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Amendment

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Offered by:

REP. SHAPIRO, 144th Dist.

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To: Subst. House Bill No. 6470

File No. 823

Cal. No. 147

"AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACTS."

1 Strike everything after the enacting clause and substitute the
2 following in lieu thereof:

3 "Section 1. Section 16a-21 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective October 1, 2009*):

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

14 delivery surcharge stated on the ticket.] For the purpose of this section,
15 [unit price] (1) "unit price" means the price per gallon computed to the
16 nearest tenth of a whole cent; (2) "associated equipment" means a gas
17 regulator, gas line, sacrificial anode, interconnecting hardware and
18 such other equipment necessary for the installation and operation of a
19 propane tank; and (3) "residential heating" means heat provided for a
20 structure with at least one but not more than four dwelling units.

21 (b) (1) No person, firm or corporation shall sell at retail fuel oil or
22 propane gas to be used for residential heating without a written
23 contract that contains all the terms and conditions for delivery of such
24 fuel oil or propane gas, including the method for determining the unit
25 price and the amount of fees, charges or penalties allowed under this
26 subsection assessed to the consumer under such contract. No written
27 contract shall contain any fees, charges or penalties except for propane
28 tank rental fees, propane tank removal fees, liquidated damages and
29 such other penalties for violation of the contract terms. Such fees may
30 increase during the contract term provided the amount of such fees are
31 clearly and conspicuously disclosed. No contract for the delivery of
32 fuel oil or propane gas under this section shall include a provision for
33 liquidated damages for a consumer breach of such contract where the
34 liquidated damages exceeds the actual damages to the fuel oil or
35 propane gas retailer caused by such breach. If a propane tank installed
36 underground on property owned by the consumer is being leased or
37 lent to such consumer, such contract shall provide the consumer with
38 the option to purchase such tank and associated equipment upon the
39 expiration of the contract and at such other times as provided in such
40 contract. Such option shall be for a commercially reasonable amount
41 and may include a reasonable waiver of liability or transfer of
42 warranty, each of which shall be stated in the contract. Any fuel oil or
43 propane gas retailer may enter into a separate contract with the
44 purchaser for additional services such as maintenance, repair and
45 warranty of equipment, provided such contract complies with the
46 provisions of this section. No written contract period shall be for a
47 period greater than thirty-six months.

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

52 (c) The requirement that contracts be in writing as set forth in this
53 section may be satisfied pursuant to the provisions of: (1) The
54 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-
55 286, inclusive, (2) sections 42a-7-101 to 42a-7-106, inclusive, and (3) the
56 Electronic Signatures in Global and National Commerce Act, 15 USC
57 7001 et seq. Except as provided in subsection (d) of this section, verbal
58 telephonic communications shall not satisfy the writing requirement of
59 this section.

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

80 (e) (1) No person, firm or corporation shall deliver fuel oil or

81 propane gas to be used for residential heating, without placing the unit
82 price, clearly indicated as such, the total number of units sold and the
83 amount of any delivery surcharge in a conspicuous place on the
84 delivery ticket given to the purchaser or an agent of the purchaser at
85 the time of delivery. Except where the delivery of fuel oil or propane
86 gas is placed in a common tank from which individual customers draw
87 such fuel oil or propane gas and are billed according to a meter that
88 measures such customer's usage from the common tank, no person,
89 firm or corporation may bill or otherwise attempt to collect from any
90 purchaser of fuel oil or propane gas an amount which exceeds the unit
91 price multiplied by the total number of units stated on the delivery
92 ticket, plus the amount of any delivery surcharge stated on the ticket.

93 (2) The requirement that contracts be in writing as set forth in this
94 section shall not apply to any retail fuel oil or propane gas contract
95 where no fee, charge or penalty is assessed, other than the unit price of
96 the retail fuel oil or propane gas delivered to a consumer and any
97 surcharge authorized under section 16a-22b, as amended by this act.

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

103 (g) (1) The provisions of this section shall not apply to an existing
104 customer of a person, firm or corporation selling at retail fuel oil or
105 propane gas on October 1, 2009, who does not have a valid written
106 contract in effect on said date, if such existing customer receives a
107 written contract that complies with the provisions of subsection (b) of
108 this section prior to January 1, 2010, containing all the terms and
109 conditions for delivery of such fuel oil or propane gas and the amount
110 of any fee, charge or penalty allowed under this section that such
111 person, firm or corporation shall assess to the customer under such
112 contract, provided: (A) The method of calculating the unit price shall
113 be the same as the method most commonly used for such calculation

114 during the previous six months; (B) fees in such contract shall not be
115 greater than the fees charged to such existing customer on October 1,
116 2009, and such fees may not increase during the contract term; (C) the
117 existing customer may reject such contract by notifying the person,
118 firm or corporation selling at retail such fuel oil or propane gas not
119 later than thirty days after the receipt of such written contract without
120 any penalty, including, but not limited to, a tank removal fee; and (D)
121 such written contract shall be effective if the existing customer does
122 not reject such contract not later than thirty days after receipt of such
123 contract.

