



# House of Representatives

General Assembly

**File No. 136**

February Session, 2010

Substitute House Bill No. 5222

*House of Representatives, March 25, 2010*

The Committee on General Law reported through REP. SHAPIRO of the 144th 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 Section 16a-21 of the general statutes is repealed and the  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, 2010*):

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] (1) "unit price" means the price per gallon computed to the  
14 nearest tenth of a whole cent; (2) "associated equipment" means a gas

15 regulator, gas line, sacrificial anode, interconnecting hardware and  
16 such other equipment necessary for the installation and operation of a  
17 propane tank; and (3) "residential heating" means heat provided for a  
18 structure with at least one but not more than four dwelling units.

19 (b) (1) No person, firm or corporation shall sell at retail fuel oil or  
20 propane gas to be used for residential heating and to be delivered to a  
21 dealer-owned fuel oil or propane gas storage tank that is being leased  
22 or lent to a consumer and is installed underground on property owned  
23 by the consumer without a written contract that contains all the terms  
24 and conditions for delivery of such fuel oil or propane gas and the  
25 amount of fees, charges or penalties allowed under this subsection  
26 assessed to the consumer under such contract. No such written  
27 contract shall contain any fees, charges or penalties except for tank  
28 rental fees, tank removal fees or liquidated damages. Such fees may  
29 increase during the contract term provided the amount of such fees is  
30 clearly and conspicuously disclosed. No contract for the delivery of  
31 fuel oil or propane gas under this section shall include a provision for  
32 liquidated damages for a consumer breach of such contract where the  
33 liquidated damages exceed the actual damages to the fuel oil or  
34 propane gas retailer caused by such breach. Any contract entered into  
35 with a consumer after the effective date of this section for the lease or  
36 loan of an underground fuel oil or propane storage tank and associated  
37 equipment shall contain an option allowing the consumer to purchase  
38 the underground fuel oil or propane storage tank and associated  
39 equipment for a specified commercially reasonable amount at the  
40 expiration of the first term of the contract not later than sixty months  
41 after the date of commencement of the contract or at such other earlier  
42 time as provided in such contract, which option may be conditioned  
43 upon the consumer executing a mutually acceptable equipment sales  
44 agreement containing reasonable waiver of liability, transfer of  
45 warranty and such other applicable terms and conditions, which shall  
46 be stated in the contract. Any fuel oil or propane gas retailer may enter  
47 into a separate contract with the purchaser for additional services,  
48 including, but not limited to, maintenance, repair and warranty of  
49 equipment, provided such contract complies with the provisions of

50 this section.

51 (2) No person, firm or corporation shall sell at retail fuel oil or  
52 propane gas to be used for residential heating and to be delivered to a  
53 dealer-owned fuel oil or propane gas storage tank that is being leased  
54 or lent to such consumer and is installed above-ground on property  
55 owned by the consumer without a written contract if the consumer is  
56 to be charged a tank removal fee. Any such contract entered into after  
57 the effective date of this section shall contain all the terms and  
58 conditions for delivery of such fuel oil or propane gas and the amount  
59 of fees, charges or penalties allowed under this subsection assessed to  
60 the consumer under such contract. No written contract shall be for an  
61 initial term of greater than thirty-six months. Such contract shall not  
62 contain any fees, charges or penalties except for propane tank rental  
63 fees, propane tank removal fees or liquidated damages. Such fees may  
64 increase during the contract term provided the amount of such fees is  
65 clearly and conspicuously disclosed. No contract for the delivery of  
66 fuel oil or propane gas under this section shall include a provision for  
67 liquidated damages for a consumer breach of such contract where the  
68 liquidated damages exceed the actual damages to the fuel oil or  
69 propane gas retailer caused by such breach. Any fuel oil or propane  
70 gas retailer may enter into a separate contract with the purchaser for  
71 additional services, including, but not limited to, maintenance, repair  
72 and warranty of equipment, provided such contract complies with the  
73 provisions of this section.

74 (3) Any written contract required by this section shall be in plain  
75 language pursuant to section 42-152, provided any fee, charge or  
76 penalty disclosed in such contract shall be in twelve-point, boldface  
77 type of uniform font.

