



General Assembly

**Amendment**

January Session, 2009

LCO No. 8844

\*HB0647008844HDO\*

Offered by:

REP. SHAPIRO, 144<sup>th</sup> 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 Section 16a-21 of the general statutes is repealed and the  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."

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>October 1, 2009</i>	16a-23m(b)
Sec. 4	<i>October 1, 2009</i>	16a-23n
Sec. 5	<i>October 1, 2009</i>	16a-23r
Sec. 6	<i>October 1, 2009</i>	16a-23p
Sec. 7	<i>July 1, 2009</i>	New section