



# Senate

General Assembly

**File No. 180**

February Session, 2008

Substitute Senate Bill No. 523

*Senate, March 26, 2008*

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

## **AN ACT CONCERNING HEATING OIL AND PROPANE GAS CHARGES.**

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

1 Section 1. Section 16a-21 of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2008*):

3 (a) No person, firm or corporation shall sell at retail fuel oil or  
4 propane gas to be used for residential heating without a written  
5 contract with the purchaser that contains all the terms and conditions  
6 for delivery of such retail fuel oil or propane gas and the amount of  
7 fees, charges or penalties, including tank removal and inspection fees,  
8 minimum usage fees, liquidated damages and hazardous materials  
9 fees assessed to the purchaser under such contract and without placing  
10 the unit price, clearly indicated as such, the total number of units sold  
11 and the amount of any delivery surcharge in a conspicuous place on  
12 the delivery ticket given to the purchaser or an agent of the purchaser  
13 at the time of delivery. No person, firm or corporation may bill or  
14 otherwise attempt to collect from any purchaser of retail fuel oil or

15 propane gas an amount which exceeds the unit price multiplied by the  
16 total number of units stated on the delivery ticket, plus the amount of  
17 any delivery surcharge stated on the ticket. For the purpose of this  
18 section, unit price means the price per gallon computed to the nearest  
19 tenth of a whole cent. Any written contract required by this section  
20 shall be in plain language pursuant to section 42-152 and any fee,  
21 charge or penalty disclosed in such contract shall be in twelve-point,  
22 boldface type of uniform font. The requirement that any contract be in  
23 writing as set forth in this section may be satisfied pursuant to the  
24 provisions of (1) the Connecticut Uniform Electronic Transactions Act,  
25 sections 1-266 to 1-286, inclusive, (2) sections 42a-7-101 to 42a-7-106,  
26 inclusive, and (3) the Electronic Signatures in Global and National  
27 Commerce Act, 15 USC 7001 et seq. Except as provided in subsection  
28 (e) of this section, verbal telephonic communications shall not satisfy  
29 the writing requirement of this section. The requirement that any  
30 contract be in writing as set forth in this section shall not apply to any  
31 retail fuel oil or propane gas contract where no fee, charge or penalty is  
32 assessed, except for the unit price of the retail fuel oil or propane gas  
33 delivered to a purchaser and any surcharge authorized under section  
34 16a-22b, as amended by this act. No contract for the delivery of retail  
35 fuel oil or propane gas under this section shall include a provision for  
36 liquidated damages for a purchaser breach of such contract where the  
37 liquidated damages exceeds the actual damages to the retail fuel oil or  
38 propane gas retailer caused by such breach.

39 (b) Any person, firm or corporation who violates subsection (a) of  
40 this section shall be fined not more than one hundred dollars for the  
41 first offense nor more than five hundred dollars for each subsequent  
42 offense.

43 (c) The provisions of this section shall not apply to any existing  
44 purchaser of a person, firm or corporation selling retail fuel oil or  
45 propane gas on October 1, 2008, who has a valid written contract on  
46 said date.

47 (d) The provisions of this section shall not apply to any existing

48 purchaser of a person, firm or corporation selling retail fuel oil or  
49 propane gas on October 1, 2008, who does not have any valid written  
50 contract on said date if such existing purchaser receives a written  
51 contract prior to October 1, 2008, containing all the terms and  
52 conditions for delivery of such retail fuel oil or propane gas and the  
53 amount of fees, charges or penalties, including tank removal and  
54 inspection fees, minimum usage fees, liquidated damages and  
55 hazardous materials fees assessed to the purchaser under such  
56 contract, provided: (1) The fees in such contract shall not be greater  
57 than the fees charged to such existing customer on October 1, 2008; (2)  
58 the existing purchaser may reject such contract by notifying the fuel oil  
59 or propane gas company within sixty days of receipt of such written  
60 contract without any penalty, including, but not limited to, a tank  
61 removal fee; and (3) such written contract shall be effective if the  
62 existing purchaser does not reject such contract within sixty days of  
63 receipt of such contract.