78 (4) No written contract between a dealer and consumer for the retail  
79 sale of fuel oil or propane gas or lease of equipment that contains a  
80 provision for automatic renewal of the contract or lease is valid unless  
81 the consumer is provided with the right to terminate the contract or  
82 lease at the end of the initial term or subsequent anniversary date of

83 such contract upon not less than thirty days' prior written notice to the  
84 dealer. After the initial term, no contract renewal period shall be for  
85 more than twelve months.

86 (c) The requirement that contracts be in writing, as set forth in this  
87 section, may be satisfied pursuant to the provisions of: (1) The  
88 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-  
89 286, inclusive; (2) sections 42a-7-101 to 42a-7-106, inclusive; and (3) the  
90 Electronic Signatures in Global and National Commerce Act, 15 USC  
91 7001 et seq. Except as provided in subsection (d) of this section, verbal  
92 telephonic communications shall not satisfy the writing requirement of  
93 this section.

94 (d) The requirement that contracts be in writing pursuant to this  
95 section and section 16a-23n, as amended by this act, may be satisfied  
96 telephonically by a person, firm or corporation selling at retail fuel oil  
97 or propane gas, only if such person, firm or corporation: (1) Has  
98 provided to the consumer prior to any telephonic communication all  
99 terms and conditions of the contract, in writing, except for the contract  
100 duration, the unit price and the maximum number of units covered by  
101 the contract; (2) employs an interactive voice response system or  
102 similar technology which provides the consumer with the contract  
103 duration, the unit price and the maximum number of units covered by  
104 the contract to complete the contract; (3) retains, in a readily retrievable  
105 format, a recording of the consumer agreeing to each such term and  
106 condition for the period of the contract plus one year; (4) sends the  
107 consumer a letter confirming the consumer's agreement to such terms  
108 and conditions, with the written stipulation that the consumer is  
109 bound by such terms and conditions unless the agreement is rescinded  
110 by the consumer, in writing, not later than three business days after  
111 receipt of such letter by said consumer; and (5) retains a copy of each  
112 such letter for not less than the period of the contract plus one year.

113 (e) (1) No person, firm or corporation shall deliver fuel oil or  
114 propane gas to be used for residential heating, without placing the unit  
115 price, clearly indicated as such, the total number of units sold and the

116 amount of any delivery surcharge in a conspicuous place on the  
117 delivery ticket given to the purchaser or an agent of the purchaser at  
118 the time of delivery. Except where the delivery of fuel oil or propane  
119 gas is placed in a common tank from which individual customers draw  
120 such fuel oil or propane gas and are billed according to a meter that  
121 measures such customer's usage from the common tank, no person,  
122 firm or corporation may bill or otherwise attempt to collect from any  
123 purchaser of fuel oil or propane gas an amount that exceeds the unit  
124 price multiplied by the total number of units stated on the delivery  
125 ticket, plus the amount of any delivery surcharge stated on the ticket.

126 (2) The requirement that contracts be in writing, as set forth in this  
127 section, shall not apply to any retail fuel oil or propane gas contract  
128 where no fee, charge or penalty is assessed, except for stating the unit  
129 price of the retail fuel oil or propane gas delivered to a consumer.

130 (f) The provisions of this section shall not apply to existing  
131 customers of a person, firm or corporation selling at retail fuel oil or  
132 propane gas on October 1, 2010, who have valid written contracts on  
133 said date.

134 (g) The provisions of this section shall not apply to existing  
135 customers of a person, firm or corporation selling at retail fuel oil or  
136 propane gas on October 1, 2010, to be used for residential heating, who  
137 does not have a valid written contract in effect on said date if such  
138 existing customer is not assessed any new fee or an increase in the  
139 amount of any fee greater than the fees charged to such existing  
140 customer as of October 1, 2010. Such existing customer may terminate  
141 on thirty days' written notice without any tank removal charge. No  
142 person, firm or corporation selling fuel oil or propane gas to be used  
143 for residential heating to an existing customer who does not have a  
144 valid written contract in effect on October 1, 2010, shall charge a new  
145 fee or increase the amount of any fee greater than the fees charged to  
146 such existing customer as of October 1, 2010, unless the customer  
147 receives prior written notice not less than sixty days and not more than  
148 ninety days prior to the effective date of the assessment of the new or

149 increased fee and the customer is further notified that the customer's  
150 payment of the new or increased fee shall be deemed to be acceptance  
151 thereof.

