



General Assembly

Substitute Bill No. 5222

February Session, 2010

* HB05222GL 031610 *

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 Section 16a-21 of the general statutes is repealed and the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 are
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 are
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.*