainly use that same process and someone would stamp it at the office. And I'm sure the Attorney General's office, if they knew about a merger or acquisition and they did not receive a copy, would be able to send a letter to whatever company and request it. So I believe this information would be conveyed and there would be certainty as to whether or not the AG's office had it.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

I understand that when the filings are made with the DOJ and the FTC, that it triggers some type of statutory requirement that the companies can't actually perform the merger for a period of 30 days while the federal government looks over the numbers.

But when the Attorney General's office gets a copy of this information, there's nothing in this bill that says they even have to open the envelope or look at it. So what if they don't look at it for 45 days and then they decide that maybe there's some antitrust questions, but in the meantime the 30 day period has

already gone by and the companies have performed the merger or the acquisition. What recourse would the AG's office have at that time?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, the AG's office would have the same abilities today if -- and we pass this bill, as it does previously. Nothing changes with respect to that. And the federal 30-day period goes by now often without the Attorney General's office acting until later.

There are a variety of remedies and it depends upon the nature of the violation. In some instances there are fines. In some instances there are periods where the Attorney General's office will force them to cease a particular practice as they did with the purchasing of insurance on the municipal bonds.

And in a case where it's a merger or acquisition, there is the possible for a divestiture, a required divestiture that could happen in either the state or federal government's antitrust measures.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

I believe that this first part -- I don't know if it's Section 1, but the AG piece with the antitrust is a very complicated idea. It's a new idea. It's never been tested in any state in the country. It's being done at a time when many people may share my concerns about the Attorney General's office.

We have before us a bill that's going to change somewhat the antitrust disclosures at a time when Connecticut has had no known antitrust violations within this industry. We're going to pass a bill making Connecticut the first state in the country to change this type of antitrust disclosure.

We're doing something that's fairly repetitive because the Attorney General currently has all of the powers necessary to access all of the information that he or she could want or need.

We're doing this when the federal government has fees that exceed 45,000, exceed 50,000, a hundred thousand, 200,000, 300,000. We're not collecting a

fee. We're just saying, give us a copy. We might look at it. We might not look at it. We might apply the HHI to it to determine if market concentration is being saturated. We might not apply the HHI to the information that's being sent to us. We really don't know because the bill doesn't specifically state whether the Attorney General office even has to look at it.

I'm not comfortable with the first section of this bill, Mr. Speaker. But it leaves me somewhat of a dilemma because as life would have it here in the General Assembly, I like the second part of the bill.

Through you, Mr. Speaker, I'd like to talk about a little bit about the price-gouging section of the bill. In line 125, it talks about, unconscionably -- excuse me, excessive price. How are we going to define that for the consumer?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, the unconscionably excessive price is the current standard, which has proven

difficult to have a uniform standard on for businesses to feel comfortable that they know when they are gouging, when their price is unconscionably excessive. And that was the genesis of this anti-gouging bill.

We want to make sure consumers are protected and we want to make sure that the businesses know how to comply with the law, which is why we drafted the safe harbor provision, which says, if there is an abnormal market disruption and you maintain the profit margin that you had in the previous 90 days during the abnormal market disruption, then we know you're not gouging.

Yes, your price may go up, because if ten oil rigs go down, the price the gas station gets charged for gas may go up, but as long as your margin is the same, you're not taking it out of the hide of the Connecticut consumer. And we know that if you are doing that, then you are absolutely not charging an unconscionably excessive price.

If you do something other than that, you may be, you may not be. You're under the existing rules with the Attorney General and you will find that out through litigation probably, unfortunately, which is why we crafted the safe harbor.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Bacchiochi.

REP. BACCHIOCHI (52nd):

Thank you, Mr. Speaker.

Mr. Speaker, I want to thank the chairman of the General Law Committee. I know he's worked very hard on both Sections, the section that bothers me and this section that I like.

Even as I've been asking all of these questions about the first section, I've been somewhat unsure. I did vote in favor of the bill in committee. The good chairman did tell me it would be a work in progress and I was happy to let that go forward so that I would have an opportunity to look at it further.

But after really looking at this bill further I think that I'm going to have to take a pass on it. I can't support providing all of this information to the Attorney General's office when he currently can get all of the information himself.

It's a little bit of a duplicated process. I don't want to see Connecticut get inside the antitrust laws and see them being changed, so that we're the only state in the country to do what's being proposed.

But I do thank the chairman of general law for his efforts.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Larry Miller.

REP. MILLER (122nd):

Thank you, Mr. Speaker.

I rise in opposition to the bill. This is exactly why Connecticut is ranked 48th in the nation as far as the least business-friendly state in the country. Maybe this will get us down to 49th, we can get closer to the bottom.

But this is not the right thing to be doing to the state of Connecticut when we're in such fiscal -- we have such fiscal problems that we can't get out of them. This is not going to help.

When I go to Pennsylvania to see my daughter and I get gasoline on the Jersey Turnpike or the -- well, Jersey Turnpike. And the minute I come across to Connecticut on the Merritt Parkway, the first gas station is at least 30 to 40 cents a gallon more expensive. And we can attribute some of that to the high taxes we have. We're rated number four in the

nation as far as having the highest gasoline taxes in the country.

If we reduce our taxes -- you want to be competitive? Reduce taxes on both diesel and gasoline. Unfortunately, I don't think that will ever happen.

I have some questions, Mr. Speaker, through you.

SPEAKER DONOVAN:

Please proceed, sir.

REP. MILLER (122nd):

The oil industry has changed dramatically over the last 25 years. Normally, it would be the big major oil companies: Mobil, Shell, Texaco, Exxon. These people are pretty much leaving the industry. So now, what we're dealing with is the likes of Lukoil. They're in Jersey, Pennsylvania, Maryland; all the Getty stations were purchased by the Russians.

Now is the Attorney General going to request that the Russian government, or the Russian conglomerate provide the information about their products to the state of Connecticut? And if so, how would he force them to do that?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, the bill requires that any company that triggers the federal FTC filing file certain information with the federal government and it would provide us a copy in the State of Connecticut. Whether it's Lukoil, Getty or anyone.

And in order to operate and do business in the United States of America, many oil companies do that, including BP, which is not an American company, or Royal Dutch Shell.

So this is currently going on with the federal government. We're simply asking them to send us a copy of this. So yes, Lukoil would have to send us a copy of their federal filing, which they currently would have to file if they had merger of this size.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Miller.

REP. MILLER (122nd):

And another company that's a big player in, especially the New England area, is Irving oil or Irving gas. I'm not sure what ago by, but they're out of Canada. They're slowly taking over stations. I

guess, some of them are Mobile stations, they're taking over, because Mobile now is getting out of the gasoline station business, the retail gasoline end of it.

So they would also be subject to this legislation.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, yes. And precisely because some of these large international conglomerates do have the ability to come back in. That is why a lot of Connecticut business supports this, our local gas stations, our local wholesalers.

Unlike some of the characterizations earlier, this is not one of those antibusiness bills. There are no fees attached, as we said. This is not about taxes. This is about providing a level playing field that many of Connecticut's business want and that's why they testified in support of this bill.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Miller.

REP. MILLER (122nd):

Thank you.

And through you, Mr. Speaker, what we have also taking over gas station operations are the likes of companies like Home Depot and Sears, and others who may have a different operation, but if they file on the federal level, they also file on the state level. Is that correct?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, yes. If their assets were of that size where they're making the federal filing, they would also send us the copy.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Miller.

REP. MILLER (122nd):

And other people who are now getting into the gasoline business are financial institutions; Citicorp out of New York. A number of years now, they've been renting tankers filled with gasoline and they might rent them for maybe a year before they decide that they can bring them over to this country and sell the product. I'm not sure how that would apply to this

legislation.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you.

And through you, Mr. Speaker, that it would be my understanding that companies like Citigroup and Morgan Stanley, who also plays a lot in the trading of these commodities, really wouldn't be affected by this because they're trading commodities as opposed to acquiring or merging businesses. And they would not currently come with their business' practices under the Hart-Scott-Rodino filings. So that really wouldn't be applicable in this situation.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Miller.

