



House of Representatives

General Assembly

File No. 823

January Session, 2009

Substitute House Bill No. 6470

House of Representatives, April 29, 2009

The Committee on Appropriations reported through REP. GERAGOSIAN of the 25th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACTS.

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 Section 16a-21 of the general statutes is repealed and the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, 2009*):

3 (a) [No person, firm or corporation shall sell at retail fuel oil or
4 propane gas to be used for residential heating without placing the unit
5 price, clearly indicated as such, the total number of units sold and the
6 amount of any delivery surcharge in a conspicuous place on the
7 delivery ticket given to the purchaser or an agent of the purchaser at
8 the time of delivery. No person, firm or corporation may bill or
9 otherwise attempt to collect from any purchaser of fuel oil or propane
10 gas an amount which exceeds the unit price multiplied by the total
11 number of units stated on the delivery ticket, plus the amount of any
12 delivery surcharge stated on the ticket.] For the purpose of this section,
13 unit price means the price per gallon computed to the nearest tenth of

14 a whole cent.

15 (b) (1) No person, firm or corporation shall sell at retail fuel oil or
16 propane gas to be used for residential heating without a written
17 contract that contains all the terms and conditions for delivery of such
18 fuel oil or propane gas and the amount of fees, charges or penalties
19 allowed under this subsection assessed to the consumer under such
20 contract. No written contract shall contain any fees, charges or
21 penalties except for propane tank rental fees, propane tank removal
22 fees, liquidated damages and such other penalties for violation of the
23 contract terms. Such fees may increase during the contract term
24 provided the amount of such fees is clearly and conspicuously
25 disclosed. No contract for the delivery of fuel oil or propane gas under
26 this section shall include a provision for liquidated damages for a
27 consumer breach of such contract where the liquidated damages
28 exceeds the actual damages to the fuel oil or propane gas retailer
29 caused by such breach. If a propane tank is being supplied to the
30 purchaser, such contract shall provide the purchaser with the
31 opportunity to purchase the propane tank for the fair market value of
32 the tank upon expiration of the contract. Fair market value shall be net
33 of depreciation. Any fuel oil or propane gas retailer may enter into a
34 separate contract with the purchaser for additional services such as
35 maintenance, repair and warranty of equipment, provided such
36 contract complies with the provisions of this section. No written
37 contract period shall be for a period greater than thirty-six months.

38 (2) Any written contract required by this section shall be in plain
39 language pursuant to section 42-152, provided any fee, charge or
40 penalty disclosed in such contract shall be in twelve-point, boldface
41 type of uniform font.

42 (c) The requirement that contracts be in writing as set forth in this
43 section may be satisfied pursuant to the provisions of: (1) The
44 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-
45 286, inclusive, (2) sections 42a-7-101 to 42a-7-106, inclusive, and (3) the
46 Electronic Signatures in Global and National Commerce Act, 15 USC

47 7001 et seq. Except as provided in subsection (d) of this section, verbal
48 telephonic communications shall not satisfy the writing requirement of
49 this section.

50 (d) The requirement that contracts be in writing pursuant to this
51 section and section 16a-23n, as amended by this act, may be satisfied
52 telephonically by a person, firm or corporation selling at retail fuel oil
53 or propane gas, only if such person, firm or corporation: (1) Has
54 provided to the consumer prior to any telephonic communication all
55 terms and conditions of the contract, in writing, except for the contract
56 duration, the unit price and the maximum number of units covered by
57 the contract, (2) employs an interactive voice response system or
58 similar technology which provides the consumer with the contract
59 duration, the unit price and the maximum number of units covered by
60 the contract, to complete the contract, (3) retains, in a readily
61 retrievable format, a recording of the consumer agreeing to each such
62 term and condition for the period of the contract plus one year, (4)
63 sends the consumer a letter confirming the consumer's agreement to
64 such terms and conditions, with the written stipulation that the
65 consumer is bound by such terms and conditions unless the agreement
66 is rescinded by the consumer, in writing, not later than three business
67 days after receipt of such letter by said consumer, and (5) retains a
68 copy of each such letter.