152 (h) No person, firm or corporation shall condition the sale of fuel oil  
153 or propane to a consumer upon an agreement to purchase a fuel oil or  
154 propane tank from such person, firm or corporation. No person, firm  
155 or corporation shall condition the sale of a fuel oil or propane tank to a  
156 consumer upon an agreement to purchase fuel oil or propane from  
157 such person, firm or corporation.

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

165 Sec. 2. Subsection (b) of section 16a-23m of the 2010 supplement to  
166 the general statutes is repealed and the following is substituted in lieu  
167 thereof (*Effective October 1, 2010*):

168 (b) Each person, firm or corporation seeking registration as a home  
169 heating oil or propane gas dealer shall apply annually for a certificate  
170 of registration with the Department of Consumer Protection on forms  
171 prescribed by the Commissioner of Consumer Protection. Such forms  
172 shall require the dealer to disclose all affiliated companies registered  
173 with the Department of Consumer Protection that are under common  
174 ownership or have interlocking boards of directors. Each applicant  
175 shall pay a registration fee of two hundred dollars. The commissioner  
176 shall require all applicants for registration as a home heating oil or  
177 propane gas dealer to provide evidence of general liability insurance  
178 coverage and insurance to cover any potential environmental damage  
179 due to fuel oil spills or propane gas leaks caused by such applicant as a  
180 registered dealer which coverage shall be not less than one million  
181 dollars. Each registered dealer shall provide the department with

182 evidence of each renewal of or change to such insurance coverage not  
183 later than five days after such renewal or change during the period of  
184 registration, which renewal or change shall meet the requirements of  
185 this subsection.

186 Sec. 3. Section 16a-23n of the general statutes is repealed and the  
187 following is substituted in lieu thereof (*Effective October 1, 2010*):

188 (a) As used in this section:

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

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

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

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

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

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

210 [(a)] (b) A contract or a renewal or extension of a contract for the

211 retail sale of home heating oil or propane gas that offers a guaranteed  
212 price [plan] contract, including fixed or capped price contracts and any  
213 other similar terms, shall be in writing and the terms and conditions of  
214 such price plan shall be disclosed, including a plain language  
215 description of the circumstances under which the price may increase or  
216 decrease. A capped price contract shall specify how the price will or  
217 will not decrease in relation to the heating oil or propane commodities  
218 market. Such disclosure shall be in plain language and shall  
219 immediately follow the language concerning the price or service that  
220 could be affected and shall be printed in no less than twelve-point  
221 boldface type of uniform font.

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

226 [(c)] (d) No home heating oil or propane gas dealer shall enter into,  
227 renew or extend a [prepaid home heating oil or propane gas contract  
228 or a capped price per gallon home heating oil] guaranteed price  
229 contract unless such dealer has, not later than five business days after  
230 receipt of such guaranteed price contract, either: (1) Obtained and  
231 maintained heating oil or propane gas futures or forwards contracts,  
232 physical supply contracts or other similar commitments the total  
233 amount of which allow such dealer to purchase, at a fixed price,  
234 heating oil or propane gas in an amount not less than eighty per cent  
235 of the maximum number of gallons or amount that such dealer is  
236 committed to deliver pursuant to all [prepaid home heating oil or  
237 propane gas] guaranteed price contracts entered into, renewed or  
238 extended by such dealer, [or that such dealer estimates is committed  
239 pursuant to all capped price per gallon home heating oil or capped  
240 price per unit propane gas contracts, respectively,] or (2) obtained and  
241 maintained a surety bond in an amount not less than fifty per cent of  
242 the total amount of funds paid to the dealer by consumers [pursuant to  
243 prepaid home heating oil or propane gas contracts] or that the dealer  
244 estimates will be paid to the dealer by consumers pursuant to all

245 [capped price per gallon home heating oil or capped price per unit  
246 propane gas contracts, respectively] guaranteed price contracts. Such  
247 dealer shall maintain such total amount of futures or forwards  
248 contracts, physical supply contracts or other similar commitments, or  
249 the amount of the surety bond required by this subsection for the  
250 period of time for which such [prepaid home heating oil or propane  
251 gas contracts or capped price per gallon home heating oil or capped  
252 price per unit propane gas contracts] guaranteed price contracts are  
253 effective, except that the total amount of such futures or forwards  
254 contracts, physical supply contracts or other similar commitments, or  
255 the amount of the surety bond may be reduced during such period of  
256 time to reflect any amount of home heating oil or propane gas already  
257 delivered to and paid for by the consumer.

