



Senate

General Assembly

File No. 108

February Session, 2012

Substitute Senate Bill No. 207

Senate, March 26, 2012

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING RESIDENTIAL HEATING OIL AND PROPANE CONTRACTS.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 16a-17 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective July 1, 2013*):

3 (a) As used in sections 16a-17 to 16a-20, inclusive:

4 (1) "Fuel" includes electricity, natural gas, petroleum products, coal
5 and coal products, wood fuels, radioactive materials and any other
6 resource yielding energy;

7 (2) "Creating a fuel shortage" means the diminution by contrivance
8 or artificial means of the supply of fuel to a point below that needed to
9 meet consumer demands adequately.

10 (b) As used in sections 16a-21, as amended by this act, 16a-22a, as
11 amended by this act, and 16a-22k, as amended by this act:

12 (1) "Associated equipment" means a gas regulator, gas line,
13 sacrificial anode, interconnecting hardware and such other equipment
14 necessary for the installation and operation of a propane tank;

15 (2) "Cash" means legal tender, a certified or cashier's check,
16 commercial money order or equivalent of such legal tender, check or
17 money order. Cash also includes a guaranteed payment on behalf of a
18 consumer by a government or community action agency, provided no
19 discount is taken for the charge as billed;

20 (3) "Commissioner" means the Commissioner of Consumer
21 Protection;

22 (4) "Consumer" means a direct purchaser of heating fuel from a
23 heating fuel dealer, when such fuel is the primary source of heat for
24 residential heating or domestic hot water to one or more dwelling
25 units within a structure having not more than four dwelling units;

26 (5) "Gallon" means an accepted unit of measure consisting of two
27 hundred thirty-one cubic inches, for all liquid or gaseous heating fuel,
28 subject to modifications allowed under regulations adopted pursuant
29 to section 43-42;

30 (6) "Heating fuel" means any petroleum based fuel used as the
31 primary source of residential heating or domestic hot water, including
32 petroleum products regulated pursuant to chapter 250;

33 (7) "Heating fuel dealer" or "dealer" means any individual or group
34 of individuals, a firm, partnership, corporation, cooperative or limited
35 liability company that offers the retail sale of heating fuel to a
36 consumer;

37 (8) "Lessee" means a natural person who rents or leases personal
38 property under a consumer rental or lease agreement; and

39 (9) "Lessor" means a heating fuel dealer who regularly provides the
40 use of personal property through consumer rental or lease agreements
41 and to whom rent is paid at a fixed interval for the use of such

42 property.

43 Sec. 2. Section 16a-21 of the general statutes is repealed and the
44 following is substituted in lieu thereof (*Effective July 1, 2013*):

45 [(a) No person, firm or corporation shall sell at retail fuel oil or
46 propane gas to be used for residential heating without placing the unit
47 price, clearly indicated as such, the total number of units sold and the
48 amount of any delivery surcharge in a conspicuous place on the
49 delivery ticket given to the purchaser or an agent of the purchaser at
50 the time of delivery. No person, firm or corporation may bill or
51 otherwise attempt to collect from any purchaser of fuel oil or propane
52 gas an amount which exceeds the unit price multiplied by the total
53 number of units stated on the delivery ticket, plus the amount of any
54 delivery surcharge stated on the ticket. For the purpose of this section,
55 unit price means the price per gallon computed to the nearest tenth of
56 a whole cent.]

57 (a) (1) No heating fuel dealer shall sell heating fuel or rent or lease a
58 heating fuel tank without a written contract that contains all the terms
59 and conditions for delivery of such heating fuel and the amount of
60 fees, charges, surcharges or penalties allowed under this section and
61 assessed to the consumer under such contract. No such contract shall
62 contain any fees, charges, surcharges or penalties, except for tank
63 rental fees or liquidated damages for violation of the contract terms.
64 No contract for the delivery of heating fuel under this subsection shall
65 include a provision for liquidated damages for a consumer breach of
66 such contract where the liquidated damages exceed the actual
67 damages to the heating fuel dealer caused by such breach. No written
68 contract period for heating fuel shall be for a term greater than
69 eighteen months.