REP. MILLER (122nd):

And lastly, through you, Mr. Speaker, there's been a lot of activity in the futures market. The federal government now is initiating legislation to control the futures trading.

Again, I have often spoken on the floor about the

three markets: Dubai, London and the Mercantile exchange in New York. Some of these companies are using the ICI, the London exchange, to bring product over here and bypassing sometimes federal regulations. How do we control that kind of activity when they come in with large amounts of gasoline or diesel product, and come in with prices that are out of this world in a market that's very tight and the demand is such that everybody wants to buy?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, I commend the good Representative on his knowledge in this area and his foresight in talking about it. I would have to admit that that kind of issue is above my pay grade. That may be something that the President, his cabinet, the commerce and energy secretaries can deal with in a way better than we could.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Miller.

REP. MILLER (122nd):

That's all the questions that I had, but again, this is going to not sit well in other parts of the country with people who are looking to sell product throughout the New England region, and they look at Connecticut with the overregulation of various industries.

I do not plan to vote for this and hope that others in the Chamber also do not vote for this.

Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

I rise to pose a few questions to the proponent of the bill as amended.

SPEAKER DONOVAN:

Please proceed, sir.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

Mr. Speaker, through you, just one of the questions that I have is, what expertise with the Attorney General's office have that the Department of Justice or the Federal Trade Commission doesn't have

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that would enable him to do a better job in enforcing the provisions of this bill than the federal government has already?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you to the good Representative Hamzy, the question really isn't so much would they do a better job, but it's a question of priorities. The federal government may or may not choose to enforce any particular action.

They may see something that raises their eyebrow here in Connecticut, but they're really more focused, not on the motor fuel industry in Connecticut, but on the electricity industry in Nebraska. And because they have limited resources they may choose to enforce that and Connecticut currently only has a very expensive way to enforce it on its own if we determine that we believe it's a real problem for us here. And this provides a more efficient way to do it. Not that our expertise supersedes their's, but it may just be a matter of priorities.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

And through you, does the AG's office have people in house that would be able to conduct these investigations and possibly pursue an antitrust action?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, yes. The Attorney General's office does have experienced antitrust lawyers in house, although part of the necessity of this bill is that you have to go through so much documentation requests at the outset that they may have to call in outside counsel which gets expensive to at least get the ball rolling.

Whereas here, if they're able to get information in a more efficient manner, they may be able to do it more in house and keep it cheaper. But the answer to your first question of, do they have the expertise?

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Yes, they do.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

And through you, do the filings that are required by the Department of Justice and the Federal Trade Commission, are those available to the Attorney General's office upon request?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, they may or may not be available to the Attorney General's request. It depends upon what the FTC or the DOJ says.

And the initial filing is very simple. It's a description of the transaction and the parties thereto. It's the subsequent decision to make an analysis of how this affects the market concentration that is slightly more important, but also the notice provided by making the filing or receiving the copy is pretty important because we don't necessarily see

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every merger or acquisition that's out there in Connecticut. They can't be aware of everything and they can't always know to request it in the first place.

Getting the copy may sometimes show them, hey, this is afoot, and make them aware of it as a matter of first impression.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

And through you, I'm trying to envision how this process would work. The trigger is a filing that a person conducting business in the motor fuel industry makes with regard to a merger or acquisition -- and then there's a catchall phrase, I guess, any other information regarding market concentration is made with the FTC and the Department of Justice.

Simultaneously, that information is provided to the Attorney General's office. The Attorney General's office conducts a study to measure market concentration. And then what happens next? When that study of market concentration is made by the AG's

office, what would be the next step?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, it could be a number of things. And first, just to be perfectly clear, the Attorney General wouldn't have to conduct the market concentration study. It is in his discretion whether he would or not, but assuming he did, he would conduct the study, put the numbers through the formula and it depends on where it came.

If the market -- if you put the numbers through the formula and it showed that the market was very competitive, there were a lot of players there, this acquisition really doesn't affect commerce, then nothing would happen. The Attorney General's office would say, it's fine. We have a healthy, competitive market here.

If it were up a notch and it were in a highly concentrated market, but it really didn't move the numbers that much and didn't change it, then the Attorney General might not request additional

information.

If it moves the numbers a bunch in a market that is already highly concentrated and you're on the way moving towards a monopoly, that's the point at which I would imagine the Attorney General's office would request more information to get a better understanding of just how much marketshare they have, just how much sway they have over other businesses and how this would affect prices to consumers, which is ultimately what we're most concerned with.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

But in order to make any of these conclusions or determinants, the Attorney General's office would have to conduct that -- excuse me.

The market concentration -- but make a determination of what the change in market concentration is using that index that's cited in this proposed bill. Is that accurate?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, the answer to Representative Hamzy is yes.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

And through you, Mr. Speaker, how is the market defined? Is it by town? Is it by county? Through you, Mr. Speaker, is that in all -- is that term already defined or is that in current statute?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, the Representative asked a good question. The market is often an area where the two sides have some dispute. Whether the market is just Connecticut. Is it a regional market? Is it a national market?

And that is currently determined by the FTC and DOJ in their analysis and would be by the Connecticut Attorney General and his -- I couldn't speak to what their determination would be, but market is defined

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differently by different people. This statute doesn't change that.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

And the reason why I asked that question is because the Attorney General conducts this study of a change in market concentration or a measure of market concentration.

And for what I understand in the last answer, the determining factor of what a market is, is left to the opinion of the Attorney General. Through you, Mr. Speaker, is that accurate?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, the definition of market is currently left to the regulators in this state as it is at the federal level, but if suits are brought then disputes are had over that and it's a matter that the courts decide.

This bill would not change that at all, but yes,

the way it would work in practice is that the Attorney General would set the formula, include what market he believes is relevant, which my guess would be, the market is Connecticut.

By through you, Mr. Speaker, that -- that's the answer and that this bill would not change that.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

And I just want pose a couple of questions with regard to Section 2. I understand that most of the language that is in Section 2 is current law. And I was trying to read through the bill to understand how that is -- how price gouging is determined and how it is enforced.

Through you, Mr. Speaker, how -- what is the current law and how is price gouging enforced?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

And through you, currently price gouging is

enforced by this definition that you see before you and sellers are not allowed to charge prices that are unconscionably excessive.

The way that is enforced is unfortunately, after the fact that prices are charged. The gas stations are left to determine what they think is a fair price, given the abnormal market disruption. If the Attorney General's office gets reports in from consumers who feel that they were gouged, they investigate.

They go back to the businesses and try to request information and often settlements are reached. The Attorney General saying, I feel that you gouged. The business saying, you know, I don't really think I have, but maybe we need to settle this.

And it has been so unclear that both sides, quite frankly, have been looking for clarification and a way to promote this better going forward, and to have a standard under which businesses can comply and the consumers are protected. Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

And through you, Mr. Speaker, I see that the new language, I assume, tries to clarify what price

gouging is. And in lines 113 through 170 there is a definition of margin that is proposed.

Through you, Mr. Speaker, how is that definition arrived at?

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Mr. Speaker.

Through you, that is a simple definition of margin discussed in the business, which is saying it is the price that gas stations purchased it at, or were the price that they sold it at, including any taxes.

We're really looking at just getting the cost of gas and not having anyone load in other factors like transportation or credit card charges, or anything like that. We wanted to get at their basic cost of the goods so that we could know when they were charging the customer, how much profit they were making on those costs of goods. And that was arrived in consultation with the Attorney General's office and with the industry that came up with this accepted definition.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

So is the change that's proposed in this designed to allow retailers to realize the same amount of profit, regardless of what the underlying cost is? Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you.

Through you, Mr. Speaker, it's designed to say on day one of the abnormal market disruption businesses will look back at the previous 90 days and see what their margin was. And if they used a number that was within that 90-day range going forward during the emergency or market disruption, that we would know that that's not gouging, because that was their normal price during a pretty decent chunk of the year prior to that.

So we would know they're not just tacking on extra profit during an emergency when no one will notice because the prices are already so high. But it provides them the ability to still get a profit and

have not -- have people not think that they are gouging because the prices are going high because their costs will end up, too.