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

262 [(e)] (f) Any [prepaid home heating oil or propane gas] guaranteed  
263 price contract shall indicate: (1) The amount of funds paid by the  
264 consumer to the dealer under such contract, (2) the maximum number  
265 of gallons of home heating oil or maximum amount of propane gas  
266 committed by the dealer for delivery to the consumer pursuant to such  
267 contract, and (3) that performance of such [prepaid home heating oil or  
268 propane gas] guaranteed price contract is secured by one of the two  
269 options described in subsection [(c)] (d) of this section. Any such  
270 contract shall provide that the contract price of any undelivered home  
271 heating oil or propane gas owed to the consumer under the contract,  
272 on the end date of such contract, shall be reimbursed to the consumer  
273 not later than thirty days after the end date of such contract unless the  
274 parties to such contract agree otherwise.

275 [(f)] (g) Each home heating oil or propane gas dealer who enters  
276 into, renews or extends [prepaid home heating oil or propane gas  
277 contracts or capped price per gallon home heating oil contracts or

278 capped price per unit propane gas] guaranteed price contracts shall  
279 inform the Commissioner of Consumer Protection, in writing, that  
280 such dealer is entering into, renewing or extending such contracts and  
281 shall identify any entity from which the dealer has secured futures or  
282 forwards contracts or other similar commitments or surety bonds  
283 pursuant to subsection [(c)] (d) of this section. Each such dealer shall  
284 notify the commissioner if at any time the total amount of such secured  
285 futures or forwards contracts, physical supply contracts or other such  
286 similar commitments or surety bonds held by the dealer is less than  
287 eighty per cent of the maximum number of gallons or amount that  
288 such dealer is committed to deliver pursuant to all such [prepaid home  
289 heating oil or propane gas] guaranteed price contracts entered into,  
290 renewed or extended by such dealer or that such dealer estimates it is  
291 committed to deliver pursuant to all of its [capped price per gallon  
292 home heating oil or capped price per unit propane gas] guaranteed  
293 price contracts, respectively. The commissioner shall prescribe the  
294 form in which such information shall be reported.

295 [(g)] (h) Each person from which a home heating oil or propane gas  
296 dealer has secured a futures [or forwards] contract, a physical supply  
297 contract or other similar commitment pursuant to subsection [(c)] (d)  
298 of this section or who provides a bond pursuant to this section shall  
299 notify the Commissioner of Consumer Protection, in writing, of the  
300 cancellation of such contract, [or] other similar commitment or of the  
301 cancellation of such bond not later than three business days after such  
302 cancellation.

303 Sec. 4. Section 16a-23r of the general statutes is repealed and the  
304 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

308 (b) In accordance with the provisions of section 53a-11, any [home  
309 heating oil dealer] person, firm or corporation who knowingly violates  
310 the provisions of subsection [(c)] (d) of section 16a-23n, as amended by

311 this act, shall have committed a class A misdemeanor.

312 (c) Any person, firm or corporation who violates the provisions of  
 313 section 16a-23m, as amended by this act, section 16a-23n, as amended  
 314 by this act, except the provisions of subsection (d) of said section 16a-  
 315 23n, or section 16a-23o, shall be fined not more than five hundred  
 316 dollars for a first offense, not more than seven hundred fifty dollars for  
 317 a second offense occurring not more than three years after a prior  
 318 offense and not more than one thousand five hundred dollars for a  
 319 third or subsequent offense occurring not more than three years after a  
 320 prior violation.