124 (2) At the end of such contract's term, the provisions of this section
125 shall not apply to an existing customer if such existing customer
126 receives a written contract that complies with the provisions of
127 subsection (b) of this section by certified mail, return receipt requested,
128 not more than ninety days and not less than thirty days prior to the
129 end of such contract's term, containing all the terms and conditions for
130 delivery of such fuel oil or propane gas and the amount of any fee,
131 charge or penalty allowed under this section that such person, firm or
132 corporation shall assess to the customer under such contract, provided:
133 (A) The method of calculating the unit price shall be the same as the
134 method most commonly used for such calculation during the previous
135 six months; (B) fees in such contract and a comparison of such fees to
136 the fees under the current contract shall be clearly and conspicuously
137 disclosed; (C) the existing customer may reject such contract by
138 notifying the person, firm or corporation selling at retail such fuel oil
139 or propane gas not later than thirty days after the receipt of such
140 written contract without any penalty, including, but not limited to, a
141 tank removal fee; and (D) such written contract shall be effective if the
142 existing customer does not reject such contract not later than thirty
143 days after receipt of such contract. Such person, firm or corporation
144 shall maintain the signed certified mail receipt for a period of not less
145 than three years from the effective date of such contract.

146 (h) No person, firm or corporation shall condition the sale of fuel oil
147 or propane to a consumer upon an agreement to purchase a fuel oil or

148 propane tank from such person, firm or corporation. No person, firm
149 or corporation shall condition the sale of a fuel oil or propane tank to a
150 consumer upon an agreement to purchase fuel oil or propane from
151 such person, firm or corporation.

152 [(b)] (i) Any person, firm or corporation who violates [subsection
153 (a)] any provision of this section shall be fined not more than [one] five
154 hundred dollars for the first offense, [nor] not more than [five] seven
155 hundred fifty dollars for [each subsequent offense] a second offense
156 occurring not more than three years after a prior offense and not more
157 than one thousand five hundred dollars for a third or subsequent
158 offense occurring not more than three years after a prior offense.

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

161 (a) No retail dealer of fuel oil or propane shall assess a surcharge on
162 the price of fuel oil or propane delivered to a customer if the delivery
163 of the fuel oil or propane is in an amount [in excess] of one hundred or
164 more gallons, except that a surcharge may be assessed if a delivery is
165 made outside the normal service area or the normal business hours of
166 the dealer or extraordinary labor costs are involved in making a
167 delivery. No other fee, charge or penalty may be assessed, except as
168 provided in section 16a-21, as amended by this act.

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

173 (c) Any person, firm or corporation who violates a provision of this
174 section shall be fined not more than five hundred dollars for a first
175 offense, not more than seven hundred fifty dollars for a second offense
176 occurring not more than three years from a prior offense and one
177 thousand five hundred dollars for a third or subsequent offense
178 occurring not more than three years after a prior violation.

179 Sec. 3. Subsection (b) of section 16a-23m of the general statutes is
180 repealed and the following is substituted in lieu thereof (*Effective*
181 *October 1, 2009*):

182 (b) Each person, firm or corporation seeking registration as a home
183 heating oil or propane gas dealer shall apply annually for a certificate
184 of registration with the Department of Consumer Protection on forms
185 prescribed by the Commissioner of Consumer Protection. Such forms
186 shall require the dealer to disclose all affiliated companies registered
187 with the Department of Consumer Protection that are under common
188 ownership or have interlocking boards of directors. Each applicant
189 shall pay a registration fee of one hundred dollars. The commissioner
190 shall require all applicants for registration as a home heating oil or
191 propane gas dealer to provide evidence of general liability insurance
192 coverage and insurance to cover any potential environmental damage
193 due to fuel oil spills or propane gas leaks caused by such applicant as a
194 registered dealer which coverage shall be not less than one million
195 dollars. Each registered dealer shall provide the department with
196 evidence of each renewal of or change to such insurance coverage not
197 later than five days after such renewal or change during the period of
198 registration, which renewal or change shall meet the requirements of
199 this subsection.