69 (e) (1) No person, firm or corporation shall deliver fuel oil or
70 propane gas to be used for residential heating, without placing the unit
71 price, clearly indicated as such, the total number of units sold and the
72 amount of any delivery surcharge in a conspicuous place on the
73 delivery ticket given to the purchaser or an agent of the purchaser at
74 the time of delivery. No person, firm or corporation may bill or
75 otherwise attempt to collect from any purchaser of fuel oil or propane
76 gas an amount which exceeds the unit price multiplied by the total
77 number of units stated on the delivery ticket, plus the amount of any
78 delivery surcharge stated on the ticket.

79 (2) The requirement that contracts be in writing as set forth in this

80 section shall not apply to any retail fuel oil or propane gas contract
81 where no fee, charge or penalty is assessed, except for stating the unit
82 price of the retail fuel oil or propane gas delivered to a consumer and
83 any surcharge authorized under section 16a-22b, as amended by this
84 act.

85 (f) The provisions of this section shall not apply to existing
86 customers of a person, firm or corporation selling at retail fuel oil or
87 propane gas on October 1, 2009, who have valid written contracts on
88 said date. The provisions of this section shall apply as of the renewal
89 dates of such contracts.

90 (g) The provisions of this section shall not apply to an existing
91 customer of a person, firm or corporation selling at retail fuel oil or
92 propane gas on October 1, 2009, who does not have a valid written
93 contract in effect on said date, if such existing customer receives a
94 written contract prior to October 1, 2009, containing all the terms and
95 conditions for delivery of such fuel oil or propane gas and the amount
96 of any fee, charge or penalty allowed under this section that such
97 person, firm or corporation shall assess to the customer under such
98 contract, provided: (1) Fees in such contract shall not be greater than
99 the fees charged to such existing customer on October 1, 2009, and may
100 not increase during the contract term; (2) the existing customer may
101 reject such contract by notifying the person, firm or corporation selling
102 at retail such fuel oil or propane gas not later than sixty days after the
103 receipt of such written contract without any penalty, including, but not
104 limited to, a tank removal fee; and (3) such written contract shall be
105 effective if the existing customer does not reject such contract not later
106 than sixty days after receipt of such contract.

107 (h) No person, firm or corporation selling fuel oil or propane gas to
108 be used for residential heating shall be required to maintain a written
109 contract pursuant to this section if such person, firm or corporation
110 lists on the delivery ticket for such fuel oil or propane gas all of the
111 terms and conditions required by this section.

112 [(b)] (i) Any person, firm or corporation who violates subsection

113 [(a)] (e) of this section shall be fined not more than one hundred
114 dollars for the first offense [nor] or more than five hundred dollars for
115 each subsequent offense.

116 Sec. 2. Section 16a-22b of the general statutes is repealed and the
117 following is substituted in lieu thereof (*Effective July 1, 2009*):

118 (a) No retail dealer of fuel oil or propane shall assess a surcharge on
119 the price of fuel oil or propane delivered to a customer if the delivery
120 of the fuel oil or propane is in an amount in excess of one hundred
121 gallons, except that a surcharge may be assessed if a delivery is made
122 outside the normal service area or the normal business hours of the
123 dealer or extraordinary labor costs are involved in making a delivery.
124 No other fee, charge or penalty may be assessed, except as provided in
125 section 16a-21, as amended by this act.

