
OLR Bill Analysis

sSB 207

AN ACT CONCERNING RESIDENTIAL HEATING OIL AND PROPANE CONTRACTS.

SUMMARY:

This bill generally requires a written contract for (1) selling residential heating fuel, rather than just for guaranteed price heating fuel sales or (2) renting or leasing a heating fuel tank. The bill applies to fuel sales where fuel is the primary source of heat for residential heating or domestic hot water for a structure having one to four units.

It also sets out requirements for:

1. guaranteed fuel price plans,
2. tank sale and lease contracts,
3. fuel delivery, and
4. fuel dealers.

It increases and standardizes the penalties.

The bill does not apply the retail contract, delivery, or tank provisions to existing heating fuel consumers who have a valid written contract on July 1, 2013. But it will apply on the contract's renewal or expiration dates.

It allows the Department of Consumer Protection (DCP) to (1) suspend or revoke any registration if the dealer fails to comply with a subpoena and (2) compel by subpoena, the production of any document from any fuel dealer or provider of surety bonds, futures or forwards contracts, physical supply contracts or other similar commitments regarding compliance with the guaranteed price plan requirements.

Finally, it states that nothing in the bill validates any provision or clause that would otherwise be unenforceable.

EFFECTIVE DATE: July 1, 2013

RETAIL CONTRACTS

Contract Requirements

The bill generally requires heating fuel dealers to have a written contract when they (1) sell residential heating fuel or (2) rent or lease a heating fuel tank. Current law only requires guaranteed price contracts to have written contracts. The bill defines guaranteed price plans to include "fixed price," "buy ahead," "prebuy," "prebought," "prepaid," "full price," "lock in," "capped," "price cap," or other similar terminology.

The contract duration may not be more than 18 months, except for underground tanks, which may be up to 5 years. It must be in plain language and include all delivery terms and conditions and the amount of fees, charges, surcharges, or penalties. The contract may only have fees, charges, surcharges, or penalties for tank rental fees or liquidated damages for violating contract terms.

These fees, charges, surcharges, or penalties must (1) not increase before the contract expires and (2) be in 12 point, boldface type of uniform font.

The bill allows dealers to meet the written contract requirements by complying with 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).

Exception/ Allowable Fees

Under the bill, a written contract is not required for any heating fuel delivery initiated by the consumer that is payable upon delivery or billed with no future delivery commitment and no unauthorized fees, charges, or surcharges.

By law, a dealer may only assess a fee, charge, or surcharge on the price per gallon or total delivery charge when the:

1. delivery is up to 100 gallons;
2. delivery is made outside the dealer's normal service area or business hours; or
3. dealer incurs extraordinary labor costs for the delivery.

Electronic Alternative

An agreement can be oral by telephone if the dealer:

1. gives the consumer a written copy of the terms and conditions, except the duration, unit price, and maximum number of units covered by the contract, before the telephone conversation;
2. uses an interactive system providing the duration, unit price, and maximum number of units covered by the contract;
3. retains readily retrievable recordings of the consumer's affirmation to the contract terms and conditions for at least one year beyond the contract's expiration;
4. sends a confirmation letter to the consumer with agreed upon terms and conditions; and
5. retains a copy of each confirmation letter.

Prohibited Provisions

Automatic Renewal. The bill prohibits written contracts for the sale of heating fuel or lease of equipment from having an automatic contract renewal unless it complies with the consumer commodity automatic renewal provision and home heating oil and propane gas sales law. By law, written consumer commodity contracts require notice that the consumer may cancel the contract (CGS § 42-126b).

Liquidated Damages. The bill prohibits delivery contracts from having a liquidated damages provision for consumer breach where the

liquidated damages exceed actual damages to the dealer. Liquidated damages is an agreed upon monetary amount in a contract that one party will pay the other upon contract breach.

GUARANTEED PRICE PLANS

Capped Plan

Under the bill, the contract for such plan must contain clear and specific language stating how and under what circumstances the price will decrease.

Clear and Specific Language

The law requires a contract to include (1) the amount of funds paid, (2) the maximum number of gallons committed by the dealer for delivery, and (3) that the performance of the contract is secured. The bill requires that a contract include a provision that states the circumstances under which the price may fluctuate, if it is subject to fluctuation. Under the bill, all of these contract terms must be written in clear and specific language.

Securing Guaranteed Contracts

Under current law, a dealer is prohibited from entering, renewing, or extending a guaranteed contract unless he or she secured the contract. Under the bill, dealers are only required to secure contracts they enter.

The bill requires dealers to secure guaranteed contracts, whether prepaid or not, within five days of acceptance. Under current law, they may secure a prepaid contract in two ways. The first is obtaining heating fuel futures or forwards contracts, or other similar commitments, the total amount of which allows the dealer to purchase, at a fixed price, fuel 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. The bill also allows dealers to obtain physical supply contracts to secure the contract. A physical supply contract is an agreement for wet barrels or gallons of heating fuel secured by a dealer. The second way permitted to secure the contract by law is by obtaining a surety bond of at least 50% of the total

amount of funds paid by the consumer.

Under current law, a dealer may also secure a prepaid contract by obtaining heating fuel futures or forwards contracts, or other similar commitments in the amount he or she estimates is committed to the guaranteed price contract. For the surety option, a dealer may obtain a bond in an amount he or she estimates will be paid by the consumer based on all capped price per gallon fuel. The bill eliminates both these estimate security options.

The bill requires a dealer to secure a guaranteed price plan that is not prepaid through the heating fuel futures contract option specified earlier. The law requires dealers to maintain the total amount of these futures contracts and surety bond amount required for the effective period of the guaranteed price plan contract, except the amount may be reduced to reflect the fuel amount that is already delivered and paid by the consumer.

