

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 12-76—sSB 207
General Law Committee
Energy and Technology Committee

AN ACT CONCERNING RESIDENTIAL HEATING OIL AND PROPANE CONTRACTS

SUMMARY: This act generally requires a written contract for (1) all residential heating fuel sales, rather than just fuel sold under guaranteed price plans, and (2) renting or leasing a heating fuel tank. It exempts automatic delivery agreements from this requirement under certain conditions. The act applies to fuel sales where fuel is the primary source of heat for residential heating or domestic hot water for a residential structure with up 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.

The act increases penalties for violations of existing law and extends them to violations of the new requirements.

Except for a requirement regarding underground tanks, the act does not apply its heating fuel contract, delivery, or tank provisions to heating fuel consumers with valid written contracts on July 1, 2013. But the provisions do apply beginning on the contracts' renewal or expiration dates.

The act allows the Department of Consumer Protection (DCP) to (1) compel by subpoena the production of any document regarding compliance with the home heating oil and propane gas sales law from any fuel dealer or provider of futures or forwards contracts, physical supply contracts, or other similar commitments, or a surety bond; (2) suspend or revoke any registration if the dealer fails to comply with a subpoena; and (3) adopt regulations establishing a consumer bill of rights.

Finally, it states that nothing in the act validates any provision or clause that would otherwise be unenforceable under the law on liquidated damages in consumer contracts.

EFFECTIVE DATE: July 1, 2013

§ 2 — RETAIL CONTRACTS

Contract Requirements

The act 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. Prior law only required written contracts for guaranteed price plans (see below). Heating fuel is any petroleum based fuel used as the primary source of residential

OLR PUBLIC ACT SUMMARY

heating or domestic hot water. The act defines additional terms for purposes of the expanded written contract requirements.

Each written contract 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 (1) fees, charges, surcharges, or penalties for certain delivery options; (2) tank rental fees; or (3) liquidated damages for violating contract terms. These fees, charges, surcharges, or penalties must not increase before the contract expires and must be printed in 12-point, boldface type of uniform font.

The act 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, or documents of title provisions in the Uniform Commercial Code (see BACKGROUND).

Contract Period

The heating fuel contract duration may be up to 36 months, but the dealer must offer the consumer the option of entering into a bona fide commercially reasonable contract for 18 months. The consumer and dealer may agree to such a contract for less than 18 months. Fuel contracts for underground tanks may be up to five years, if the fuel term agreement is the same length as the tank lease agreement.

Exceptions

Consumer Initiated Delivery. Under the act, a written contract is not required for any heating fuel delivery initiated by the consumer that is payable upon delivery or billed with no (1) future delivery commitment and (2) unauthorized fees, charges, surcharges, or penalties.

Automatic Delivery. The act also exempts agreements that are solely automatic deliveries from having written contracts if they fulfill certain requirements.

To qualify for the exemption, the consumer must be able to terminate the automatic delivery at any time with no fee, charge, surcharge, or penalty assessed for termination. The dealer providing automatic delivery must also give written notice to the consumer of the termination method, as specified by the act. The notice must be included with each invoice for products that are delivered automatically.

Under the act, a consumer may deliver a termination notice to the dealer by (1) written request by certified mail, (2) electronic mail to the dealer's valid electronic mail address, or (3) electronic facsimile to a valid facsimile (fax) number at the dealer's place of business.

The consumer must give notice at least one day before the day he or she wishes to end automatic delivery service. The consumer is not responsible for delivery payments after notice has been given, except for deliveries (1) made within one business day after the notice was given and (2) which were scheduled for delivery prior to the notice, with consideration for weekends, holiday closings, or extenuating circumstances beyond the dealer's control.

OLR PUBLIC ACT SUMMARY

Telephonic Alternative

Under the act, an agreement for the sale of heating fuel, including a guaranteed price plan, can be done orally 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 a readily retrievable recording of the consumer's affirmation to the contract terms and conditions for at least one year after the contract expires;
4. sends a confirmation letter to the consumer with a written copy of the agreed upon terms and conditions; and
5. retains a copy of each confirmation letter.