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Mr. Speaker.

And it's my understanding that a lot of these retailers purchase their product, pay for it and then resell it. So under this definition, would this allow them to make a purchase of a product that I assume has increased in price and allow them to continue to operate their business?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, yes. That is what it's designed to do.

SPEAKER DONOVAN:

Representative Hamzy.

REP. HAMZY (78th):

But if the margin that they're allowed to realize

based on the 90-day margin previous to the disruption is limited, how would that allow them to purchase future product?

Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Mr. Speaker, it would allow them -- I'm not sure I exactly understand the question. I'm going to try to get to it. If I don't hit it on the head, if the good Representative could please follow up.

But it's designed to allow them to conduct business going forward as they did in the past. So that they won't be charged with gouging going forward when the prices are higher provided they've got an equal margin. Through you, Mr. Speaker -- Madam Speaker.

(Deputy Speaker Kirkley-Bey in the Chair.)

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Madam Speaker.

I guess it's probably easier to just try to lay out in a hypothetical. If in the 90 days previous, the price that I as a retailer paid for gas was, let's say, \$2 a gallon and my margin was 3 cents, okay?

REP. SHAPIRO (144th):

Could you use a percentage because that might --

REP. HAMZY (78th):

Oh, okay.

REP. SHAPIRO (144th):

-- it's if the margin is designed -- through you, Madam Speaker, if I may, good Representative.

DEPUTY SPEAKER KIRKLEY-BEY:

Please proceed.

REP. SHAPIRO (144th):

Thank you, madam Representative.

It's designed to be done as a percentage, such that using your example, if in the 90 days prior, the station were paying \$2 and getting a 10 percent margin of 20 cents, that in the emergency if all of a sudden it cost \$3 to purchase his gas before he sold it to the consumers, he could still have that same 10 percent margin. It would now be 30 cents, not 20 cents, but it's the same margin.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hamzy.

REP. HAMZY (78th):

Thank you.

Thank you for the explanation. That makes a little bit more sense.

And in just, finally -- well, not -- just a couple of other questions. In the amendment that was adopted, lines 95 through 97 were struck. And as I was reading the file copy and comparing the amendment, it seems to me that the penalties for not making these filings was what was eliminated from the bill through the amendment.

Through you, Madam Speaker, is that accurate?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Madam Speaker.

And through you, that's partially accurate. The amendment did two things. The first one was it harmonized the penalty, which in the original bill, had been \$5,000 for failure to file and it reduced it to \$2,000, which is consistent with the State's other

antitrust statutes for failure to file.

So we reduced it to have standardization and then it did remove the CUPA violation for penalty for failure to file because we believed failing to file is not an unfair trade practice and that really just wasn't appropriate in this instance.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hamzy.

REP. HAMZY (78th):

I'm sorry. I did have one other question with regard to the-- to Section 2.

In -- starting in line 136, the Attorney General is required to post a notice announcing the beginning of the end dates of the abnormal market disruption.

Through you, Madam Speaker, why was it just the Attorney General's office and not, say, the consumer protection office?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, the reason it's the Attorney General's office is because they are the ones currently making the determination of when an abnormal

market disruption is occurring because they're the ones deciding when the unconscionably excessive price is happening during such abnormal market -- disruption is occurring. So it felt consistent to have them continue to do that.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hamzy.

REP. HAMZY (78th):

Thank you, Madam Speaker.

And I'd like to thank the House chair of General Law for its answers to these questions.

Madam Speaker, in all honesty, I think I and a lot of other people in this Chamber have a lot of concerns with the way -- the litigious manner in which the Attorney General has conducted business in this state, which I think has resulted in our State having a reputation of not being very employer friendly, if you will.

And it just seems to me that the changes that are proposed by this bill would give additional authority and additional opportunities for the Attorney General's office to bring more investigations and more lawsuits against businesses that are not contemplated

in any other state in this country.

As was elicited in questions and answers that were posed by the House ranking member, this is a change that would be made in Connecticut and would be the first state in the nation to do this.

And when we talk about high gas prices, the amount of taxes that we as a State levy on a gallon of gasoline cannot be excluded from the equation and from the discussion of high gas prices.

There is a direct correlation which has been made over and over again by the Office of Legislative Research of the amount of taxes that are levied by states on a gallon of gasoline and its corresponding cost.

And while, you know, we may -- while some people may think that there isn't enough competition in the state of Connecticut amongst gas retailers, and that this is somehow an answer that we will promote additional investigations and additional lawsuits being brought by an activist Attorney General, I think that's entirely wrong.

And it's for those reasons, because we don't get to the actual reason for the cost, high cost of gasoline in this state by way of the taxes that we

levy, I'll be voting against this bill as well.

Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Camillo, you have the floor, sir.

REP. CAMILLO (151st):

Thank you, Madam Speaker.

I rise in support of this bill as amended. I think anything that has to do with -- that attacks price gouging and anti-competitive prices; competition is a good thing.

I certainly understand some of my colleagues' points about being antibusiness. I think some of the bills we've seen here are going to really push us out of the 48th slot and into number 50 pretty quickly, but this bill is not one of them.

I've come -- I used to be in an industry where there was anti-competitive practices and I could tell you there's nothing more antibusiness than a monopoly. And that you could ask that of anybody that's in small business. We're particularly concerned about this and issues like this in our end of the state where we already pay the highest gas prices.

So I think this is a good bill. And I think in

the end it will actually be a pro-business bill. So I urge support of this bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Candelora, you have the floor, sir.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

If I may, a couple of questions to the proponent of the bill.

DEPUTY SPEAKER KIRKLEY-BEY:

Please proceed, sir.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

I was just trying to get a better understanding of the trigger mechanism and the Attorney General's analysis in this. As I read it, we have this trigger of the HHI, that index, that could trigger the AG into determining whether or not there's a change in the market concentration.

And I'm wondering, I guess, is that index specifically used to determine whether or not a merger has antitrust elements?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Madam Speaker.

And through you, yes. That is the current mechanism that the Federal Trade Commission and the Department of Justice use to determine whether a market is highly concentrated and therefore, whether scrutiny needs to be given to any particular merger or acquisition in that concentrated marketplace.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

And as I read Section B in the bill, it requires that that measurement be used, but it's not necessarily the excuse -- exclusive tool that the Attorney General may use.

So that, would the Attorney General then therefore have the ability if the index doesn't fall in the range provided in Subsection C? Could the Attorney General still independently determine that

the merger may have antitrust elements so as to further an investigation?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, I find it difficult to imagine the situation under which that would take place. The Attorney General would have a very difficult time making the case that anticompetitive behavior was going on.

The weight of federal regulatory law and case law would be against him, since this is a well accepted industry benchmark. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Through you, Madam Speaker.

And does this analysis only deal with the vertical integration of a company -- or, excuse me, the horizontal integration for antitrust purposes? Or is there also a vertical analysis as well?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, I believe this touches on the segmentation discussion we had earlier, which is there could be various parts of the industry that any merger or acquisition touches. It could involve both wholesaling and retail at the same time and the analysis could include both of those.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

But the index itself or how the federal -- which is what the federal government uses, that index only deals with the horizontal element.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, I believe it does, but one wouldn't have to just run it through once. You could run it through for each segment.

Through you, Madam Speaker.

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DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker. I appreciate that answer.

So that the Attorney General would have the ability using this index to determine whether or not a company would be in violation vertically or horizontally. Am I correct?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, that is my understanding.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

And then there is a calm -- I guess, a provision here that talks about, the Attorney General may measure the market concentration and changes in the market.

And I guess I've already asked this question, but

in terms of, I guess, the investigation piece, just to be clear, an investigation would not be triggered until there would be a finding of meeting that threshold of the HHI index.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, my understanding is that if the numbers put through the index showed that it was a competitive marketplace, then there would be no reason to institute an investigation into antitrust violations.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

And I guess, how -- where in the bill, if it is, that the investigation is tied to that trigger? Because as I read the language, it seems as if regardless of the outcome of the analysis in Sections B and C, it seems like the Attorney General would still have the ability to investigate. Am I

current?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, while we did not preclude them by statute from doing so, it's my belief that facts on the ground would preclude them from doing it and that it would be extremely difficult to carry forward any antitrust investigation if you don't have evidence of a highly concentrated marketplace.