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

130 Sec. 3. Subsection (d) of section 20-327b of the general statutes is
131 repealed and the following is substituted in lieu thereof (*Effective July*
132 *1, 2009*):

133 (d) (1) The Commissioner of Consumer Protection [,] shall, by
134 regulations adopted in accordance with the provisions of chapter 54,
135 prescribe the form of the written residential disclosure report required
136 by this section and sections 20-327c to 20-327e, inclusive. The
137 regulations shall provide that the form include information concerning
138 municipal assessments, including, but not limited to, sewer or water
139 charges applicable to the property. Such information shall include: (A)
140 Whether such assessment is in effect and the amount of the
141 assessment; (B) whether there is an assessment on the property that
142 has not been paid, and if so, the amount of the unpaid assessment; and
143 (C) to the extent of the seller's knowledge, whether there is reason to
144 believe that the municipality may impose an assessment in the future.

145 (2) Such form of the written residential disclosure report shall
146 contain the following:

147 (A) A certification by the seller in the following form:

148 "To the extent of the seller's knowledge as a property owner, the
149 seller acknowledges that the information contained above is true and
150 accurate for those areas of the property listed. In the event a real estate
151 broker or salesperson is utilized, the seller authorizes the brokers or
152 salespersons to provide the above information to prospective buyers,
153 selling agents or buyers' agents.

T1 (Date) (Seller)
T2 (Date) (Seller)"

154 (B) A certification by the buyer in the following form:

155 "The buyer is urged to carefully inspect the property and, if desired,
156 to have the property inspected by an expert. The buyer understands
157 that there are areas of the property for which the seller has no
158 knowledge and that this disclosure statement does not encompass
159 those areas. The buyer also acknowledges that the buyer has read and
160 received a signed copy of this statement from the seller or seller's
161 agent.

T3 (Date) (Seller)
T4 (Date) (Seller)"

162 (C) A statement concerning the responsibility of real estate brokers
163 in the following form:

164 "This report in no way relieves a real estate broker of the broker's
165 obligation under the provisions of section 20-328-5a of the Regulations
166 of Connecticut State Agencies to disclose any material facts. Failure to
167 do so could result in punitive action taken against the broker, such as
168 fines, suspension or revocation of license."

169 (D) A statement that any representations made by the seller on the

170 written residential disclosure report shall not constitute a warranty to
171 the buyer.

172 (E) A statement that the written residential disclosure report is not a
173 substitute for inspections, tests and other methods of determining the
174 physical condition of property.

175 (F) Information concerning environmental matters such as lead,
176 radon, subsurface sewage disposal, flood hazards and, if the residence
177 is or will be served by well water, as defined in section 21a-150, the
178 results of any water test performed for volatile organic compounds
179 and such other topics as the Commissioner of Consumer Protection
180 may determine would be of interest to a buyer.

181 (G) A statement that information concerning the residence address
182 of a person convicted of a crime may be available from law
183 enforcement agencies or the Department of Public Safety and that the
184 Department of Public Safety maintains a site on the Internet listing
185 information about the residence address of persons required to register
186 under section 54-251, 54-252, 54-253 or 54-254, who have so registered.

187 (H) If applicable, a statement disclosing that there is a propane gas
188 tank of a capacity in excess of twenty gallons located on such property,
189 the name of the owner of such tank and any contract related to such
190 tank.

191 Sec. 4. Section 16a-23n of the general statutes is repealed and the
192 following is substituted in lieu thereof (*Effective October 1, 2009*):

193 (a) As used in this section:

194 (1) "Capped price contract" means an agreement where the cost to
195 the consumer of heating oil or propane may not increase above a
196 specified price per gallon but the consumer may pay less than the
197 specified price under circumstances specified in such contract;

198 (2) "Fixed price contract" means an agreement where the cost to the
199 consumer of heating oil or propane is set at a specific price during the

200 term of the contract;

201 (3) "Futures contract" means a standardized, transferable, exchange-
202 traded agreement that requires delivery of heating oil or propane at a
203 specified price on a specified future date;

204 (4) "Guaranteed price contract" means a fixed price or capped price
205 contract or any other agreement where the per gallon price for heating
206 oil or propane is set at a specified amount unless certain circumstances
207 occur;

208 (5) "Physical supply contract" means an agreement for wet barrels or
209 wet gallons of propane that has been secured by the heating oil or
210 propane dealer from a wholesaler;