321 Sec. 5. Section 16a-23p of the general statutes is repealed and the  
 322 following is substituted in lieu thereof (*Effective October 1, 2010*):

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

334 Sec. 6. (NEW) (*Effective October 1, 2010*) Nothing in section 16a-21,  
 335 subsection (b) of section 16a-23m, section 16a-23n or 16a-23r of the  
 336 general statutes, as amended by this act, shall validate a provision or  
 337 clause that would otherwise be unenforceable pursuant to section 42-  
 338 150u of the general statutes.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2010</i>	16a-21

Sec. 2	<i>October 1, 2010</i>	16a-23m(b)
Sec. 3	<i>October 1, 2010</i>	16a-23n
Sec. 4	<i>October 1, 2010</i>	16a-23r
Sec. 5	<i>October 1, 2010</i>	16a-23p
Sec. 6	<i>October 1, 2010</i>	New section

**GL**      *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.

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 11 \$	FY 12 \$
Consumer Protection, Dept.	GF - Revenue Gain	Potential	Potential

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a potential revenue gain to the state due to potential violations of the Connecticut Unfair Trade Practices Act (CUTPA) associated with retail heating oil and propane contracts.

**The Out Years**

The potential revenue gain identified above would continue into the future subject to the number of violations.

**OLR Bill Analysis****sHB 5222*****AN ACT CONCERNING RESIDENTIAL RETAIL HEATING OIL AND PROPANE CONTRACTS.*****SUMMARY:**

This bill requires parties entering into a retail agreement to buy fuel oil or propane gas for residential heating that contains fees other than a unit price to have a written contract. It permits contracts to be made by oral or telephone agreements that satisfy certain conditions. The bill prohibits heating oil and propane dealers from conditioning the sale of (1) a tank on the purchase of fuel oil or propane or (2) fuel oil or propane on the sale of a tank.

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 as an acceptable form 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, or physical supply contract to notify the Department of Consumer Protection (DCP) commissioner of any cancellations.

The bill requires dealers to disclose on their annual registration certificate all affiliated companies registered with DCP that are under common ownership or have interlocking boards of directors.

It also adds certain fines and penalties and increased others, making them uniform. It allows DCP to suspend or revoke any registration if the registrant fails to comply with a subpoena. Finally, it states that nothing in the bill validates any provision or clause for liquidated

damages that would otherwise be unenforceable.

EFFECTIVE DATE: October 1, 2010

## **§ 1 — CONTRACTS**

The bill requires parties entering into an agreement for the retail sale of fuel oil or propane gas for heating in a residential structure with one to four dwelling units, to execute a written contract. 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 written contract can extend up to 36 months for fuel delivered to a dealer-owned, above-ground tank and 60 months for a dealer-owned, underground tank.

Currently, there is no written contract requirement for retail sale of fuel oil or propane gas for residential heating. The law only 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. No contract may require a consumer commitment for more than 18 months (CGS § 16a-23n(d)).

### ***Terms and Conditions***

Under the bill, the contract must contain the terms and conditions for delivery, written in plain language and in 12-point boldface type, and including any fees, charges, or penalties that may be imposed. The only fees allowed under the contract are the cost of tank rentals, tank removals, contract violation penalties, and liquidated damages. A dealer may increase its fees during the contract period if the increase is clearly and conspicuously disclosed. A contract cannot contain a liquidated damages provision that allows for damages that exceed the dealer's actual damage. Individuals may enter into separate contracts for additional services such as maintenance, repairs, and equipment warranties. If an underground propane tank is supplied to a residential property owned by the person signing the contract, the contract must allow the property owner to buy it at a commercially reasonable price when the contract expires.

***Electronic Alternative***

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

Oral or telephonic agreements do not satisfy the written contract requirement unless they meet certain conditions. Before the telephone conversation, the consumer must be given a written copy of the contract's terms and conditions. As an alternative, the dealer may:

1. use an interactive system providing the duration, unit price, and maximum number of units covered by the contract and recording the consumer's oral acceptance of the contract's terms;
2. retain readily retrievable recordings of the agreement for at least one year beyond the contract's expiration;
3. send a confirmation letter notifying the consumer that the contract is binding unless he or she rescinds it in writing within three days of receipt of the notification; and
4. retain a copy of the confirmation letter for a year after the contract ends.

