



Substitute Senate Bill No. 948

Public Act No. 05-229

AN ACT CONCERNING THE FAILURE OF A MUNICIPALITY TO OBTAIN A BOND FROM CERTAIN CONTRACTORS, PREPAID HOME HEATING OIL CONTRACTS AND HEAT AND UTILITY SURCHARGE CLAUSES IN RESIDENTIAL LEASES.

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

Section 1. Section 49-41 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) Each contract exceeding fifty thousand dollars in amount for the construction, alteration or repair of any public building or public work of the state or of any subdivision thereof shall include a provision that the person to perform the contract shall furnish to the state or the subdivision on or before the award date, a bond in the amount of the contract which shall be binding upon the award of the contract to that person, with a surety or sureties satisfactory to the officer awarding the contract, for the protection of persons supplying labor or materials in the prosecution of the work provided for in the contract for the use of each such person, provided no such bond shall be required to be furnished (1) in relation to any general bid in which the total estimated cost of labor and materials under the contract with respect to which such general bid is submitted is less than fifty thousand dollars, (2) in relation to any sub-bid in which the total estimated cost of labor and

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materials under the contract with respect to which such sub-bid is submitted is less than fifty thousand dollars, or (3) in relation to any general bid or sub-bid submitted by a consultant, as defined in section 4b-55. Any such bond furnished shall have as principal the name of the person awarded the contract.

(b) Nothing in this section or sections 49-41a to 49-43, inclusive, as amended by this act, shall be construed to limit the authority of any contracting officer to require a performance bond or other security in addition to the bond referred to in subsection (a) of this section, except that no such officer shall require a performance bond in relation to any general bid in which the total estimated cost of labor and materials under the contract with respect to which such general bid is submitted is less than twenty-five thousand dollars or in relation to any sub-bid in which the total estimated cost of labor and materials under the contract with respect to which such sub-bid is submitted is less than fifty thousand dollars.

(c) No contract for the construction, alteration or repair of any public building or public work of the state or of any subdivision thereof that requires a person to supply the state or subdivision with a bond may include a provision that requires the person to obtain the bond from a specific surety, agent, broker or producer. No contracting officer may require that a bond be obtained from a specific surety, agent, broker or producer.

(d) In the event that any political subdivision of the state enters into a contract described in subsection (a) of this section and fails to obtain delivery from the contractor of the bond required by this section, any person who has not been paid by the contractor for labor or materials supplied in the performance of work under the contract shall have the same legal right of action against such political subdivision of the state as such person would have had against a surety under the provisions of section 49-42. Nothing in this section shall be construed to extend

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liability to the state for any person's right to payment or constitute a waiver of the state's sovereign immunity.

Sec. 2. Section 16a-23n of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

(a) A contract for the retail sale of home heating oil that offers a guaranteed price plan, including fixed price contracts and any other similar terms, shall be in writing and the terms and conditions of such price plans shall be disclosed. Such disclosure shall be in plain language and shall immediately follow the language concerning the price or service that could be affected and shall be printed in no less than twelve-point boldface type of uniform font.

(b) A home heating oil dealer that advertises a price shall offer said price for a period of no less than twenty-four hours or until the next advertised price is publicized, whichever occurs first.

(c) No home heating oil dealer shall enter into a prepaid home heating oil contract unless such dealer has either: (1) Obtained and maintained heating oil futures contracts or other similar commitments that allow such dealer to purchase, at a fixed price, heating oil in an amount not less than seventy-five per cent of the maximum number of gallons that such dealer is committed to deliver pursuant to all prepaid home heating oil contracts entered into by such dealer, or (2) obtained and maintained a surety bond in an amount not less than fifty per cent of the total amount of funds paid to the dealer by consumers pursuant to prepaid home heating oil contracts. Such dealer shall maintain the amount of futures contracts or the amount of the surety bond required by this subsection for the period of time for which such prepaid home heating oil contracts are effective, except that the amount of such futures contracts or surety bond may be reduced during such period of time to reflect any amount of home heating oil already delivered to and paid for by the consumer.

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(d) No prepaid home heating oil contract shall require any consumer commitment to purchase home heating oil pursuant to the terms of such contract for a period of more than eighteen months.

(e) Any prepaid home heating oil contract shall indicate: (1) The amount of funds paid by the consumer to the dealer under such contract, (2) the maximum number of gallons of home heating oil committed by the dealer for delivery to the consumer pursuant to such contract, and (3) that performance of such prepaid home heating oil contract is secured by one of the two options described in subsection (c) of this section. Any such contract shall provide that the contract price of any undelivered home heating oil owed to the consumer under the contract, on the end date of such contract, shall be reimbursed to the consumer not later than thirty days after the end date of such contract unless the parties to such contract agree otherwise.

Sec. 3. Section 16a-23p of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

The Department of Consumer Protection may suspend or revoke any registration issued under section 16a-23m if the holder of such registration is grossly incompetent, engages in malpractice or unethical conduct or knowingly makes false, misleading or deceptive representations regarding such holder's work, [or] violates any provision of section 16a-23n, as amended by this act, or violates any regulations adopted under section 16a-23q. Before any such registration is suspended or revoked, such holder shall be given notice and opportunity for hearing as provided in regulations adopted by the Commissioner of Consumer Protection in accordance with the provisions of chapter 54.

Sec. 4. Section 16a-23r of the general statutes is repealed and the following is substituted in lieu thereof (*Effective from passage*):

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(a) A violation of the provisions of section 16a-23m, 16a-23n, as amended by this act, or 16a-23o constitutes an unfair trade practice under subsection (a) of section 42-110b.

(b) In accordance with the provisions of section 53a-11, any home heating oil dealer who knowingly violates the provisions of subsection (c) of section 16a-23n, as amended by this act, shall have committed a class A misdemeanor.

Sec. 5. Subsection (b) of section 49-41a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2005*):

(b) If payment is not made by the general contractor or any of its subcontractors in accordance with such requirements, the subcontractor shall set forth his claim against the general contractor and the subcontractor of a subcontractor shall set forth its claim against the subcontractor through notice by registered or certified mail. Ten days after the receipt of that notice, the general contractor shall be liable to its subcontractor, and the subcontractor shall be liable to its subcontractor, for interest on the amount due and owing at the rate of one per cent per month. In addition, if a surety bond is not in place, the general contractor, upon written demand of its subcontractor, or the subcontractor, upon written demand of its subcontractor, shall be required to place funds in the amount of the claim, plus interest of one per cent, in an interest-bearing escrow account in a bank in this state, provided the general contractor or subcontractor may refuse to place the funds in escrow on the grounds that the subcontractor has not substantially performed the work according to the terms of his or its employment. In the event that such general contractor or subcontractor refuses to place such funds in escrow, and the party making a claim against it under this section is found to have substantially performed its work in accordance with the terms of its employment in any arbitration or litigation to determine

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the validity of such claim, then such general contractor or subcontractor shall pay the attorney's fees of such party.

Approved July 8, 2005