211 (6) "Secured letter of credit" means a standby, revolving or
212 irrevocable letter of credit issued by a bank or other state or federally
213 chartered financial institution that provides for the Department of
214 Consumer Protection to be named beneficiary in the event of a default
215 by a dealer in the promise of delivery of heating oil or propane under
216 contract to consumers; and

217 (7) "Surety bond" means a bond issued by a licensed insurance
218 company on behalf of a dealer, guaranteeing that such company will
219 reimburse any consumer losses incurred as a result of the failure of the
220 dealer to fulfill an obligation to a consumer.

221 [(a)] (b) A contract for the retail sale of home heating oil or propane
222 gas that offers a guaranteed price [plan] contract, including fixed or
223 capped price contracts and any other similar terms, shall be in writing
224 and the terms and conditions of such price plan shall be disclosed,
225 including a description of the circumstances under which the price
226 may increase or decrease. Such disclosure shall be in plain language
227 and shall immediately follow the language concerning the price or
228 service that could be affected and shall be printed in no less than
229 twelve-point boldface type of uniform font.

230 [(b)] (c) A home heating oil or propane gas dealer that advertises a

231 price shall offer such price for a period of no less than twenty-four
232 hours or until the next advertised price is publicized, whichever occurs
233 first.

234 [(c)] (d) No home heating oil or propane gas dealer shall enter into,
235 renew or extend a [prepaid home heating oil or propane gas contract
236 or a capped price per gallon home heating oil contract] guaranteed
237 price contract unless such dealer has, not later than five business days
238 after receipt of a such guaranteed price contract, either: (1) Obtained
239 and maintained heating oil or propane gas futures or forwards
240 contracts, physical supply contracts or other similar commitments the
241 total amount of which allow such dealer to purchase, at a fixed price,
242 heating oil or propane gas in an amount not less than eighty per cent
243 of the maximum number of gallons or amount that such dealer is
244 committed to deliver pursuant to all [prepaid home heating oil or
245 propane gas] guaranteed price contracts entered into, renewed or
246 extended by such dealer, [or that such dealer estimates is committed
247 pursuant to all capped price per gallon home heating oil or capped
248 price per unit propane gas contracts, respectively, or] (2) obtained and
249 maintained a surety bond in an amount not less than fifty per cent of
250 the total amount of funds paid to the dealer by consumers [pursuant to
251 prepaid home heating oil or propane gas contracts] or that the dealer
252 estimates will be paid to the dealer by consumers pursuant to all
253 [capped price per gallon home heating oil or capped price per unit
254 propane gas contracts, respectively] guaranteed price contracts, or (3)
255 obtained a secured letter of credit in an amount not less than fifty per
256 cent of the total amount of funds paid to the dealer by consumers
257 pursuant to guaranteed price contracts. Such dealer shall maintain
258 such total amount of futures or forwards contracts, physical supply
259 contracts or other similar commitments, a secured letter of credit or the
260 amount of the surety bond required by this subsection for the period of
261 time for which such [prepaid home heating oil or propane gas
262 contracts or capped price per gallon home heating oil or capped price
263 per unit propane gas contracts] guaranteed price contracts are
264 effective, except that the total amount of such futures or forwards
265 contracts, physical supply contracts or other similar commitments, the

266 secured letter of credit or the amount of the surety bond may be
267 reduced during such period of time to reflect any amount of home
268 heating oil or propane gas already delivered to and paid for by the
269 consumer.

270 [(d)] (e) No [prepaid home heating oil or propane gas] guaranteed
271 price contract shall require any consumer commitment to purchase
272 home heating oil or propane gas pursuant to the terms of such contract
273 for a period of more than eighteen months.