70 (2) If a tank is being leased or lent to a consumer, a contract for the
71 tank rental or loan shall indicate in writing a description of the tank,
72 initial installation charges, if any, the amount and timing of rental or
73 loan payments, the manner in which the lessor will credit the lessee for
74 any unused heating fuel and terms by which a lessee may terminate

75 the contract. A lessor may enter into a separate contract with the lessee
76 for additional services including, but not limited to, maintenance,
77 repair and warranty of equipment, provided such contract complies
78 with the provisions of this section. No contract for a tank installed
79 above ground shall exceed eighteen months. No contract for a tank
80 installed underground shall exceed five years.

81 (3) If a tank installed underground is being leased or lent to the
82 consumer, a contract for such tank lease or loan shall contain a clause
83 providing the lessee with the option to purchase the tank and
84 associated equipment upon the expiration of the first term of the
85 contract, which shall not be later than five years after the date of
86 commencement of the contract. The purchase price for the tank shall be
87 disclosed in the contract and shall not increase before the contract
88 expires. Any waiver of liability or transfer of warranty shall be stated
89 in the contract.

90 (4) A contract required by this section shall be in writing and shall
91 comply with the plain language requirements of section 42-152,
92 provided any fee, charge, surcharge or penalty disclosed in such
93 contract shall be in twelve-point, boldface type of uniform font. Any
94 fee, charge, surcharge or penalty shall not increase prior to the
95 expiration of the contract.

96 (5) A written contract for the sale of heating fuel or lease of
97 equipment that calls for an automatic renewal of the contract is not
98 valid unless such contract complies with section 42-126b and chapter
99 296a.

100 (6) The requirement that contracts be in writing pursuant to this
101 section shall not apply to any heating fuel delivery initiated by a
102 consumer, payable on delivery or billed to the consumer with no
103 future delivery commitment, where no fee, charge, surcharge or
104 penalty is assessed, except for any fee, charge or surcharge authorized
105 under subsection (g) of this section.

106 (b) If a consumer complaint is being mediated or investigated by

107 the commissioner, the heating fuel dealer, if it owns the tank and has
108 exclusive fill requirements, may not deny the consumer deliveries of
109 heating fuel from October first to March thirty-first, inclusive, because
110 of the existence of the mediation or investigation, provided the heating
111 fuel dealer remains the exclusive supplier of heating fuel and the
112 consumer pays cash for such fuel upon delivery.

113 (c) The requirement that contracts be in writing as set forth in this
114 section may be satisfied pursuant to the provisions of: (1) The
115 Connecticut Uniform Electronic Transactions Act, sections 1-266 to 1-
116 286, inclusive, (2) sections 42a-7-101 to 42a-7-106, inclusive, or (3) the
117 Electronic Signatures in Global and National Commerce Act, 15 USC
118 7001 et seq. Except as provided in subsection (d) of this section, verbal
119 telephonic communications shall not satisfy the writing requirement of
120 this section.

121 (d) The requirement that contracts be in writing pursuant to this
122 section and section 16a-23n, as amended by this act, may be satisfied
123 telephonically, only if a heating fuel dealer:

124 (1) Has provided to the consumer prior to any telephonic
125 communication all terms and conditions of the contract, in writing,
126 except for the contract duration, the unit price and the maximum
127 number of units covered by the contract;

128 (2) Employs an interactive voice response system or similar
129 technology that provides the consumer with the contract duration, the
130 unit price and the maximum number of units covered by the contract;

131 (3) Retains for a period of not less than one year from the date of the
132 expiration of the contract, in a readily retrievable format, a recording
133 of the consumer affirmation to each such term and condition;

134 (4) Sends the consumer a letter confirming the consumer's
135 agreement to such terms and conditions, with a written copy of the
136 terms and conditions agreed to; and

137 (5) Retains a copy of each such letter.

138 (e) No heating fuel dealer shall deliver heating fuel without placing
139 the unit price, clearly indicated as such, the total number of gallons or
140 units sold and the amount of any fee, charge, surcharge or penalty
141 allowed pursuant to this section in a conspicuous place on the delivery
142 ticket given to the consumer or an agent of the consumer at the time of
143 delivery. No heating fuel dealer shall bill or otherwise attempt to
144 collect from any consumer of heating fuel an amount that exceeds the
145 unit price multiplied by the total number of gallons or units stated on
146 the delivery ticket, plus the amount of any fee, charge, surcharge or
147 penalty allowed pursuant to this section and stated on the delivery
148 ticket.