And if, in fact, you have evidence of a competitive marketplace, there would seem to lack basis for such a claim and the Attorney General would not be interested in taking a case with that stow stacked against them.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

And then in lines, specifically, 55 through 57, when the Attorney General is doing an investigation, we've tied the submission of documents to whether or

not those documents would be considered privileged, are precluded in a grand jury investigation.

And I'm wondering why we've created that threshold as opposed to production of documents through, like, a normal court proceeding.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Thank you, Madam Speaker.

And through you, this is language that is taken from elsewhere in the antitrust statute. So it's primarily used to be consistent and, in fact, the kinds of information that it precludes are ones that are similar to court proceedings in that, you know, for grand jury exclusions, they would include work-product privileges and attorney-client privileges.

So I believe it's similar, but it is done mostly for consistency with the rest of the statute. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker. I appreciate that answer.

And I guess if Section 1 was not passed today, is there anything that currently would preclude the Attorney General from doing an investigation of an antitrust claim under current law?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, there are in statutory preclusions, but there are practical preclusions. There are resource preclusions and this makes it easier and more cost effective to do it. And there may also be notice preclusions.

The AG's office may not know of every acquisition or merger that would be triggered. And filing this provides us notice and the ability to respond if they feel that there's a problem, but there's not a statutory preclusion.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

And I appreciate the good Representative's answers to my questions. And I guess, Madam Speaker, one of the concerns that I have, like my colleague spoke previously, is the type of jurisdiction that we are opening up for the Attorney General in providing this tool.

Because while it certainly is meritorious to make sure that we have a competitive market, it seems to me that the Attorney General would have the ability to conduct investigations that could be quite disruptive to business for any reason at all under this statute. There doesn't need to necessarily be a finding or an indication of an antitrust issue or trigger. There seems to be a disconnect.

We have an analysis on one side where the Attorney General needs to analyze whether or not a merger may have elements of antitrust. And then we have on the other side, we're providing the Attorney General with tools of an investigatory power that are completely disconnected from one or the other.

And I think that that type of authority certainly could be dangerous. Connecticut does not have a reputation of being business friendly. We've

certainly seen the volumes and volumes of cases that have been brought, sometimes with merit, sometimes without, against businesses.

And while it may just cost the taxpayer a little bit of money in tax dollars, because we have plenty of attorneys in the AG's office to represent the suits and bring them, it certainly costs businesses in the state of Connecticut and ultimately the taxpayer when we are creating this atmosphere of suing them and having them defend themselves as opposed to operating their businesses and being productive.

So I have concerns that this bill does not rein in the ability to investigate, and strictly tie it to a finding of antitrust prior to any of those investigations taking place. And therefore, I have strong concerns of the underlying bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides, you have the floor, ma'am.

REP. KLARIDES (114th):

Thank you, Madam Speaker. Madam Speaker, through you, I have a few questions to the chairman of the committee.

DEPUTY SPEAKER KIRKLEY-BEY:

Please proceed.

REP. KLARIDES (114th):

Thank you, Madam Speaker.

Through you, I know that my colleagues have certainly asked a number of questions and I don't mean to repeat any of them. So just a few to clarify for myself.

I think that the chairman has mentioned that there, we have not had any known issues in regards to this, any known antitrust issues in Connecticut in regards to the fuel industry that would precipitate a change in a law like this.

Through you, is that accurate?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, at least in the past few years we have not had any antitrust violations. I can't speak to whether there were investigations or not on them, whether they came to fruition.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Madam Speaker.

And through you, if there had been investigations, the Attorney General's office would be the venue to do those investigations. Is that accurate?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, yes. In the state -- it would be obviously at the federal level. The FTC or Department of Justice would be the ones to carry out such an investigation.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Madam Speaker.

I remember the chairman mentioned earlier in reference to another question, that there were certain people that have mentioned that they think this may be a problem down the line. That's why we're doing this now. Is that accurate? And if so, if he could explain that a little further.

Through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP.. SHAPIRO (144th):

Thank you, Madam Speaker.

And through you, as Representative -- I'm sorry. I can't remember who said it earlier, but one of the Representatives had said, you know, had asked that question, you know, what precipitated this? And it is concern in the industry that there will be reconsolidation that is already starting. That distributors are buying up lots of retail stations and consolidating power and that the old bosses of Exxon, Mobil, Shell are being replaced with new bosses.

And therefore, as Representative Camillo said, the good businesses in this state are saying, there's no worse business practice than a monopoly, and they want to be able to continue to practice freely and fairly, which is why I'm supporting this. Otherwise, I wouldn't be.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Madam Speaker.

And through you, as the law stands today without this bill that we're debating, going through, if there was an investigation, what power, as of today, does the Attorney General have in that investigation in the final result? In other words, what can the Attorney General do after he investigates, as of the law we have today?

Through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, and the bill we're talking about today does nothing to affect the Attorney General's powers as to what they can do if antitrust violations were found. This bill does not affect that.

And today I suppose it would depend on the nature of the violation. If there was a particular business practice, they could get an injunction against it. There could be fines if anticompetitive behavior were found. If it's a large acquisition that includes smaller pieces, they might be required to divest some of those pieces. And those are the kinds of tools

that the Attorney General currently has and would still have after this bill.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Madam Speaker. Then I'm a little confused, because I don't understand how passing this would change what the Attorney General can do in the future and what he can do at present time.

Through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker.

And through you, it's not about expanding the power. It's about improving information, information that is currently expensive and difficult for the Attorney General to get. And we don't want to cause the taxpayers greater expense and we don't want to have to hire expensive outside counsel to do this and become aware of this.

And the bill would provide a mechanism by which the Attorney General could get information more easily

and more efficiently. And again, it goes back to one of the earliest questions, which is, why would we care about this when maybe the feds wouldn't, and it's because their issues are a priority.

The federal government might be investigating an Enron scandal in California and not have time and resources to devote to our fuel market when it's really hurting Connecticut drivers and consumers and we might want to look at it.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Madam Speaker.

And through you, I believe the chairman mentioned earlier on that there is the capability within the Attorney General's office as it stands today with attorneys that can handle antitrust investigations, as they do today. Does the chairman anticipate, if this bill passes, the lawyers that handle those antitrust cases workload increasing?

Through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Shapiro.

REP. SHAPIRO (144th):

Through you, Madam Speaker, I suppose I'm not the best person to estimate that. I know OFA asked the Attorney General's office and they said that they would be able to handle it within available appropriations, which is why there's no fiscal note. But I'm not sure I'm the best -- in the best position to answer that question.

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Klarides.

REP. KLARIDES (114th):

Thank you, Madam Speaker.

Madam Speaker, I certainly thank the chairman for his exhaustive answers to all the members' questions. And I guess I have a similar problem that my colleagues have.

I understand that we should certainly, as a State, be investigating any concern or any violation of any law that we see fit. And if the Attorney General's office couldn't do that right now, I would be the first person to vote yes.

But what we do know after today's debate is we have not had a problem yet, as far as we know. We

have people that are telling us, we may have a problem going forward, however we just may be one of those days that is particularly efficient in this regard. So we have no idea if we will or we won't have a problem. All we know is we have not had a problem.

We're allowing another group of government to gain information, therefore expanding bureaucracy that has clearly been overexpanded as we've seen throughout time. As I mentioned before, if we did not have the ability to do this as a State, I would be the first person standing up saying, we should do this.

But we already have the ability to do it. We don't know if this will cost the State any money. We hear that the fiscal note will be done within available appropriations. We have no idea how many more lawyers if any will be needed and what their workload will be.

For those reasons, Madam Speaker, I will not be supporting this bill.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Piscopo, you have the floor,  
sir -- no.

Will you remark? Will you remark further on the

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bill as amended? Will you remark further on the bill as amended? If not, staff and guests please come to the well. Members take your seats. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is voting by roll call. Members to the chamber, please.