274 [(e)] (f) Any [prepaid home heating oil or propane gas] guaranteed
275 price contract shall indicate: (1) The amount of funds paid by the
276 consumer to the dealer under such contract, (2) the maximum number
277 of gallons of home heating oil or maximum amount of propane gas
278 committed by the dealer for delivery to the consumer pursuant to such
279 contract, and (3) that performance of such prepaid home heating oil or
280 propane gas contract is secured by one of the two options described in
281 subsection [(c)] (d) of this section. Any such contract shall provide that
282 the contract price of any undelivered home heating oil or propane gas
283 owed to the consumer under the contract, on the end date of such
284 contract, shall be reimbursed to the consumer not later than thirty days
285 after the end date of such contract unless the parties to such contract
286 agree otherwise.

287 [(f)] (g) Each home heating oil or propane gas dealer who enters
288 into, renews or extends [prepaid home heating oil or propane gas
289 contracts or capped price per gallon home heating oil contracts or
290 capped price per unit propane gas contracts] capped price contracts,
291 fixed price contracts or guaranteed price contracts shall inform the
292 Commissioner of Consumer Protection, in writing, that such dealer is
293 entering into, renewing or extending such contracts and shall identify
294 any entity from which the dealer has secured futures or forwards
295 contracts or other similar commitments secured lines of credit or
296 surety bonds pursuant to subsection [(c)] (d) of this section. Each such
297 dealer shall notify the commissioner if at any time the total amount of
298 such secured futures or forwards contracts, physical supply contracts

299 or other such similar commitments or secured lines of credit or surety
300 bonds held by the dealer is less than eighty per cent of the maximum
301 number of gallons or amount that such dealer is committed to deliver
302 pursuant to all such [prepaid home heating oil or propane gas]
303 contracts entered into, renewed or extended by such dealer or that
304 such dealer estimates it is committed to deliver pursuant to all of its
305 [capped price per gallon home heating oil or capped price per unit
306 propane gas contracts] capped price contracts, fixed price contracts or
307 guaranteed price contracts, respectively. The commissioner shall
308 prescribe the form in which such information shall be reported.

309 [(g)] (h) Each person from which a home heating oil or propane gas
310 dealer has secured a futures [or forwards] contract, physical supply
311 contract or other similar commitment pursuant to subsection [(c)] (d)
312 of this section or who provides a bond or secured letter of credit
313 pursuant to this section shall notify the Commissioner of Consumer
314 Protection, in writing, of the cancellation of such contract, [or] other
315 similar commitment or of the cancellation of such bond or secured
316 letter of credit not later than three business days after such
317 cancellation.

318 (i) The provisions of any guaranteed price contract shall not be
319 enforceable against the estate or survivors upon the death of the
320 customer signing such contract unless such estate or survivor has
321 accepted an express assignment of such contract in writing.

322 Sec. 5. Section 16a-23r of the general statutes is repealed and the
323 following is substituted in lieu thereof (*Effective October 1, 2009*):

324 [(a) A violation of the provisions of section 16a-23m, 16a-23n or 16a-
325 23o constitutes an unfair trade practice under subsection (a) of section
326 42-110b.]

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

331 Sec. 6. (NEW) (*Effective July 1, 2009*) Nothing in sections 1 to 5,
332 inclusive, of this act shall validate a provision or clause that would
333 otherwise be unenforceable pursuant to section 42-150u of the general
334 statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2009</i>	16a-21
Sec. 2	<i>July 1, 2009</i>	16a-22b
Sec. 3	<i>July 1, 2009</i>	20-327b(d)
Sec. 4	<i>October 1, 2009</i>	16a-23n
Sec. 5	<i>October 1, 2009</i>	16a-23r
Sec. 6	<i>July 1, 2009</i>	New section

APP *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 10 \$	FY 11 \$
Consumer Protection, Dept.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The Department of Consumer Protection can meet the requirements of the bill with existing resources.

OLR Bill Analysis

sHB 6470

AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACTS.