Prohibited Provisions

Automatic Renewal. The act specifies that a written contract for selling heating fuel or leasing equipment with an automatic contract renewal is invalid unless it complies with the law's 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 act prohibits delivery contracts from having a liquidated damages provision for consumer breach where the liquidated damages exceed the dealer's actual damages. Liquidated damages is an agreed upon monetary amount in a contract that one party will pay the other upon contract breach.

Consumer Bill of Rights

Under the act, the DCP commissioner may adopt regulations (1) establishing a consumer bill of rights regarding home heating fuel dealers, (2) requiring dealers to provide consumers with such a bill of rights before entering into a contract, and (3) permitting dealers to post the bill of rights on their websites or record and play it for consumers who call the dealers' offices.

§§ 5 & 6 — GUARANTEED PRICE PLANS

Capped and Guaranteed Price Plans

The act broadens the scope of laws dealing with guaranteed price plans. It defines a "capped price plan" as an agreement where the fuel cost does not exceed a specific per gallon price and the consumer pays less than the cost under certain contract terms. Guaranteed price plans are contracts offering fuel at a guaranteed or maximum future price, which may use "fixed price," "buy ahead," "prebuy," "prebought," "prepaid," "full price," "lock in," "capped," "price cap," or other similar terminology to describe them.

OLR PUBLIC ACT SUMMARY

Under the act, a contract for a capped price plan or a guaranteed price plan using similar terms or descriptions must contain clear and specific language stating how and under what circumstances the price will decrease, if applicable. Existing law requires guaranteed price plan contracts to disclose in writing the terms and conditions. The disclosure must (1) be in plain language, (2) immediately follow the language concerning the price or service that could be affected, and (3) be in at least 12-point boldface type of uniform font.

Contract Terms

The act requires that a guaranteed price plan contract include (1) a provision stating the circumstances under which the price may fluctuate, if it is subject to fluctuation and (2) terms written in clear and specific language. The law already requires the contract to include (1) the amount of money paid; (2) the maximum number of gallons committed by the dealer for delivery; (3) that contract performance is secured; and (4) a statement explaining that the contract price of undelivered fuel owed to the consumer will be reimbursed within 30 days after the contract ends, unless the parties agree otherwise.

Automatic Renewal

The act prohibits a guaranteed price plan contract from containing an automatic contract renewal or extension clause.

Securing Guaranteed Contracts

The act eliminates the requirement that dealers secure renewed or extended guaranteed contracts. Prior law prohibited a dealer from entering, renewing, or extending a guaranteed contract unless he or she secured it. Under the act, dealers are only required to secure contracts they enter.

The act requires dealers to secure guaranteed contracts, whether prepaid or not, within five business days of acceptance. By law, they may secure a prepaid contract in two ways. The first is by 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, at least 80% of the maximum number of gallons of fuel or amount that the dealer is committed to deliver under all of its guaranteed price contracts. The act also allows dealers to (1) obtain physical supply contracts or (2) use physical inventory they hold title to for securing the contract. A physical supply contract is an agreement for wet barrels or gallons of heating fuel secured by a dealer. By law, the second permitted way to secure the contract is by obtaining a surety bond of at least 50% of the total amount paid by consumers.

Under prior law, a dealer could also secure prepaid contracts by obtaining heating fuel futures or forwards contracts, or other similar commitments in the amount he or she estimated was committed to the capped guaranteed price contract. For the surety option, a dealer could obtain a bond in an amount he or she estimated would be paid by the consumer based on all capped price per gallon fuel. The act eliminates both these security options.

The act requires a dealer to secure a guaranteed price plan that is not prepaid

OLR PUBLIC ACT SUMMARY

through the heating fuel physical inventory or contracts options specified above. The law requires dealers to maintain the total amount of these contracts or the required surety bond amount for the effective period of the guaranteed price plan contracts, except the amount may be reduced to reflect the fuel amount that is already delivered to and paid for by the consumer.

Secured Amount Notification

The act requires dealers to notify DCP if the surety amount is 50% or less than the remaining balance consumers paid under prepaid contracts. Existing law requires this notification when the heating fuel contract security option drops below 80%.

The act also requires a dealer to identify for DCP any entity from which it obtained a surety bond or physical supply contract. They must already do so for futures or forwards contracts or similar commitments.