149 (f) No heating fuel dealer shall assess a fee, charge or surcharge on
150 any delivery, including, but not limited to, any delivery under an
151 automatic delivery agreement, initiated by the dealer to a consumer.

152 (g) No heating fuel dealer shall assess a fee, charge or surcharge on
153 the price per gallon or total delivery charge for any heating fuel
154 delivery, except when:

155 (1) The heating fuel delivery is not more than one hundred gallons;

156 (2) The heating fuel delivery is made outside the normal service area
157 of the dealer;

158 (3) The heating fuel delivery is made outside the normal business
159 hours of the dealer; or

160 (4) The dealer incurs extraordinary labor costs for the heating fuel
161 delivery.

162 (h) The provisions of this section shall not apply to existing
163 customers of a heating fuel dealer on July 1, 2013, who have valid
164 written contracts on said date. The provisions of this section shall
165 apply as of the renewal or expiration dates of such contracts.

166 (i) A violation of the provisions of this section constitutes an unfair
167 trade practice under subsection (a) of section 42-110b.

168 [(b)] (j) Any [person, firm or corporation] heating fuel dealer who
169 violates [subsection (a) of] any provision of this section shall be fined
170 not more than [one] five hundred dollars for the first offense, [nor
171 more than five hundred dollars for each subsequent offense.] not more
172 than seven hundred fifty dollars for a second offense occurring not
173 more than three years after a prior offense and not more than one
174 thousand five hundred dollars for a third or subsequent offense
175 occurring not more than three years after a prior offense.

176 Sec. 3. Section 16a-22a of the general statutes is repealed and the
177 following is substituted in lieu thereof (*Effective July 1, 2013*):

178 (a) No [retail] heating fuel dealer [of fuel oil or propane] shall
179 require that any regular [customer] consumer of such dealer accept a
180 minimum delivery of heating fuel [oil or propane] of [over] not less
181 than one hundred gallons or seventy-five per cent of primary tank size,
182 whichever is less, as a condition of delivery by such dealer.

183 (b) Any heating fuel dealer who violates the provisions of this
184 section shall be fined not more than five hundred dollars for the first
185 offense, not more than seven hundred fifty dollars for a second offense
186 occurring not more than three years after a prior offense and not more
187 than one thousand five hundred dollars for a third or subsequent
188 offense occurring not more than three years after a prior offense.

189 Sec. 4. Section 16a-22k of the general statutes is repealed and the
190 following is substituted in lieu thereof (*Effective July 1, 2013*):

191 (a) No [person, firm or corporation or any officers, agents or
192 employees thereof,] heating fuel dealer shall condition the availability
193 of [fuel oil] burner maintenance or repair service upon the agreement
194 of any [purchaser or potential purchaser] consumer to purchase
195 heating fuel [oil] from such [person, firm or corporation] dealer,
196 provided, any [person, firm or corporation] dealer may give priority
197 for service to any [person] consumer who has [an oil] a heating fuel
198 delivery contract with such [person, firm or corporation] dealer.

199 (b) Any [person, firm or corporation] dealer who sells [at retail fuel
200 oil or propane gas to be used for residential space] heating oil and who
201 has established a schedule of payments plan with a [retail customer,]
202 consumer shall, upon notice of termination of future [oil] heating fuel
203 deliveries, return to such [customer] consumer, within ten days of
204 receiving [any] such notice, any moneys collected in excess of the retail
205 price for heating fuel actually delivered, provided [,] this subsection
206 shall not apply to a schedule of payment plan in which a specific
207 product unit price is agreed upon for the length of the plan.

208 (c) Each [person, firm or corporation] heating fuel dealer who sells
209 under a trade name [at retail] heating fuel [oil or propane gas to be
210 used for residential space heating] or who provides service for heating
211 fuel [oil or propane] burners shall disclose to any [customer] consumer
212 or potential [customer] consumer on any communication and invoice
213 and in any advertising, the name of the person or entity which has
214 filed a certificate to use such a trade name, as required by and
215 pursuant to section 35-1.

216 (d) Any violation of subsections (a) to (c), inclusive, of this section
217 shall be deemed an unfair or deceptive trade practice under section 42-
218 110b.