SUMMARY:

This bill requires parties entering into an agreement for the retail sale of fuel oil or propane gas for residential heating to execute a written or qualifying contract containing the terms and conditions for delivery and any potential fees, charges, or penalties. The bill restricts the fees a retailer may charge and limits potential liquidated damages. The contract must also allow the customer to purchase the propane tank for fair market value at the end of the contract. The bill does not require a written contract if the terms and conditions are fully disclosed on the delivery ticket.

The bill also amends the written residential disclosure report to include, if applicable, a statement disclosing the (1) existence of a propane tank in excess of 20 gallons, (2) name of the tank owner, and (3) related contract.

The bill defines “guaranteed price contract” to include all forms of prepaid and fixed-price heating oil and propane contracts. It (1) adds physical supply contracts and a letter of credit as acceptable forms of security to ensure delivery and (2) requires that the commitments obtained through futures or physical supply contracts be at least 80% of the maximum number of gallons that the dealer is committed to deliver. It requires any holder of a futures contract, surety bond, physical supply contract, or letter of credit to notify the Department of Consumer Protection (DCP) of any cancellation.

The bill also eliminates a provision in current law making violations of registration, advertising, contract cancellation, and license display

requirements unfair trade practices. The bill does not appear to create new penalties for violations.

The bill also provides that none of these provisions would validate an otherwise unenforceable liquidated damages provision or clause in a consumer contract.

EFFECTIVE DATE: Various

§ 1 — CONTRACTS

The bill requires parties entering into an agreement for the retail sale of fuel oil or propane gas for residential heating to execute a written contract for up to 36 months. By law, retailers must include the unit price, units sold, and delivery surcharge on the delivery tag. Retailers may not collect more than the ticket value.

The contract must contain the terms and conditions for delivery and, in 12-point bold type, any fees, charges, or penalties that may be imposed. The only fees allowed under the contract are the cost of tank rental, tank removal, contract violation penalties, and liquidated damages. There may be no liquidated damages provision allowing for the damages to exceed the actual damage to the retailer. A retailer may increase its fees during the contract period if such increase is clearly and conspicuously disclosed. Individuals may enter into separate contracts for additional services, such as maintenance, repair, and equipment warranty. If a propane tank is supplied, the contract must allow for its purchase at fair market value, net of depreciation, when the contract expires.

Current law requires contracts for the retail sale of home heating oil or propane gas that offer a guaranteed price plan, including fixed price contracts and any other similar terms, to be in writing. The contracts must disclose the terms and conditions (1) in plain language, (2) immediately following the language concerning the price or service that could be affected, and (3) in at least 12-point boldface type of uniform font (CGS § 16a-23n(a)). No contract may require a consumer commitment for a period of more than 18 months (CGS § 16a-23n(d)).

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

Oral or telephonic agreements do not satisfy the written contract requirement unless the retailer gives the consumer a written copy of the terms and conditions before the telephone conversation. The retailer must also (1) use an interactive system providing the duration, unit price, and maximum number of units covered by the contract to complete the contract; (2) retain readily retrievable recordings of the agreement for at least one year beyond the contract; (3) send a confirmation letter informing the consumer that the contract is binding unless he or she rescinds it in writing within three days of receipt of the confirmation; and (4) retain a copy of the confirmation letter. The written contract requirement does not apply to contracts without fees, charges, or penalties assessed, but such contracts must state the unit price and surcharges.

The preceding provisions do not apply to existing customers with valid contracts on October 1, 2009. They also do not apply to customers without valid contracts if the customer receives a written contract before October 1, 2009 containing the terms and conditions, fees, surcharges, and penalties, provided:

1. fees are not greater than existing fees and may not increase; and
2. an existing customer may reject the contract within 60 days with no penalty, including for tank removal.

The written contract is effective if not rejected within 60 days of receipt.

EFFECTIVE DATE: October 1, 2009

§ 2 — SURCHARGES

Current law prohibits retailers from charging a surcharge for deliveries greater than 100 gallons unless the delivery is outside the normal service area or business hours or involves extraordinary labor costs. The bill prohibits any other fee, charge, or penalty on such deliveries totaling more than the unit price multiplied by the total number of units stated on the delivery ticket, plus the amount of any delivery surcharge stated on the delivery ticket.