DEPUTY SPEAKER KIRKLEY-BEY:

Have all members voted? Have all members voted? Please check the machine to see that your vote has been properly cast. Have all members voted? Please check the board to see that your vote has been properly cast. The machine will be locked and the Clerk will prepare the tally. Will the Clerk please announce the tally.

THE CLERK:

House Bill Number 5220 as amended by House "A."	
Total Number voting	142
Necessary for adoption	72
Those voting Yea	106
Those voting Nay	36
Those absent and not voting	9

DEPUTY SPEAKER KIRKLEY-BEY:

The bill as amended passes.

Are there any announcements or points of personal privilege?

Representative Hennessy.

REP. HENNESSY (127th):

Thank you, Mrs. Speaker.

For the purpose of an announcement.

DEPUTY SPEAKER KIRKLEY-BEY:

Please proceed, sir.

REP. HENNESSY (127th):

Thank you.

It is with deep sadness that I rise to announce that our dear colleague, Representative Caruso's mother died this last Sunday. And I would ask that the House rise for a moment of silence.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, sir.

Are there any other announcements or points of personal privilege? If not, will the Clerk please call Calendar Number 30.

THE CLERK:

On page 25, Calendar 30, Substitute for House Bill Number 5004, AN ACT CONCERNING TRANSPARENCY IN HEALTH INSURANCE CLAIMS DATA, favorable report of the

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the public official portion of the program, we can move to the public speaking part of the testimony.

And first on the docket we have Mike Fox and Chris Herb, who I believe are doing a rare double billing and actually agreeing on an issue and testifying together. They will be followed by Michael Trahan.

CHRISTOPHER HERB: Good morning, my name is Chris Herb, I'm the vice president of the Independent Connecticut Petroleum Association. We represent 560 petroleum marketers in Connecticut. We employ over 13,000 people who live and work in our state. We're here today to testify on House Bill 5220. I'm joined by Mike Fox of the Gasoline Dealers Association and as Representative Shapiro has pointed out, this is quite a rare appearance.

The stated purpose of the bill -- 5220 -- is to promote competition and as gasoline marketers in this state. We wholeheartedly agree with that stated goal. Specifically in Section 2A of the bill, a new -- it proposes to institute a new evaluation of competition. After we took a look at that, agreeing with the stated purpose, we thought that there might be -- and we respectfully suggest that there may be a way to do this, accomplish this with existing evaluation tools.

It's called the HHI index and it is extensively used by the Federal Trade Commission and the Department of Justice. It is one of the principle documents that is used when acquisition of gas stations or other retail establishments. The Federal Trade Commission would come in and evaluate if there may be a market density situation that could lead to an anti-competitive situation. The Federal Trade

Commission has a pretty voluminous document called the Horizontal Merger Guidelines.

What we would suggest is substituting in section 2A the language that is there currently and replacing it with something that alludes to something closer to an existing process, like the HHI index.

We also think the bill is a tremendous opportunity to get at a problem that has not only been a problem for local family owned businesses but for consumers, is actually going after people who are gouged in the marketplace during times of market disruption. And you've heard us testify in the past -- words like unconscionably excessive, gross disparity, abnormal market disruption, are not defined in the current statute, yet they're illegal. What we suggest is that we'd like to work with you in this bill to help promote competition through instituting the HHI Index here in Connecticut state law. And expanding and clearing defining what gouging is in Connecticut.

MICHAEL FOX: My name is Michael Fox, I am the executive director of the Gasoline and Automotive Service Dealers of America. And we do support the 5220, the concept of the bill. And I can tell you that personally, when Exxon proposed the merger with Mobil, the attorney general and myself in Washington actually used the HHI Index as a means of getting them to move from only divesting approximately 500 stations nationwide to over 4500 stations nationwide. And those divestitures went into the hands of the individual retailers of those sites, thereby creating a more prudent competition level. So it's something that we're very familiar with and I think it works very, very well.

REP. SHAPIRO: Thank you, gentlemen. I appreciate you're working in conjunction with the committee on this. A brief question. Have you submitted written testimony on this?

MICHAEL FOX: Yes.

REP. SHAPIRO: Has it been passed around? We'll look for it -- okay, we've got it in the back. Thank you. A follow up question. In discussing gouging, it's obviously a subject we've broached before, and there was language at the end of last session as part of another bill that I believe the industry had signed off on. Is that where you guys would be looking to start and end in this session or is there something else you're proposing?

CHRISTOPHER HERB: I think we'd like to resume that conversation where we left off.

REP. SHAPIRO: Thank you. Are there questions from the committee? Representative Altobello.

REP. ALTOBELLO: Howdy, gentlemen. What percentage of or what score on the HHI would you be recommending here?

CHRISTOPHER HERB: Currently, the way that the Federal Trade Commission and the Department of Justice implement it is they basically score it and then if the attorney general determines that that score may lead to an anti-competitive situation, then they can use the antitrust statutes to pursue that. So we're not necessarily recommending a particular level. What we're saying is that law enforcement at that point should be aware of that there is a competition density problem. That's probably more suited for them to address and they're comfortable with.

MICHAEL FOX: And even in the case of the Exxon-Mobil merger where they were not at the minimum level of the score or exceeding it, because of the involvement of the attorney generals we were successful in getting some divestitures, because the score was getting close. And so we were able to use overlapping stations.

When it comes to Exxon-Mobil here in the state of Connecticut, going back when we had Exxon and Mobil stations, wherever there was an Exxon, a block away was a Mobil and wherever there was a Mobil, a block away there was an Exxon. So we were able to -- even though we may not have hit the minimum score, we're were able to use those examples and get those divestitures on the table because it was working in conjunction with the state attorney generals.

CHRISTOPHER HERB: It really is just a tool for law enforcement to determine whether they need to be involved, if there's a potential for anti-competitive behavior in the marketplace.

REP. ALTOBELLO: So you're recommending no score at all.

CHRISTOPHER HERB: No, I'm recommending they score it, but I'm recommending that law enforcement officials determine at what levels that they believe that the situation may be anticompetitive and -

REP. ALTOBELLO: And if they don't like your industry, they declare 50 to be unconscionable.

CHRISTOPHER HERB: No, there's a formula within the HHI Index -

REP. ALTOBELLO: I understand the formula. I think

we need some guidance here about what's the trigger on this.

MICHAEL FOX: What puts it into effect you mean or what would make someone go to tooling the scoring?

CHRISTOPHER HERB: I mean, that would normally be like we did when Exxon proposed the merger of Mobil. All of the trade associations throughout the country lodged a complaint with their attorney generals and the Department of Justice and said, "This is a monopoly. We don't think this is a good thing." That triggered hearings and an investigation. That triggered the HHI score to be put into effect. And again, even in those areas where we didn't hit the minimum HHI score, which I believe is somewhere around 50 percent, that -- we were still able to get some divestitures on the table in order to move forward with that merger or divestiture. It's a very effective tool at getting at very difficult information to normally get, very factual information is the best way I can put it.

REP. ALTOBELLO: At first reading, I concur wholeheartedly, but I think we still need to know where -- what type of range is the danger area.

MICHAEL FOX: In other words, you would like to establish a number where you feel if you own -- a number that says you're too saturated in the state of Connecticut.

REP. ALTOBELLO: Or some guidance for an attorney general, for that matter.

CHRISTOPHER HERB: In the FTC guidance, there are three categories. And zero is a perfect competition situation, I believe it's zero to a

thousand. If it's scored 1,001 to 2,000, it's scored moderately competitive. And then 2,000; 3,000 is uncompetitive. So in the federal guidance it does sort of give points to law enforcement what situations may be a little more uncomfortable than others.

MICHAEL FOX: And that's going to be very relative because in the state of Connecticut, you're looking at a very small number. So I think I understand your point, Representative Altobello, that here in Connecticut, we only have 1153 service stations. You go into New York and they've got 6,000. The number's going to be different because of the small number of service stations in such a small state. But I do think that's something we could look at and probably agree on.