***Automatic Renewal Clauses Prohibited***

No written contract between a dealer and retail consumer for fuel oil or propane gas or the lease of equipment can have an automatic renewal clause unless the consumer has the right to terminate at the end of the initial term or subsequent anniversary date, with 30 days' written notice. After the initial term, no contract renewal period can be for more than 12 months.

***Delivery Tickets***

By law, dealers must include the unit price, units sold, and delivery

surcharge in a conspicuous place on the delivery ticket; they cannot bill or try to collect from consumers an amount that exceeds the unit price multiplied by the total number of units stated on the delivery ticket, plus any delivery surcharge. The bill allows a delivery ticket exception for deliveries to common tanks from which individual consumers draw fuel or propane gas and are billed according to a meter that measures a consumer's usage.

### ***Grandfathering Existing Contracts***

The preceding provisions do not apply to existing consumers (1) with valid contracts on October 1, 2010 or (2) those without valid written contracts on that date provided these consumers are not assessed any new or increased fees after October 1, 2010. Such existing consumers may, at any time, terminate their unwritten contracts with 30 days written notice to the dealer and may not be charged a tank removal fee. Any increased fee can be assessed on these consumers only after October 1, 2010 if a consumer (1) receives written notice of a fee increase at least 60 days before the effective date of the increase and (2) is further notified that payment is an acceptance of the new or increased fee.

### ***Fines***

The bill increases fines for violating any contract provision from up to \$100 to up to \$500 for first offenses. Current law provides for a fine for up to \$500 for each subsequent offense; the bill increases the fine for a second offense to up to \$750 and adds the requirement that the second offense be committed within three years of the first offense. It also adds a \$1,500 fine for a third or subsequent offense committed within three years of a prior offense.

## **§ 3 — 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. Guaranteed price contracts include fixed or capped price contracts or any other agreement that sets a per gallon price unless certain circumstances occur, while

guaranteed price plans include only 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 the contract. A capped price contract must, in plain language, describe how the consumer contract price will or will not change in accordance with fluctuations in the commodities prices. It defines a “fixed price contract” as an agreement that sets the cost to the consumer at a specific price for the term of the contract.

### ***Physical Supply Contracts***

The bill adds physical supply contracts to the commitments allowing dealers to purchase heating oil or propane gas in amounts not less than 80% of the maximum number of gallons that the dealer is committed to deliver.

Under existing law, a dealer must obtain (1) heating oil or propane gas futures or forward contracts or other similar commitments the total amount of which allows the dealer to purchase, at a fixed price, heating oil or propane gas in an amount not less than 80% of the maximum number of gallons or amount that the dealer is committed to deliver according to the guaranteed price contract 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. Anyone who knowingly violates the physical supply contract provision is guilty of a class A misdemeanor, punishable by up to one year imprisonment, up to a \$2,000 fine, or both.

### ***Cancellation***

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 must identify secured futures or forwards contracts and report those below 80%. The bill requires people with whom a dealer has a physical supply contract or bond or secured letter of credit to notify DCP of cancellation.

### ***Fines***

Under the bill, violating any provision of the guaranteed price contracts requirements is an unfair trade practice and, except for the physical supply contract provision, is also subject to fines up to: (1) \$500 for a first offense, (2) \$750 for a second offense occurring within three years of a prior offense, and (3) \$1,500 for a third or subsequent offense occurring within three years after a prior violation.

## **§ 2 — APPLICATION DISCLOSURE**

The bill requires heating oil or propane gas dealers to disclose on their annual registration certificate all affiliated companies registered with DCP that are under common ownership or have interlocking boards of directors. Violations are an unfair trade practice, and the dealer may incur a fine up to (1) \$500 for a first offense, (2) \$750 for a second offense occurring within three years of a prior offense, and (3) \$1,500 for a third or subsequent offense occurring within three years after a prior violation.

## **§ 4 — OTHER PENALTIES**

In addition to the penalties above, the bill adds a fine for home

heating oil and propane gas dealers that offer plumbing or heating work service without the right licenses. The fine is up to (1) \$500 for a first offense, (2) \$750 for a second offense occurring within three years of a prior offense, and (3) \$1,500 for a third or subsequent offense occurring within three years after a prior violation.

## **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.

## **COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 16 Nay 3 (03/16/2010)