EFFECTIVE DATE: July 1, 2009

§ 3 — RESIDENTIAL DISCLOSURE

The law requires a real estate seller to give prospective purchasers a residential condition report before the binder or contract is executed in a residential real estate transaction (i.e., sale, exchange, or lease with option to buy). The report discloses information about the property and environmental matters, such as lead and radon. The bill amends the required written residential disclosure report to include, if applicable, a statement disclosing the existence of a propane tank in excess of 20 gallons, the name of the tank owner, and the related contract.

EFFECTIVE DATE: July 1, 2009

§ 4 — GUARANTEED PRICE CONTRACTS

The bill requires that “guaranteed price contracts,” instead of contracts offering a “guaranteed price plan,” for the retail sale of home heating oil or propane gas be in writing. These include a fixed or capped price contract or any other agreement where there is a set per gallon price unless certain circumstances occur. The latter includes fixed price contracts.

The bill defines a “capped price contract” as an agreement where the cost to the consumer may not increase above a specified price per gallon but may be reduced under circumstances specified in such contract. It defines a “fixed price contract” as an agreement where the cost to the consumer is set at a specific price for the term of the contract. The bill requires that guaranteed price contracts describe the

circumstances in which the price may change.

The bill adds physical supply contracts to the commitments allowing dealers to purchase heating oil or propane gas in an amount not less than 80% of the maximum number of gallons that the dealer is committed to deliver. These are agreements for wet barrels or wet gallons of propane that have been secured by the heating oil or propane dealer from a wholesaler. It also adds a secured letter of credit at 50% of the total funds paid by consumers for guaranteed price contracts to the acceptable forms of security. A "secured letter of credit" is a standby, revolving, or irrevocable letter of credit issued by a bank or other state or federally chartered financial institution that provides for DCP to be named beneficiary if a dealer defaults on a promise to deliver heating oil or propane under contract to consumers.

Under existing law, a dealer must obtain (1) heating oil or propane gas futures or forward contracts or other similar commitments or (2) a surety bond of at least 50% of the total amount of funds paid by consumers. The bill defines "surety bond" as a bond issued by a licensed insurance company on behalf of a dealer, guaranteeing that the company will reimburse any consumer losses incurred as a result of the dealer's failure to fulfill an obligation to a consumer. Dealers must maintain the total amount of futures and forwards contracts, physical supply contracts, and secured credit for the effective life of the guaranteed price contracts, though they may be reduced to reflect payment and delivery. Under the bill, a "futures contract" is a standardized, transferable, exchange-traded agreement requiring delivery of heating oil or propane at a specified price on a specified future date.

The bill requires these security forms to be obtained within five days of receipt of the guaranteed price contract.

Under existing law, a dealer entering into, extending, or renewing capped, fixed, or guaranteed price contracts must (1) inform DCP in writing, (2) identify secured lines of credit or surety bonds, and (3) notify DCP at any time the physical supply contracts or secured lines

fall below 80% of the maximum gallons the dealer is committed to deliver. The dealer already must identify secured futures or forwards contracts and report those below 80%. The bill requires persons from whom a dealer has a physical supply contract or bond or secured letter of credit to notify DCP of cancellation. (Futures contracts cancelled must already be reported under current law.)

Under the bill, the provisions of guaranteed price contracts are not enforceable against the estate or survivors upon the customer's death unless express assignment was accepted in writing.