CHRISTOPHER HERB: This is nothing new to the gasoline industry or the retail industry in general. This is something that's been applied since 1982. It has been updated periodically throughout the years, most recently during the Clinton administration. This is not -- we are not asking -- we'd be the last people to ask for a new statutory mouse trap.

So what we're saying is use something that makes sense, that's in effect, that the attorneys in the industry already know how to deal with, how to respond to. And actually make the acquisitions of those stations go more smoothly because in advance on a purchase you would basically be able to run this scoring system and be able to prevent potential legal problems before they occur.

REP. ALTOBELLO: Now, is this something that's commonly used or it just comes up when there's a problem or a perceived problem?

CHRISTOPHER HERB: Usually on significant sales or acquisitions and mergers is when this typically happens.

MICHAEL FOX: Our industry, I think it was very limited use and now it's a very common tool. Because of the consolidation that's taken place within the industry, every single time something is announced that somebody's going to buy somebody else, you go immediately there.

REP. ALTOBELLO: And an analysis is done?

MICHAEL FOX: An analysis is done, hearings are opened. It's a very transparent process. And again, it's not -- you can pick any number you want, you start getting close to that number, you're going to start making deals that you wouldn't normally make because of that number.

CHRISTOPHER HERB: And as Mike stated earlier, this is not exclusive to the federal government. The attorney generals in various states use this to apply when transactions occur and are intimately involved in that process.

REP. ALTOBELLO: And I can understand that the attorney general would say, "Write the law this way so that I can pick the number at which I start proceeding," but --

Thank you. Thank you, Mr. Chairman.

REP. SHAPIRO: Thank you. Are there further questions from the committee? Hearing none, thank you very much for your testimony, gentlemen.

We have Mike Trahan followed by David Luft, I believe.

MICHAEL TRAHAN: Good morning, Mr. Chairman and

HB 5225

speaker is that a lot of the points that you intended to make have already been made. So I won't reiterate a lot of that except to just reinforce that sudden cardiac arrest is one of the leading causes of death in this country. The key to survival is quick recognition of and quick application of CPR, and then quick use of the aforementioned AED. We teach that every day in our CPR/AED training. And again, access to an AED is an important step or an important link in the cardiac chain of survival.

So again, I just want to go on the record on behalf of the American Red Cross to supporting the passage of that bill and I will entertain any questions you might have.

REP. SHAPIRO: I think one of the benefits from being the 17th person to testify on something is that you don't get grilled with questions. So thank you very much for your testimony. We have John Galvin followed by Bill Mackey.

JOHN GALVIN: Good afternoon, Senator Colapietro, Representative Shapiro and members of the committee. My name is John Galvin, I'm the president of the Connecticut chapter of the Appraisals Institute. I'm here to let you know that although the Connecticut chapter of the Appraisal Institute supports the concepts included in Bill Number 5221, and applaud its submission, we strongly encourage you to support Bill 13 instead, AN ACT CONCERNING APPRAISAL MANAGEMENT COMPANIES, that is currently in front of the Insurance and Real Estate Committee.

Although Bill 5221 contains very similar language to that detailed in Bill 13, Bill 13 is an act that has evolved from a tremendous amount of input from not just the Appraisal Institute, but also from the Department of

banking, the Department of Consumer Protection, the attorney general, Connecticut Association of Realtors, Connecticut Homebuilders Association, Connecticut Bankers Association, Connecticut Real Estate Appraisal Commission, and several independent groups concerned about this issue.

As you may be aware, in 2009 the Home Valuation Code of Conduct, HVCC, was adopted with honorable intentions requiring residential appraisals to be ordered by independent third parties to lending transactions. These were called appraisal management companies, AMCs. The results, however, have not been all that honorable and have had an adverse impact on the collateral review function of the lending process, a critical part of loan quality not just to the consumer and the underwriting institution, but also the end investor who is the source of funding that provides liquidity to this large segment of the economy.

Prior to HVCC, there were a few AMCs in existence. However, HVCC mandated a market format that resulted in a sudden increase in the number of AMCs throughout the country. One result of HVCC is that it has exposed a large number of practices that unscrupulous users of appraisal services have placed on appraisers in an effort to obtain a desired result.

Currently, the function of the AMC is the only part of the lending process that is not required to register or is regulated. AMC legislation is necessary in order to assure appraisal reports are competently completed by qualified appraisers who are appropriately certified. The Appraisal Institute has recognized the need for legislation to make appraisal management companies accountable not just in Connecticut, but across the country.

Last year the Appraisal Institute was instrumental in getting legislation passed in six states and currently efforts are taking place in approximately 30 states, all with language being written into Bill 13 that is in front of the Insurance and Real Estate Committee.

In summary, Bill 13 has been written with the group of stakeholders conscientious of fiscal impact and focused on the concepts of revenue neutral. Bill 13 also considers suggestions from the Title Vendor Management Association, which is a trade association of four AMCs. The voices coming from appraisers, though sounding different and in some cases quite emotional, are really all on the same page of passion for this issue.

As a result, the Connecticut Chapter of the Appraisal Institute respectfully requests that all the effort go into supporting one of the bills, and that being Bill 13. Thank you.

REP. SHAPIRO: Thank you for your testimony and Representative Reed, who I know has also put some time and effort into this issue.

REP. REED: Thank you, Mr. Chairman. I'm glad that you, too, are talking. I think this is really important. I have spoken to Realtors from Middlesex, New Haven and Fairfield counties who tell me how many problems they've had with appraisers who are just not well trained. They've had people come in from New Jersey to evaluate properties in Old Lyme. And they've had people coming to look at condominiums who've walked right past the amenities and wrote down in an appraisal that there were not amenities, and blew the deal on that little tight time line that people have. So I'm wondering do you have any sense now what areas

there are that would kill this bill in your terms? I mean, what has to be in there, the top one thing?

JOHN GALVIN: The top one thing I think is accountability. That -- you know -- the biggest thing we're focused on is -- one big thing is that the appraisal management companies have to have somebody who is licensed and certified appraiser on staff to review the -- to do the review function. That is the biggest thing and that person be responsible not only for the review function, but also the ordering of the appraisal and making sure that a competent appraiser is ordered. Not just a competent appraiser being able to appraise property, but competent in that geographic location.

And also other factors, by not putting an strenuous burden on appraisers by requiring them to do ten appraisals a day or insisting on doing them on a certain day of the week so they have to hit quotas, to give them the time necessary to competently appraise a property, to competently analyze it, to take the time to stop and look at the pool and the amenities of the condominium complex, et cetera.

REP. REED: Thank you and one other quick question. Just doing my research I was stunned to realize that some of the major banks now own these AMCs. But there's supposed to be a Chinese wall between them, when in reality they've actually created a new revenue stream. So I'm very interested in having some level of transparency so that everyone knows what we're talking about, who's really in charge and how much the AMCs are getting relative to how much the appraiser is getting and how much that impacts the consumer.

JOHN GALVIN: That is something that we're looking into and there's language being considered by several groups that includes something more structured in Bill 13 in the draft that's coming out for review.

REP. REED: Thank you very much. Thank you, Mr. Chairman.

REP. SHAPIRO: Thank you. Are there further questions? Thank you for your testimony. Bill Mackey followed by Paul Costello.

VOICE: (Inaudible).

REP. SHAPIRO: We're aware of that situation, that's fine.

MICHAEL MOCONYI: Good afternoon, Senator Colapietro, Representative Shapiro and committee members. My name is Michael Moconyi and I'm the executive director for the Connecticut Chapter of the National Electrical Contractors Association.

Thank you for allowing me to make a few brief remarks on Bill 5225, AN ACT CONCERNING SOLAR WORK. Connecticut NECA is here today to speak in favor of requiring the installation of solar work to be performed by E-1 and E-2 electrical license holders.

Solar electric is loosely defined as the installation, erection, repair, replacement, alteration or maintenance of photo voltaic or wind generation equipment used to distribute power. This technology has been around for decades and the installations have been performed by E-1 and E-2 licensed electricians.