64 (e) The requirement that any contract be in writing pursuant to this  
65 section and section 16a-23n may be satisfied telephonically by a  
66 person, firm or corporation selling at retail fuel oil or propane gas, only  
67 if: (1) Such telephonic communications are preceded by the purchaser  
68 having received all terms and conditions of the contract in writing,  
69 except for the contract duration, the unit price and the maximum  
70 number of units covered by the contract, if any, in advance of such  
71 telephonic communications between such purchaser and the person,  
72 firm or corporation selling at retail fuel oil or propane gas; (2) the  
73 person, firm or corporation selling at retail fuel oil or propane gas  
74 employs an interactive voice response system or similar technology  
75 which provides the purchaser with the contract duration, the unit price  
76 and the maximum number of units covered by the contract, if any, to  
77 complete the contract; (3) the person, firm or corporation selling at  
78 retail fuel oil or propane gas retains, in a readily retrievable format, a  
79 recording of the purchaser agreeing to each such term and condition  
80 for the period of the contract plus one year; (4) the person, firm or  
81 corporation selling at retail fuel oil or propane gas sends such  
82 purchaser a letter confirming the agreement to such terms and

83 conditions with the written stipulation that the purchaser is bound by  
 84 such terms and conditions unless the agreement is rescinded by such  
 85 purchaser, in writing, within three business days of receipt of said  
 86 letter by such purchaser; and (5) the person, firm or corporation selling  
 87 at retail fuel oil or propane gas retains a copy of each such letter.

88 (f) A violation of the provisions of this section constitutes an unfair  
 89 trade practice under subsection (a) of section 42-110b.

90 Sec. 2. Section 16a-22b of the general statutes is repealed and the  
 91 following is substituted in lieu thereof (*Effective July 1, 2008*):

92 (a) No retail dealer of fuel oil or propane shall assess a surcharge on  
 93 the price of fuel oil or propane delivered to a customer if the delivery  
 94 of the fuel oil or propane is in an amount in excess of one hundred  
 95 twenty-five gallons, except that a surcharge may be assessed if a  
 96 delivery is made outside the normal service area or the normal  
 97 business hours of the dealer or extraordinary labor costs are involved  
 98 in making a delivery. Any other fee, charge or penalty shall be  
 99 assessed in accordance with the provisions of section 16a-21, as  
 100 amended by this act.

101 (b) No retail dealer of fuel oil or propane shall assess a residential  
 102 customer a minimum delivery surcharge on any delivery initiated by  
 103 the seller, including any delivery under an automatic delivery  
 104 agreement.

105 (c) A violation of the provisions of this section constitutes an unfair  
 106 trade practice under subsection (a) of section 42-110b.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2008</i>	16a-21
Sec. 2	<i>July 1, 2008</i>	16a-22b

**Statement of Legislative Commissioners:**

"Consumer" was changed to "purchaser" for consistency.

**GL**      *Joint Favorable Subst.-LCO*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 09 \$	FY 10 \$
Judicial Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill places additional requirements on contracts for home heating oil and propane gas. Current law subjects any person who violates such requirements to a fine of \$100 for a first offense and \$500 for any subsequent offenses; however, no such fines have been imposed over the last six fiscal years for which data are available. To the extent that the bill's expanded requirements increase the number of fines imposed, the bill may generate a minimal revenue gain.

**The Out Years**

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

**OLR Bill Analysis****SB 523*****AN ACT CONCERNING HEATING OIL AND PROPANE GAS CHARGES.*****SUMMARY:**

This bill requires contracts between heating oil and propane gas dealers and their residential purchasers to be written. It requires the contracts to include all terms, conditions, and charges and to be in plain language. It exempts contracts (1) with existing purchasers if certain conditions are met, (2) finalized by telephone if certain steps are followed, and (3) that comply with federal and state e-sign law. It subjects a dealer who violates its written contract requirement to a criminal penalty of up to \$100 for a first offense and up to \$500 for subsequent offenses.

The law does not allow dealers to impose surcharges on deliveries of home heating oil or propane greater than 125 gallons, unless the delivery (1) is outside of the dealer's normal service area or its normal business hours or (2) involves extraordinary labor costs. The bill requires any other fee, charge, or penalty to be assessed in accordance with its provisions.