EFFECTIVE DATE: October 1, 2009

§ 5 — CUTPA VIOLATIONS ELIMINATED

The bill removes the CUTPA violation from a number of provisions in the statutes. Under current law, a person, firm, or corporation must obtain a certificate of registration from the Department of Consumer Protection (DCP) to legally engage in the retail sale of home heating oil or propane gas (CGS § 16a-23m(a)). Applicants must provide evidence of (1) general liability insurance coverage and (2) insurance to cover any potential environmental damage related to fuel oil spills or propane gas leaked. The coverage must be at least \$1,000,000. Dealers must provide evidence of renewals or changes to the coverage within five days of renewal or change (CGS § 16a-23m(b)). A dealer's insurance company must notify DCP upon cancellation of the required insurance, and DCP must revoke the registration of a dealer lacking the necessary coverage (CGS § 16a-23m(d)).

The dealer may obtain and maintain heating oil or propane gas futures, forwards contracts, or other similar commitments, at amounts allowing the dealer to purchase, at a fixed price, heating oil or propane gas of at least 80% of the maximum number of gallons or amount that such dealer is committed to deliver pursuant to all prepaid home heating oil or propane gas contracts entered into, renewed or extended by such dealer or that such dealer estimates is committed pursuant to all capped price per gallon home heating oil or capped price per unit

propane gas contracts, respectively.

Dealers must inform the DCP commissioner in writing that the dealer is entering into, renewing, or extending such contracts and identify any entity from which the dealer has secured futures or forwards contracts or other similar commitments. Dealers must notify the commissioner if at any time the total amount of such secured futures, forwards contracts, or other commitments is less than 80% of the maximum number of gallons or amount that such dealer is committed to deliver or that the dealer estimates it is committed to (CGS § 16a-23n(f)).

Anyone from whom a dealer has secured a futures or forwards contract or other similar commitment must notify the DCP commissioner, in writing, of the cancellation of such contract or other similar commitment within three business days of the cancellation (CGS § 16a-23n(g)).

Any prepaid home heating oil or propane gas contract must indicate (1) the amount of paid by the consumer under the contract, (2) the maximum number of gallons of home heating oil or maximum amount of propane gas committed by the dealer for delivery to the consumer, and (3) that performance of such prepaid home heating oil or propane gas contract is secured. The contract must include information that the contract price of any undelivered home heating oil or propane gas owed to the consumer under the contract, on the end date of such contract, will be reimbursed to the consumer within 30 days of the contract end date unless otherwise agreed (CGS § 16a-23n(d)).

Registered dealers must display their registration number in all advertisements or other prepared material (CGS § 16a-23m(c)). A home heating oil or propane gas dealer offering plumbing or heating work service must submit evidence when registering, that the registrant subcontracts with or employs only persons licensed or registered to perform such work. The registrant must attest, when applying for registration as a dealer, that all plumbing or heating work service must be performed in accordance with the law. Any registrant

under this section who offers such plumbing or heating services must display the state license number of the subcontractor or employee performing such work for the registrant on all commercial vehicles used in his or her business and display such number in a conspicuous manner on all printed advertisements, bid proposals, contracts, invoices and stationery used in the business (CGS § 16a-23o).

A home heating oil or propane gas dealer that advertises a price must offer it for at least 24 hours or until the next advertised price is publicized, whichever occurs first (CGS § 16a-23n(b)).

The bill repeals the statute making failure to comply with any of the above provisions a CUTPA violation.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

E-Sign Laws

The Connecticut Uniform Electronic Transactions Act establishes a legal basis 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 modifies 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.

Related Bills

HB 5400 (File 63) requires the written residential condition report used in residential real estate transactions to include a statement listing all leased items on residential property, including propane tanks and security system hardware.

SHB 6114 (File 736) requires the residential condition report to include a statement that if the property is historic or in an historic district or village, a person may contact the town clerk for compliance requirements information for the property.

Legislative History

On March 31, the House referred the bill (File 134) to the Appropriations Committee, which reported a substitute, eliminating the unfair trade practice designation for violations of (1) the bill's provisions relating to contract requirements and surcharges and (2) existing laws governing violations of registration, insurance, advertising, contract cancellation, and license display requirements.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 14 Nay 4 (03/05/2009)

Appropriations Committee

Joint Favorable Substitute
Yea 50 Nay 0 (04/15/2009)