Historically, the state of Connecticut has issued E-1 and E-2 licenses that regulate the

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there's windows or roof skylights or things like that that we've been doing for years and trained to do. If we can't handle them any more or install them because they might have some kind of a membrane that's been incorporated in them. Thank you.

REP. SHAPIRO: Thank you. Questions? Thanks for your testimony. Thanks for hanging out so long. Steve Guveyan, wrap up.

STEVEN GUYEYAN: Good afternoon, Senator Colapietro, Representative Shapiro and members of the committee, I'm Steven Guveyan from the Connecticut Petroleum Council, testifying in opposition to House Bill 5220. I'll quickly summarize our points.

This bill looks like it's coming after the gasoline industry only. We've been through a number of investigations in this state with the attorney general. Those investigations have yielded nothing. We've come up clean every single time, after all the hurricanes, after all the price spikes. Every time we've been subpoenaed, we've complied. There's been no fighting subpoenas. The investigations have shown at least at the major oil company refiner or terminal operator level, no violations, no consent orders. So why is it that this bill appears to give the office of the attorney general extraordinary power over just the gasoline industry?

If passed, like many bills you get those unintended consequences. When we went through the hurricanes here there was real concern about getting gasoline. If this bill were to pass and the 50 percent trigger holds, any company close to that, if several refineries go down or some stations don't have gasoline, it's going to be very hesitant to sending gasoline

here because they think they're going to break the 50 percent trigger that's outlined in this bill.

As we look at that 50 percent trigger, we can't quite figure out what the intent is. Usually when you go through an antitrust analysis, they look at different segments of an industry. If it's liquor, they'll look at maybe the brewer or the manufacturer, they'll look at the distributor, they'll look at the retailer.

With gasoline they're going to look at the refiner and the producer and the wholesaler and the retailer. They look at each segment of the industry in it's own right and it looks at the level of competition in that segment. They do not add the segments together. This bill seems to add the segments together. So that to break the 50 percent segment, if you produce 13 percent of gasoline, you refine 13 percent, wholesale 13 percent, retail 13 percent, you've the broken 50 percent mark. That is not 50 percent market share. It's certainly not 50 percent market share value for the Department of Justice or the Federal Trade Commission analysis.

So for that reason, I really do oppose the bill. We don't like the idea of just turning over all the documents to the attorney general should that 50 percent number be breached, considering what our history is there.

Finally, since the point seems to be that the structure of the industry is questioned or suspect, we point to the fact that the attorney generals in the northeast did a study a few years ago. The Connecticut attorney general did not participate. The other ones participated and they wrote a very detailed 327 page report that looked at market structure and

they didn't find anything wrong.

So the data was there had he wanted it. It gave us a clean bill of health, but I understand that it didn't make his case, but it does make our case. Thank you.

REP. SHAPIRO: Thank you, Steven. I'd just like to take the opportunity to clarify a couple of things because I think you're misreading the bill a little bit.

And as a matter of first impression, the bill does not intend to come after anybody. In fact, it may be that currently, this bill doesn't apply to anyone. It came out -- as the previous testifiers said who were in favor of the bill, the market has changed a lot over the past five years and there are companies now who could own the vast majority of the terminals and wind up owning a great number of stations. We wouldn't want to set up a situation in which someone was leveraging their ownership of the terminals to benefit their stations to the detriment of everyone else.

And so it's a guideline and in fact it doesn't necessarily trigger anything. All it says is you're not supposed to, you know, if you own 50 percent of more of two or more industries. So it couldn't be 13 percent in one of each and that would total 50. You'd have to be the controlling player in two or more segments and misuse those to come afoul of the law. It doesn't automatically trigger anything, but it does serve as a notice of, "Hey, there is a partner, a person who's becoming dominant in this particular segment and let's just make sure that everything is still going smoothly and their power's not being used in restraint of trade." So that's where the bill is coming from and I think you have a little

misunderstanding as to the way it worked.

STEVEN GUYEYAN: So it would be 50 percent in each of the categories outlined in the bill?

REP. SHAPIRO: Correct.

STEVEN GUYEYAN: Okay. If that's the case then we would recommend if you're going to move forward with the bill to clarify that or tighten up the language a bit.

REP. SHAPIRO: I understand and I appreciate the comment. Are there other questions by members of the committee? Hearing -

STEVEN GUYEYAN: One final point we'd like to make. It's not in our testimony, but the point came up with prior witnesses today. On the HHI Index as a methodology to look at either mergers or acquisitions through sales, we go through that analysis with the Federal Trade Commission and the Department of Justice regularly, any time there's going to be a merger or sale by a major company. We are not in favor of going through it a second time in the state of Connecticut. It is frightfully time consuming. They take a year where we have to go out and hire an economist, hire very specialized anti-trust lawyers who are good at market share analysis.

The attorney generals have, individually or together, the right to go to the FTC and give their points of view. And they are not shy about doing that. So we go through it at that level. We do not want to then turn around and go through it a second time at the state level.

Based on earlier comments today -- it's not in the bill, but based on earlier comments, someone suggested that might be a way to go.

We don't want to go through it a second time, knowing how tough the FTC, DOJ rules are. Because I think it was Representative Altobello made the point this morning, you could just take the number and ratchet it down from what the FTC does and prevent the sale and that is very true. They've got tight numbers and tough standards to begin with.

And the attorney general in this state has said that he disagrees with the FTC and the DOJ, and would never let go forward a merger or acquisition that was highly concentrated or even moderately concentrated. And the FTC said in certain circumstances, "We will definitely allow those to go forward." And our attorney general has said no.

So we don't want different -- we don't want to go through it a second time, but we certainly do not want different standards to apply and the attorney general has already signaled what the standard would be. So we would have to go through it a second time because -- if that kind of language were to be adopted. And again, it's not in the bill, but just to address comments made this morning, I wanted to say that.

REP. SHAPIRO: Okay, thank you very much for your testimony. If there are no further questions, thank you very much and this hearing is adjourned.

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**Connecticut  
Petroleum Council**

A Division of API

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February 25, 2010

**Testimony of  
Steven Guveyan  
Connecticut Petroleum Council  
Opposition to HB-5220**

The Connecticut Petroleum Council—a trade association representing major oil companies, refiners and terminal operators doing business in Connecticut—strongly opposes HB-5220, because it singles out the gasoline industry—especially its largest members—for special anti-trust treatment, *even though there has been no showing of monopolistic behavior or restraint of trade, which is what this bill seeks to prevent*. It duplicates the existing authority of the Attorney-General, and is, therefore, unnecessary. We ask you to give this bill an unfavorable report.

The Attorney-General currently has the power to prevent restraint of trade and monopolies; he also has broad subpoena power, and can seek forfeiture of a franchise, civil penalties up to \$250,000 and treble damages (see CT statutes, Chapter 624, sec. 35-24). *Without this bill, the Attorney-General already has the power to subpoena the oil industry... and in the past, he has. Those investigations at the major oil company, refiner and terminal operator level failed to identify any violations or wrongdoings, and were quietly dropped.*

In addition to the Attorney-General, the Federal Trade Commission (FTC) and the U.S. Department of Justice (DOJ) have broad subpoena power and monitor oil industry market share. *If passed, the bill would discourage some companies from expanding in Connecticut, and set bad precedent. It may also inhibit some companies from sending additional gasoline here during events like Hurricane Katrina/Rita/Wilma, if doing so brings them close to the combined, artificially-imposed 50% trigger point in the bill.* The document request (outlined in lines 19-34 of the bill)—which would include wholesale and retail prices and volumes at all terminals and service stations, as well as refinery prices and volumes coming into Connecticut—would be voluminous, time-consuming and very expensive to comply with.

Finally, proponents have not shown that passage of this bill will in any way increase competition in the gasoline industry.