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

202 (a) As used in this section:

203 (1) "Capped price contract" means an agreement where the cost to
204 the consumer of heating oil or propane may not increase above a
205 specified price per gallon and the consumer may pay less than the
206 specified price under circumstances specified in such contract;

207 (2) "Fixed price contract" means an agreement where the cost to the
208 consumer of heating oil or propane is set at a specific price during the
209 term of the contract;

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

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

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

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

224 [(a)] (b) A contract or a renewal or extension of a contract for the
225 retail sale of home heating oil or propane gas that offers a guaranteed
226 price [plan] contract, including fixed or capped price contracts and any
227 other similar terms, shall be in writing and the terms and conditions of
228 such price plan shall be disclosed, including a plain language
229 description of the circumstances under which the price may increase or
230 decrease. A capped price contract shall specify how the price will or
231 will not decrease in relation to the heating oil or propane commodities
232 market. Such disclosure shall be in plain language and shall
233 immediately follow the language concerning the price or service that
234 could be affected and shall be printed in no less than twelve-point
235 boldface type of uniform font.

236 [(b)] (c) A home heating oil or propane gas dealer that advertises a
237 price shall offer such price for a period of no less than twenty-four
238 hours or until the next advertised price is publicized, whichever occurs
239 first.

240 [(c)] (d) No home heating oil or propane gas dealer shall enter into,

241 renew or extend a [prepaid home heating oil or propane gas contract
242 or a capped price per gallon home heating oil] guaranteed price
243 contract unless such dealer has, not later than five business days after
244 receipt of such guaranteed price contract, either: (1) Obtained and
245 maintained heating oil or propane gas futures or forwards contracts,
246 physical supply contracts or other similar commitments the total
247 amount of which allow such dealer to purchase, at a fixed price,
248 heating oil or propane gas in an amount not less than eighty per cent
249 of the maximum number of gallons or amount that such dealer is
250 committed to deliver pursuant to all [prepaid home heating oil or
251 propane gas] guaranteed price contracts entered into, renewed or
252 extended by such dealer, [or that such dealer estimates is committed
253 pursuant to all capped price per gallon home heating oil or capped
254 price per unit propane gas contracts, respectively,] or (2) obtained and
255 maintained a surety bond in an amount not less than fifty per cent of
256 the total amount of funds paid to the dealer by consumers [pursuant to
257 prepaid home heating oil or propane gas contracts] or that the dealer
258 estimates will be paid to the dealer by consumers pursuant to all
259 [capped price per gallon home heating oil or capped price per unit
260 propane gas contracts, respectively] guaranteed price contracts. Such
261 dealer shall maintain such total amount of futures or forwards
262 contracts, physical supply contracts or other similar commitments, or
263 the amount of the surety bond required by this subsection for the
264 period of time for which such [prepaid home heating oil or propane
265 gas contracts or capped price per gallon home heating oil or capped
266 price per unit propane gas contracts] guaranteed price contracts are
267 effective, except that the total amount of such futures or forwards
268 contracts, physical supply contracts or other similar commitments, or
269 the amount of the surety bond may be reduced during such period of
270 time to reflect any amount of home heating oil or propane gas already
271 delivered to and paid for by the consumer.

272 [(d)] (e) No [prepaid home heating oil or propane gas] guaranteed
273 price contract shall require any consumer commitment to purchase
274 home heating oil or propane gas pursuant to the terms of such contract

275 for a period of more than eighteen months.

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

289 [(f)] (g) Each home heating oil or propane gas dealer who enters
290 into, renews or extends [prepaid home heating oil or propane gas
291 contracts or capped price per gallon home heating oil contracts or
292 capped price per unit propane gas] guaranteed price contracts shall
293 inform the Commissioner of Consumer Protection, in writing, that
294 such dealer is entering into, renewing or extending such contracts and
295 shall identify any entity from which the dealer has secured futures or
296 forwards contracts or other similar commitments or surety bonds
297 pursuant to subsection [(c)] (d) of this section. Each such dealer shall
298 notify the commissioner if at any time the total amount of such secured
299 futures or forwards contracts, physical supply contracts or other such
300 similar commitments or surety bonds held by the dealer is less than
301 eighty per cent of the maximum number of gallons or amount that
302 such dealer is committed to deliver pursuant to all such [prepaid home
303 heating oil or propane gas] guaranteed price contracts entered into,
304 renewed or extended by such dealer or that such dealer estimates it is
305 committed to deliver pursuant to all of its [capped price per gallon
306 home heating oil or capped price per unit propane gas] guaranteed
307 price contracts, respectively. The commissioner shall prescribe the
308 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, a physical supply
311 contract or other similar commitment pursuant to subsection ~~[(c)]~~ (d)
312 of this section or who provides a bond pursuant to this section shall
313 notify the Commissioner of Consumer Protection, in writing, of the
314 cancellation of such contract, ~~[or] other similar commitment~~ or of the
315 cancellation of such bond not later than three business days after such
316 cancellation.