Secured Amount Notification

The bill requires dealers to notify DCP if the secured surety amount drops below 50% of the remaining balance the consumer paid under the prepaid contract. The law already requires this notification when the heating fuel futures contract option drops below 80%.

Automatic Renewal

The bill prohibits guaranteed price plans from containing an automatic contract renewal or extension clause.

Cancellation Notification

The bill requires anyone with a guaranteed price plan to notify DCP of any cancelation within three business days. The law already requires this for the heating fuel futures contract.

HEATING OIL DELIVERY

Delivery Ticket Label

The bill broadens what must be on the delivery ticket. Under current law, a dealer must place the total number of units sold and the

amount of any delivery surcharge in a conspicuous place on the delivery ticket that must be given to the consumer or his or her agent at delivery. Dealers may not bill or attempt to collect an amount that exceeds the unit price multiplied by the total number of units stated on the delivery ticket, plus the amount of any delivery surcharge on the ticket.

The bill requires dealers, at the time of delivery, to provide a delivery ticket with the (1) unit price; (2) total number of gallons or units sold; and (3) the amount of any fee, charge, surcharge, or penalty. The delivery ticket must clearly indicate these things and be in a conspicuous place.

The dealer cannot bill or attempt to collect from a consumer an amount that exceeds the amount on the ticket for (1) the unit price multiplied by the total number of gallons or units and (2) any allowable fee, charge, or surcharge.

Delivery Charges

The bill prohibits dealers from assessing a fee, charge, or surcharge on any delivery, including under an automatic delivery agreement that the dealer initiates.

LEASED FUEL TANK CONTRACTS

Leased Tanks

The bill requires a contract for a tank being leased or loaned to indicate in writing the:

1. tank's description,
2. initial installation charges,
3. amount and timing of rental or loan payments,
4. manner in which the dealer will credit the consumer for any unused heating fuel, and
5. terms by which a consumer may terminate the contract.

A separate contract for additional services may be entered, if it complies with the previous contract requirements, including maintenance, repair, and warranty of the equipment. The contract duration for a tank installed above ground may not be more than 18 months, while one installed underground may not be more than 5 years.

Option to Purchase Underground Leased Tank

The bill requires a lease for an underground tank to contain a clause allowing the consumer to buy the tank and associated equipment when the contract's first term expires. The purchase price must be disclosed in the contract and may not increase before the contract expires. Any liability waivers or warranty transfers must be stated in the contract.

Dealer Filling Requirements

The bill bans a dealer from refusing to make fuel deliveries to a consumer between October 1st and March 1st annually if the

1. dealer owns and exclusively fills the tank,
2. dealer remains the exclusive fuel supplier, and
3. the consumer pays cash.

FUEL DEALERS

Board of Directors Disclosure

Current law requires propane and heating oil dealers to annually apply for separate DCP certificate of registrations. The bill requires dealers of either heating oil or propane to apply for a heating fuel dealer certificate. A dealer who sells both types of fuel only needs to obtain one registration, but the bill requires a separate registration for each name the business uses.

The bill also requires dealers to disclose on these forms all affiliated companies that are under common ownership or have interlocking boards of directors that are registered with DCP.

Registration Number

The bill requires dealers to display the registration number on all contracts, delivery tickets, letters, and vehicle advertisements. The law already requires dealers to display their registration number in all advertisements and other material they prepare or issue.

PENALTIES

The bill increases the penalty for a dealer who violates the prohibition against selling fuel oil or propane to be used for residential heating without printing the unit price, total number of units sold, and the amount of any delivery surcharge on the delivery ticket. Under current law, the penalty is up to a \$100 fine for the first offense and up to a \$500 fine for each subsequent offense.

The bill increases this to a fine of up to \$500 for a first offense, up to \$750 for a second offense occurring within three years of the first offense, and up to \$1,500 for a subsequent offense occurring within three years of a prior offense.

The bill applies these penalties for violating the requirements to contracts, guaranteed price plans, delivery, availability, payment plan, advertising, and registration requirements. Under current law, (1) failing to secure a guaranteed contract is a class A misdemeanor, punishable by up to a \$1,000 fine, up to one year imprisonment, or both and (2) any violation of the registration, guaranteed price plan, or plumbing or heating work service provisions is an unfair and deceptive trade practice.

The bill applies these penalties to the following actions. By law, dealers are:

1. prohibited from requiring regular consumers to accept as a condition of delivery, a minimum heating fuel delivery of over 100 gallons, or 75% of the primary tank size, whichever is less (CGS § 16a-22a(a));
2. prohibited from conditioning the availability of burner

maintenance or repair service on an agreement that the consumer purchase heating fuel from them, but the dealer may give priority for service to consumers with delivery contracts (CGS § 16a-22k(a));

3. required to return to the consumer within 10 days after the termination notice, any excess money that was collected for an established payment plan. This does not apply to payment plans with a specific product unit price that is agreed upon for the plan's length (CGS § 16a-22k(b));
4. required to disclose if they sell under a trade name on any communication, invoice, or advertising the name of the person or entity which filed a certificate to use such trade name to any consumer or potential one (CGS § 16a-22k(c)); and
5. required to submit evidence to the consumer protection commissioner when registering, if they offers plumbing or heating work service, that it will only employ licensed people to do the work and display the state license number on all commercial vehicles and in a conspicuous manner on all printed advertisements, bid proposals, contracts, invoices, and business stationary (CGS § 16a-23o).

It also makes violating the retail contract, delivery, and tank provisions an unfair and deceptive trade practice.

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 State 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 15 Nay 2 (03/13/2012)