219 (e) Any heating fuel dealer who violates the provisions of this
220 section shall be fined not more than five hundred dollars for the first
221 offense, not more than seven hundred fifty dollars for a second offense
222 occurring not more than three years after a prior offense and not more
223 than one thousand five hundred dollars for a third or subsequent
224 offense occurring not more than three years after a prior offense.

225 Sec. 5. Section 16a-23m of the general statutes is repealed and the
226 following is substituted in lieu thereof (*Effective July 1, 2013*):

227 [(a) No person, firm or corporation shall engage in the retail sale of
228 home heating oil or propane gas without a certificate of registration as
229 a home heating oil or propane gas dealer issued pursuant to this
230 section. Only one registration shall be required of a dealer to engage in

231 both the retail sale of heating oil and propane gas.]

232 (a) As used in this section and sections 16a-23n to 16a-23r, inclusive,
233 as amended by this act:

234 (1) "Capped price plan" means an agreement where the cost to the
235 consumer of heating fuel shall not increase above a specified price per
236 gallon and the consumer shall pay less than the specified price under
237 circumstances specified in such contract;

238 (2) "Commissioner" means the Commissioner of Consumer
239 Protection;

240 (3) "Consumer" means a direct purchaser of heating fuel from a
241 heating fuel dealer, when such fuel is the primary source of heating
242 fuel for residential heating or domestic hot water to one or more
243 dwelling units within a structure having not more than four dwelling
244 units;

245 (4) "Forwards contract" means an agreement between two parties to
246 buy or sell an asset at a certain future time for a certain price;

247 (5) "Futures contract" means a standardized, transferable, exchange-
248 traded agreement that requires delivery of heating fuel at a specified
249 price on a specified future date;

250 (6) "Gallon" means an accepted unit of measure consisting of two
251 hundred thirty-one cubic inches, for all liquid or gaseous heating fuel,
252 subject to modifications allowed under regulations adopted pursuant
253 to section 43-42;

254 (7) "Guaranteed price plan", also known as "guaranteed plan", "fixed
255 price", "buy ahead", "prebuy", "prebought", "prepaid", "full price", "lock
256 in", "capped", "price cap", or other similar terminology, when used to
257 describe a contract, means a type of contract offering heating fuel at a
258 guaranteed future price or at a maximum future price;

259 (8) "Heating fuel" means any petroleum based fuel used as a

260 primary source of residential heating or domestic hot water, including
261 petroleum products regulated pursuant to chapter 250;

262 (9) "Heating fuel dealer" or "dealer" means any individual or group
263 of individuals, a firm, partnership, corporation, cooperative or limited
264 liability company that offers the retail sale of heating fuel to
265 consumers;

266 (10) "Heating oil" means a predominantly liquefied petroleum
267 product at ambient temperatures, that is sold as a commodity and is a
268 primary source of residential heating or domestic hot water, including
269 products known as #2 oil (heating oil), #1 oil (kerosene), #4 oil, bio
270 fuels, or any bio fuel blended with conventionally refined fossil fuel
271 commodities and that meets the requirements of the American Society
272 for Testing and Materials Standard 396, as amended from time to time;

273 (11) "Maintain" means retention of the balance, measured in gallons
274 or other accepted units of measure, of heating fuel that remains to be
275 delivered to consumers who are party to a guaranteed price plan
276 contract;

277 (12) "Physical supply contract" means an agreement for wet barrels
278 or gallons of heating fuel that has been secured by a heating fuel
279 dealer;

280 (13) "Propane" or "liquefied petroleum gas (LPG)" means a
281 petroleum product that meets ASTM specification D1835, as amended
282 from time to time, and is composed predominantly of any of the
283 following hydrocarbons or mixtures thereof: Propane, propylene,
284 butanes (normal butane or isobutane), and butylenes and is intended
285 for use, among other things, as a fuel for residential heating; and

286 (14) "Surety bond" means a bond issued by a licensed insurance
287 company or banking institution as surety for a dealer obligating the
288 surety to the commissioner in a sum certain in guaranty of the full and
289 faithful performance by the dealer of prepaid guaranteed price plan
290 contracts entered into pursuant to this chapter.