**MARKET CONCENTRATION**

While the 50% threshold found in lines 10-15 of the bill at first sounds high, the bill says that it applies to *any two or more of the following segments of the motor fuel industry in this state: (1) production/refining; (2) distribution; (3) terminals....., or (4) retail sale.....* Therefore, any company that refines 13% of the gasoline sold here (even though the refinery is located outside of Connecticut), and then wholesales that 13% here, terminals it (13%) in New Haven or Bridgeport, and retails it (13%) will accumulate to—and run afoul of—the artificially-imposed 50% market share restriction found in this bill. Intel/AMD (microprocessors) and Microsoft/Apple (software) are prime examples of industries with tough competition but with only two major competitors; Intel and Microsoft would never pass the 50% test imposed by this bill if it applied to them. The Connecticut gasoline industry has many more players—

with much less market concentration—than the microprocessor or software operating system industry, and therefore, shouldn't be subject to this highly restrictive proposal. As you know, there are approximately 30 motor fuel wholesalers doing business in Connecticut, a number of large terminals, and many, many retailers. Competition at the wholesale level, where major oil companies compete is measured in tenths-of-a-cent-per-gallon, while at the pump it is measured in pennies. Almost no other industry competes to that degree.

### SUBPOENAS

Subpoenas are a serious legal matter, and should—for purposes of the gasoline industry—be limited to instances where the Attorney-General needs documentation because of violations or perceived violations of the Unfair Trade Practices Act. They should not be used as an ongoing document request in the absence of any wrongdoing, or to seek information using poorly defined market share criteria. Both the FTC and the DOJ break out market share by individual industry segment; *they do not artificially combine them as this bill does.*

### GASOLINE INDUSTRY INFORMATION AVAILABLE TO THE ATTORNEY-GENERAL

Considerable information about the local gasoline industry was available to the Connecticut Attorney-General—had he wanted it—but he chose not to participate in a gasoline report compiled by his peers in the Northeast states that provided much of the very same information sought by this bill. The Attorneys'-General in five Northeast states (MA, ME, NH, NY, VT) commissioned a detailed study in September, 2007 by ERS Group examining product distribution, industry participants and market structure in the oil industry. A professor from Yale with significant gasoline industry experience also participated. The 327-page report gave retail gasoline market share by brand, and did so on a county-by-county basis. It also provided barrels of storage by terminal operator, and ownership structure of service stations by state.

*That report outlined all the reasons for the recent increases in gasoline prices, but did not point to any wrong-doing by major oil companies, refiners or terminal operators as the reason for price spike. In fact, the report stated that: Overall, petroleum markets in the (five) states have functioned relatively smoothly in the recent past.....Although the states have experienced nationwide price and output shocks in the recent past (e.g. after the 2005 hurricanes), they have not had localized gasoline price and output shocks as the other regions have (e.g. Midwest markets in 2001).*

*Had the Connecticut Attorney-General wanted much of the information being sought by HB-5220, he could have participated in that project, although he would have then been bound by its conclusions, which pointed to market forces—not anti-trust violations or wrongdoings—as the reason for recent gasoline price spikes.*

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RICHARD BLUMENTHAL  
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Office of The Attorney General  
**State of Connecticut**

**TESTIMONY OF  
ATTORNEY GENERAL RICHARD BLUMENTHAL  
BEFORE THE GENERAL LAW COMMITTEE  
FEBRUARY 25, 2010**

I appreciate the opportunity to support the concept of House Bill 5220, An Act Concerning Competition in the Motor Fuel Industry.

This proposal establishes a bright line standard for illegal consolidation of market power by large oil companies in Connecticut. Specifically, the legislation prohibits any person from owning or having common control of more than 50% of two of the following gasoline market segments: production/refining, distribution, terminals or retail.

Market control and power in our gasoline markets inhibit strong competitive forces that would otherwise lower prices for consumers. Surveys demonstrate how consumers are held hostage by major oil and gasoline companies' market power. Some gasoline dealers are charged 20 cents more than their same brand name retailer just a few miles away. There is no legitimate reason for such price disparities because transportation costs are no higher and the amount purchased is no different.

Local prices should be determined by local retailers responding to local economic factors. The handful of big oil company suppliers headquartered in Texas or California or abroad or gasoline marketers with significant market control in Connecticut should not be allowed to manipulate the local retail price of gasoline.

While antitrust laws generally prohibit anti-competitive behavior, the law doesn't currently bar the accumulation of significant market share by one entity. House Bill 5220 provides a clear test that will ensure a number of competitive players in each gasoline market. Further, the language allows for the use of antitrust enforcement even against entities that do not meet the market power standard if they engage in illegal price fixing or other anti-competitive behavior.

I have a number of drafting concerns and would appreciate the opportunity to work with the committee.

Thank you.

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February 25, 2010

Co-Chair Thomas Colapietro  
 Co-Chair Jim Shapiro  
 Senator Kevin Witkos  
 Representative Penny Bacchiochi

General Law Committee:

We are submitting testimony in on H.B. 5220, AN ACT CONCERNING  
 COMPETITION IN THE MOTOR FUEL INDUSTRY.

The Independent Connecticut Petroleum Association (ICPA) represents 560 petroleum marketers and their associated business in Connecticut. ICPA members employ over 13,000 people in our state and provide our fellow citizens with gasoline and heating oil.

GASDA represent 450 members and they are responsible for selling over 60% of all gasoline sold in Connecticut. Over the last 5-years, GASDA members have purchased approximately 200 locations from the Major Oil Companies and are on track to purchase another 100 in 2010. This has kept jobs here in Connecticut rather than selling locations which end up for other than service station use and prevent the ranks of the unemployed from growing further at a time when the state can least afford more unemployment claims!

The statement of purposes of this bill is to "promote competition in the motor fuels industry". As representatives of the gasoline industry, this goal is of the utmost importance to a properly functioning market place. Connecticut's gasoline industry is fiercely competitive, and we support laws that protect and promote that environment.

While the gasoline industry supports the stated purpose of H.B. 5220, we believe that it can be accomplished in a more comprehensive and established approach that will benefit consumers and the local family businesses that serve them.

Since 1982 the Federal Trade Commission (FTC) and the Department of Justice (DOJ) and state attorneys general have used the Herfindahl-Hirschman Index (HHI) to measure market concentration for purposes of antitrust enforcement.

The HHI of a market is calculated by summing the squares of the percentage market shares held by the respective firms. For example, an industry consisting of two firms with market shares of 70% and 30% has an HHI of  $70^2 + 30^2$ , or 5800. The closer a market is to being a monopoly, the higher the market's concentration (and the lower its competition).

If, for example, if there were only one firm in an industry, that firm would have 100% market share, and the HHI would equal 10,000 ( $100^2$ ), indicating a monopoly. Or, if there were thousands of firms competing, each would have nearly 0% market share, and the HHI would be close to zero, indicating nearly perfect competition.

Section 2(a) of this bill should be replaced with language that adopts the FTC's HHI, so that a formula that has been applied for close to three decades can fairly and objectively determine market density. Section 2(a) of the bill seems to formulate a new approach that already has a reliable and accepted indicator to determine market density. Instituting new and arbitrary tests to determine market density is untested, inefficient and unnecessary.

In addition to applying the HHI when gasoline stations are bought and sold, we ask that the committee strengthen the protections that the bill strives to achieve by bolstering the "gouging" law as found in section 42-234 of the CGS.

As the law stands today, gasoline retailers are in the dark as to if and when they are "gouging". Connecticut law provides no guidance to the gasoline industry or law enforcement officials as to when "gouging" occurs.

Gouging Connecticut motorists is unacceptable and our statute today provides NO protection for them! Phrases like "gross disparity", "abnormal market disruption" and "unconscionably excessive" are not defined in the law. How can consumers be protected and local family owned businesses comply with the law if there is not absolute clarity?

ICPA and GASDA request that the bill clearly define what gouging is so that consumers are protected and family owned businesses are not subject to undefined laws that ultimately serve no one.

We ask that the General Law Committee **accept substitute language to H.B. 5220, AN ACT CONCERNING COMPETITION IN THE MOTOR FUEL INDUSTRY** that works to protect the competitive market place in an efficient and established manner while allowing the state to have a workable gouging law.

Respectfully,

*Michael J. Fox*  
Michael J. Fox  
Executive Director, GASDA

*Christian A. Herb*  
Christian A. Herb  
Vice President, ICPA