317 (i) The provisions of any contract entered into pursuant to this
318 section shall not be enforceable against a survivor of a deceased
319 customer upon the death of the customer signing such contract unless
320 such survivor has accepted an express assignment of such contract in
321 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, as amended by
325 this act, 16a-23n, as amended by this act, or 16a-23o constitutes an
326 unfair trade practice under subsection (a) of section 42-110b.

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

331 (c) Any person, firm or corporation who violates the provisions of
332 section 16a-23m, as amended by this act, section 16a-23n, as amended
333 by this act, except the provisions of subsection (d) of said section 16a-
334 23n, or section 16a-23o, shall be fined not more than five hundred
335 dollars for a first offense, not more than seven hundred fifty dollars for
336 a second offense occurring not more than three years after a prior
337 offense and not more than one thousand five hundred dollars for a
338 third or subsequent offense occurring not more than three years after a
339 prior violation.

340 Sec. 6. Section 16a-23p of the general statutes is repealed and the
341 following is substituted in lieu thereof (*Effective October 1, 2009*):

342 (a) The Department of Consumer Protection may suspend or revoke
343 any registration issued under section 16a-23m, as amended by this act,
344 if the holder of such registration is grossly incompetent, engages in
345 malpractice or unethical conduct or knowingly makes false,
346 misleading or deceptive representations regarding such holder's work,
347 violates any provision of section 16a-23n, as amended by this act, fails
348 to comply with any subpoena issued pursuant to subsection (b) of this
349 section or violates any regulations adopted under section 16a-23q.
350 Before any such registration is suspended or revoked, such holder
351 shall be given notice and opportunity for hearing as provided in
352 regulations adopted by the Commissioner of Consumer Protection in
353 accordance with the provisions of chapter 54.

354 (b) The commissioner may, at his or her discretion, compel by
355 subpoena the production of any documents from any dealer or from
356 any provider of futures contracts, physical supply contracts or other
357 similar commitments regarding compliance with the provisions of
358 sections 16a-23m to 16a-23r, inclusive, as amended by this act.

359 Sec. 7. (NEW) (*Effective July 1, 2009*) Nothing in sections 16a-21, 16a-
360 22b, subsection (b) of section 16a-23m, and section 16a-23n and 16a-23r
361 of the general statutes, as amended by this act, shall validate a
362 provision or clause that would otherwise be unenforceable pursuant to
363 section 42-150u of the general statutes.

364 Sec. 8. Section 42-158aa of the general statutes is repealed and the
365 following is substituted in lieu thereof (*Effective January 1, 2010, and*
366 *applicable to all contracts entered into on and after said date*):

367 (a) No provision of a contract for refuse removal or disposal which
368 states that the term of such contract shall be deemed renewed for a
369 [specified additional] period of time in excess of one year shall be
370 enforceable unless the person against whom such provision is to be
371 enforced initialed or signed a conspicuous statement immediately

372 following such provision, stating, in boldface type at least twelve
 373 points in size: "I acknowledge that this contract contains an
 374 AUTOMATIC RENEWAL provision.", and within ninety days of the
 375 expiration of the term of such contract, the recipient of such refuse
 376 removal or disposal services is (1) mailed or delivered a notice by the
 377 refuse removal company to the authorized representative of the person
 378 against whom such contract provision is to be enforced, notifying them
 379 of such renewal, and (2) within thirty days of such mailing or delivery,
 380 the person against whom such provision is to be enforced does not
 381 provide a written statement to the refuse removal or disposal services
 382 company that he or she does not intend to renew the contract. The
 383 provisions of this subsection only apply to written contracts for refuse
 384 removal or disposal and [shall also apply] to contracts meeting the
 385 requirements of the Connecticut Uniform Electronic Transactions Act,
 386 sections 1-266 to 1-286, inclusive, for refuse removal or disposal.

387 (b) The provisions of this section shall not apply to: (1) [Any] An
 388 initial contract with a term not exceeding twelve months that contains
 389 a renewal contract with a specific length of time, and the person
 390 against whom such provision is to be enforced has initialed or signed a
 391 conspicuous statement immediately following such provision, stating
 392 in bold face type at least twelve points in size: "I acknowledge that this
 393 contract contains an AUTOMATIC RENEWAL provision.", (2) any
 394 contract in which the automatic renewal period specified is thirty-one
 395 days or less and can be cancelled at any time without penalty or
 396 damages, or [(2)] (3) a written contract subject to the provisions of
 397 section 42-126b."

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2009	16a-21
Sec. 2	July 1, 2009	16a-22b
Sec. 3	October 1, 2009	16a-23m(b)
Sec. 4	October 1, 2009	16a-23n
Sec. 5	October 1, 2009	16a-23r
Sec. 6	October 1, 2009	16a-23p

Sec. 7	<i>July 1, 2009</i>	New section
Sec. 8	<i>January 1, 2010, and applicable to all contracts entered into on and after said date</i>	42-158aa