291 (b) No heating fuel dealer shall engage in the sale of heating fuel
292 without a certificate of registration as a heating fuel dealer issued
293 pursuant to this section. No federally established heating assistance
294 agency shall be required to register. Only one registration shall be
295 required of a dealer to engage in both the retail sale of heating oil and
296 propane. A separate certificate of registration is required for each name
297 that a heating fuel dealer does business as or advertises.

298 [(b)] (c) Each person, firm or corporation seeking registration as a
299 [home] heating [oil or propane gas] fuel dealer shall apply annually for
300 a certificate of registration with the Department of Consumer
301 Protection on forms prescribed by [the Commissioner of Consumer
302 Protection.] the commissioner. Each heating fuel dealer shall disclose
303 on such forms all affiliated companies registered with the department
304 that are under common ownership or have interlocking boards of
305 directors. Each applicant shall pay a registration fee of two hundred
306 dollars. The commissioner shall require all applicants for registration
307 as a [home] heating [oil or propane gas] fuel dealer to provide
308 evidence of general liability insurance coverage and insurance to cover
309 any potential environmental damage due to heating fuel [oil] spills or
310 [propane gas] leaks caused by such applicant as a registered dealer
311 which coverage shall be not less than one million dollars. Each
312 registered dealer shall provide the department with evidence of each
313 renewal of or change to such insurance coverage not later than five
314 days after such renewal or change during the period of registration,
315 which renewal or change shall meet the requirements of this
316 subsection.

317 [(c)] (d) Each registered dealer shall display its registration number
318 in all advertisements and other materials prepared or issued by the
319 dealer, which contain information [on] regarding such dealer,
320 including, but not limited to, all contracts, delivery tickets, letters and
321 vehicle advertisements.

322 [(d)] (e) The insurance company of a [home] heating [oil or propane
323 gas] fuel dealer shall notify the [Commissioner of Consumer

324 Protection] commissioner, in writing, upon cancellation of insurance
325 required by subsection [(b)] (c) of this section by any [home] heating
326 [oil or propane gas] fuel dealer. The [Commissioner of Consumer
327 Protection] commissioner shall revoke the registration of any such
328 dealer without the insurance coverage required by subsection [(b)] (c)
329 of this section.

330 Sec. 6. Section 16a-23n of the general statutes is repealed and the
331 following is substituted in lieu thereof (*Effective July 1, 2013*):

332 (a) A contract for the retail sale of [home] heating [oil or propane
333 gas] fuel that offers a guaranteed price plan [, including fixed price
334 contracts and any other similar terms,] shall be in writing and the
335 terms and conditions of such guaranteed price plan shall be disclosed.
336 Such disclosure shall be in plain language and shall immediately
337 follow the language concerning the price or service that could be
338 affected and shall be printed in no less than twelve-point boldface type
339 of uniform font.

340 (b) A [home] heating [oil or propane gas] fuel dealer that advertises
341 a price for a guaranteed price plan shall offer such price for a period of
342 no less than twenty-four hours or until the next advertised price is
343 publicized, whichever occurs first.

344 (c) Each capped price plan and any guaranteed price plan that
345 includes the terms "cap", "capped", "maximum", "not to exceed" or any
346 other similar term or description shall not increase above a specified
347 price per gallon. The contract for such plan shall contain clear and
348 specific language stating how and under what circumstances the price
349 will decrease, if applicable.

350 [(c) No home] (d) A heating [oil or propane gas] fuel dealer shall,
351 [enter into, renew or extend a prepaid home heating oil or propane gas
352 contract or a capped price per gallon home heating oil contract unless
353 such dealer has] not later than five business days after entering into a
354 prepaid guaranteed price plan contract, either: (1) [Obtained and
355 maintained] Obtain heating [oil or propane gas] fuel futures or