The bill makes it an unfair trade practice to violate its provisions and the law allowing only certain types of surcharges.

**EFFECTIVE DATE:** October 1, 2008, except for the provision on surcharges, which is effective on July 1, 2008.

**WRITTEN CONTRACTS**

The law requires home heating oil and propane gas dealers to disclose all of a residential purchaser's costs in writing, including unit price and delivery surcharges (CGS § 14-329). The bill requires the

contracts between these dealers and their purchasers to be written and contain all of the delivery terms and conditions and the amount of fees, charges, or penalties, including tank removal and inspection fees, minimum usage fees, liquidated damages, and hazardous material fees assessed on the purchaser. Further, the bill requires the contracts to meet the requirements of the state plain language law and to state fees, charges, and penalties in 12-point boldface type of uniform font (see BACKGROUND). The bill prohibits them from including a provision for liquidated damages for a purchaser breach of contract in which the liquidated damages are greater than the actual damages to the dealer. The law already requires contracts offering a guaranteed price plan to be written (CGS § 16a-23n).

### ***Existing Purchasers***

The bill exempts from its written contract requirements an existing purchaser with a valid written contract on July 1, 2008 and those existing purchasers without a valid written contract in effect on July 1, 2008 if the following conditions are met:

1. the purchaser receives such a contract before that date;
2. the contract contains all of the delivery terms and conditions and the amount of fees, charges, or penalties the bill requires for new purchaser contracts;
3. the fees in the contract are not more than the fees charged the purchaser before October 1, 2008;
4. the purchaser is allowed to reject it by notifying the dealer within 60 days of receiving it without penalty, including a tank removal fee; and
5. the contract is effective if the purchaser does not reject it within the 60-day period.

### ***Telephonic Contracts***

The bill generally provides that verbal telephonic communications

do not satisfy the bill's written contract requirements. But it specifically allows the written contract requirement to be satisfied telephonically if:

1. the telephone call is preceded by the purchaser's receipt of all contract terms and conditions in writing, except for contract duration, unit price, and maximum units covered, if any;
2. the dealer uses an interactive voice response system or similar technology that provides the purchaser with the contract duration, unit price, and maximum units, if any, to complete the contract;
3. the dealer keeps, in a readily retrievable format, a recording of the purchaser agreeing to each term and condition for the duration of the contract plus one year;
4. the dealer sends a letter to the purchaser confirming the agreement to each term and condition with the written stipulation that the purchaser is bound by them unless the purchaser rescinds it in writing within three business days of receiving the letter; and
5. the dealer keeps a copy of the letter.

Finally, it also exempts contracts in which a fee, charge, or penalty is not assessed except for (1) the fuel's unit price and (2) surcharges imposed for (a) delivering 125 gallons of fuel or less or (b) deliveries outside of the normal service area or normal business hours or if extraordinary labor costs are incurred.

### ***Electronic Contracts***

The bill allows dealers to meet the written contract requirement by meeting the requirements of the Connecticut Uniform Electronic Transaction Act, the federal Electronic Signatures in Global and National Commerce Act, and provisions about electronic contracts in the Uniform Commercial Code (see BACKGROUND).

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**BACKGROUND*****Plain Language in Consumer Contracts***

The law requires all consumer contracts, defined as those having a value of \$25,000 or less or to lease a residence, to be written in plain language and establishes two alternative tests for determining if the requirement has been satisfied. The subjective test requires the contracts to meet nine standards, such as using short sentences and paragraphs, everyday words, and readable type. The objective test has 11 standards, such as limiting the number of words per sentence to 50 and words per paragraph to 150, limiting the average number of syllables per word to less than 1.55, and prohibiting type face smaller than eight points (CGS § 42-152).

***E-Sign Laws***

The Connecticut Uniform Electronic Transactions Act establishes a legal foundation to use electronic communications in transactions in which the parties have agreed to conduct business electronically. The federal Electronic Signatures in Global and National Commerce Act (E-SIGN) validates the use of electronic records and signatures (15 USC § 7001 et seq.). The Uniform Commercial Code provisions modify the federal law in certain ways to the extent federal law allows (CGS § 42a-7-101 et seq.).

***Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable

Yea 18    Nay 0    (03/11/2008)