356 forwards contracts, physical supply contracts or other similar
357 commitments the total amount of which allow such dealer to purchase,
358 at a fixed price, heating [oil or propane gas] fuel in an amount not less
359 than eighty per cent of the maximum number of gallons or amount
360 that such dealer is committed to deliver pursuant to all prepaid [home
361 heating oil or propane gas] guaranteed price contracts entered into [,
362 renewed or extended] by such dealer, [or that such dealer estimates is
363 committed pursuant to all capped price per gallon home heating oil or
364 capped price per unit propane gas contracts, respectively,] or (2)
365 [obtained and maintained] obtain a surety bond in an amount not less
366 than fifty per cent of the total amount of funds paid to the dealer by
367 consumers pursuant to prepaid [home heating oil or propane gas]
368 guaranteed price plan contracts. [or that the dealer estimates will be
369 paid to the dealer by consumers pursuant to all capped price per
370 gallon home heating oil or capped price per unit propane gas
371 contracts, respectively.] A heating fuel dealer shall, not later than five
372 business days after entering into a guaranteed price plan contract that
373 is not prepaid, obtain heating fuel futures or forwards contracts,
374 physical supply contracts or other similar commitments the total
375 amount of which allow such dealer to purchase, at a fixed price,
376 heating fuel in an amount not less than eighty per cent of the
377 maximum number of gallons or amount that such dealer is committed
378 to deliver pursuant to all guaranteed price plan contracts entered into
379 by such dealer. Such dealer shall maintain such total amount of futures
380 or forwards or physical supply contracts or other similar commitments
381 or the amount of the surety bond required by this subsection for the
382 period of time for which such [prepaid home heating oil or propane
383 gas] guaranteed price plan contracts [or capped price per gallon home
384 heating oil or capped price per unit propane gas contracts] are
385 effective, except that the total amount of such futures or forwards or
386 guaranteed price plan contracts or other similar commitments or the
387 amount of the surety bond may be reduced during such period of time
388 to reflect any amount of [home] heating [oil or propane gas] fuel
389 already delivered to and paid for by the consumer.

390 [(d)] (e) No [prepaid home heating oil or propane gas] guaranteed

391 price plan contract shall require any consumer commitment to
392 purchase [home] heating [oil or propane gas] fuel pursuant to the
393 terms of such contract for a period of more than eighteen months. A
394 guaranteed price plan contract for the purchase of heating fuel may
395 contain an automatic contract renewal or extension clause.

396 [(e)] (f) Any [prepaid home heating oil or propane gas] guaranteed
397 price plan contract shall indicate, in clear and specific language: (1) The
398 amount of funds paid by the consumer to the heating fuel dealer under
399 such contract, (2) the maximum number of gallons of [home] heating
400 [oil or maximum amount of propane gas] fuel committed by the dealer
401 for delivery to the consumer pursuant to such contract, [and] (3) that
402 performance of such [prepaid home heating oil or propane gas]
403 guaranteed price plan contract is secured by one of the [two] options
404 described in subsection [(c)] (d) of this section, and (4) if the price of
405 heating fuel is subject to fluctuation, the circumstances under which
406 the price may fluctuate. Any such contract shall provide that the
407 contract price of any undelivered [home] heating [oil or propane gas]
408 fuel owed to the consumer under the contract, on the end date of such
409 contract, shall be reimbursed to the consumer not later than thirty days
410 after the end date of such contract unless the parties to such contract
411 agree otherwise.

412 [(f)] (g) Each [home] heating [oil or propane gas] fuel dealer who
413 enters into [, renews or extends prepaid home heating oil or propane
414 gas] guaranteed price plan contracts [or capped price per gallon home
415 heating oil contracts or capped price per unit propane gas contracts]
416 shall inform the Commissioner of Consumer Protection, in writing,
417 that such dealer is entering into [, renewing or extending] such
418 contracts and shall identify any entity from which the dealer has
419 secured futures or forwards contracts, physical supply contracts or
420 other similar commitments or a surety bond pursuant to subsection
421 [(c)] (d) of this section. Each such dealer shall notify the commissioner
422 if at any time the total amount of such secured futures or forwards
423 contracts, physical supply contracts or other such similar commitments
424 held by the dealer is less than eighty per cent of the maximum number

425 of gallons or amount that such dealer is committed to deliver pursuant
426 to all such [prepaid home heating oil or propane gas] contracts entered
427 into [, renewed or extended] by such dealer [or that such dealer
428 estimates it is committed to deliver pursuant to all of its capped price
429 per gallon home heating oil or capped price per unit propane gas
430 contracts, respectively] or, if the total amount of such surety bond is
431 not more than fifty per cent of the remaining balance of funds
432 consumers paid pursuant to prepaid guaranteed price plan contracts.
433 The commissioner shall prescribe the form in which such information
434 shall be reported.

435 [(g)] (h) Each person from which a [home] heating [oil or propane
436 gas] fuel dealer has secured a futures, [or] forwards or physical supply
437 contract or other similar commitment or a surety bond pursuant to
438 subsection [(c)] (d) of this section shall notify the Commissioner of
439 Consumer Protection, in writing, of the cancellation of such contract or
440 other similar commitment or surety bond not later than three business
441 days after such cancellation.

442 Sec. 7. Section 16a-23p of the general statutes is repealed and the
443 following is substituted in lieu thereof (*Effective July 1, 2013*):

444 The Department of Consumer Protection may suspend or revoke
445 any registration issued under section 16a-23m, as amended by this act,
446 if the holder of such registration is grossly incompetent, engages in
447 malpractice or unethical conduct or knowingly makes false,
448 misleading or deceptive representations regarding such holder's work,
449 violates any provision of section 16a-23n, as amended by this act, fails
450 to comply with any subpoena issued pursuant to this section or
451 violates any regulations adopted under section 16a-23q. Before any
452 such registration is suspended or revoked, such holder shall be given
453 notice and opportunity for hearing as provided in regulations adopted
454 by [the Commissioner of Consumer Protection] said commissioner in
455 accordance with the provisions of chapter 54. Said commissioner may
456 compel by subpoena, at his or her discretion, the production of any
457 documents from any heating fuel dealer or from any provider of

458 futures or forwards contracts, physical supply contracts or other
459 similar commitments or a surety bond, regarding compliance with the
460 provisions of sections 16a-23m to 16a-23r, inclusive, as amended by
461 this act.

462 Sec. 8. Section 16a-23r of the general statutes is repealed and the
463 following is substituted in lieu thereof (*Effective July 1, 2013*):

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

467 (b) In accordance with the provisions of section 53a-11, any [home]
468 heating [oil] fuel dealer who knowingly violates the provisions of
469 subsection [(c)] (d) of section 16a-23n, as amended by this act, shall
470 have committed a class A misdemeanor.

471 (c) Any person, firm or corporation who violates the provisions of
472 section 16a-23m, as amended by this act, 16a-23n, as amended by this
473 act, or 16a-23o shall be fined not more than five hundred dollars for
474 the first offense, not more than seven hundred fifty dollars for a second
475 offense occurring not more than three years after a prior offense and
476 not more than one thousand five hundred dollars for a third or
477 subsequent offense occurring not more than three years after a prior
478 offense.

479 Sec. 9. (NEW) (*Effective July 1, 2013*) Nothing in sections 16a-17, as
480 amended by this act, 16a-21, as amended by this act, 16a-22a, as
481 amended by this act, 16a-22k, as amended by this act, 16a-23m, as
482 amended by this act, 16a-23n, as amended by this act and 16a-23p, as
483 amended by this act, shall validate a contract provision or clause that
484 would otherwise be unenforceable pursuant to section 42-150u of the
485 general statutes.

486 Sec. 10. Section 16a-22b of the general statutes is repealed. (*Effective*
487 *July 1, 2013*)

This act shall take effect as follows and shall amend the following sections:

Section 1	July 1, 2013	16a-17
Sec. 2	July 1, 2013	16a-21
Sec. 3	July 1, 2013	16a-22a
Sec. 4	July 1, 2013	16a-22k
Sec. 5	July 1, 2013	16a-23m
Sec. 6	July 1, 2013	16a-23n
Sec. 7	July 1, 2013	16a-23p
Sec. 8	July 1, 2013	16a-23r
Sec. 9	July 1, 2013	New section
Sec. 10	July 1, 2013	Repealer section

Statement of Legislative Commissioners:

In section 9 "sections 1 to 7, inclusive, of this act" was changed to statutory cites for accuracy.

GL *Joint Favorable Subst.-LCO*

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.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Consumer Protection, Dept.	GF - Revenue Gain	less than \$5,000	less than \$5,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a revenue gain of less than \$5,000 to the Department of Consumer Protection (DCP) due to the increase in allowable fines for violations regarding residential home heating oil and propane contracts.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

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 cancellation 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)