Cancellation Notification

The act requires anyone who secures a surety bond or physical supply contract for a dealer to notify DCP of the cancellation of the bond or contract within three business days. The law already requires this for futures and forwards supply contracts.

§ 2 — HEATING FUEL DELIVERY

Delivery Ticket Label

The act broadens what must be on the delivery ticket. Existing law requires dealers to place the (1) unit price, (2) total number of units sold, and (3) amount of any delivery surcharge in a conspicuous place on the delivery ticket given to the consumer or his or her agent at delivery.

The act requires dealers to disclose any fee, charge, or surcharge instead of only any delivery surcharge.

A dealer cannot bill or attempt to collect from a consumer an amount exceeding the unit price multiplied by the total number of gallons or units on the ticket, plus any allowable fee, charge, or surcharge stated on the ticket.

Allowed Delivery Fees, Charges, or Surcharges

The act prohibits fees, charges, or surcharges if the dealer initiates the delivery. It allows dealers to impose fees, charges, or surcharges on the price per gallon or total delivery charge, for consumer-initiated deliveries when the:

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

Prior law allowed a dealer to impose only a surcharge for deliveries made under the conditions above. It also prohibited a delivery surcharge on dealer-initiated residential deliveries

§ 2 — LEASED FUEL TANK CONTRACTS

Leased Tanks

The act requires a contract for a leased or loaned tank 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.

The dealer and consumer may enter into a separate contract for additional services, including maintenance, repair, and warranty of the equipment, but it must comply with the act's heating fuel and tank contract requirements. The contract duration for a tank installed above ground may be up to 36 months, but the dealer must offer the consumer the option of entering into a bona fide commercially reasonable 18-month contract. The consumer and dealer may agree to such a contract for less than 18 months. Contracts for underground tanks can be for no more than five years.

Above Ground Tank Cancellation

The act allows a consumer who loans or leases an above ground tank through an oral agreement or a course of dealing to cancel the relationship with the dealer without penalty. It prohibits tank removal charges or forfeiture of unused heating fuel and specifies that the consumer is entitled to a refund of all unused fuel at the same price at which he or she purchased it.

Option to Purchase Underground Leased Tank

The act requires a lease for an underground tank to contain a clause allowing the consumer to buy the tank and associated equipment at any time up to five years after the contract begins. The purchase price must (1) be disclosed in the contract and (2) not increase during the contract. Any liability waiver or warranty transfer must be stated in the contract.

For existing contracts, both oral and written, where the purchase option or price is undisclosed or unspecified, the dealer must mail or deliver a contract addendum to the consumer by September 1, 2013. The addendum must include (1) the option to purchase the tank and associated equipment before September 1, 2018 and (2) a commercially reasonable price. If the consumer purchases the tank and any associated equipment, all heating fuel and tank contract obligations terminate upon purchase.

Dealer Filling Requirements

The act bans a dealer who owns a tank and has exclusive fill requirements from refusing to make fuel deliveries to a consumer because of a complaint DCP is mediating or investigating, from October 1 to March 31 annually, if the (1)

OLR PUBLIC ACT SUMMARY

dealer is the only supplier and (2) consumer pays cash upon delivery.

For the purposes of the act, “cash” means legal tender, a certified or cashier’s check, commercial money order, or something equivalent. It is also a guaranteed payment on behalf of a consumer by a government or community action agency, provided there is no discount.

§ 5 — FUEL DEALERS

Registration

By law, unchanged by the act, dealers of heating oil or propane must annually apply for a DCP certificate of registration. A dealer selling both fuels only needs one registration, but the act requires a separate registration for each name the dealer uses. The act exempts federally established heating assistance agencies.

Board of Directors Disclosure

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

Displaying Registration Number

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

§§ 2-4, & 8 — PENALTIES

Under prior law, the penalty for a dealer who violated the prohibition against (1) selling fuel oil or propane to be used for residential heating without printing certain required information on the delivery ticket or (2) overbilling or over collecting, was a fine of up to \$100 for the first offense and up to \$500 for each subsequent offense. The act increases the fine to 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 third or subsequent offense occurring within three years of a prior offense.

The act also applies the increased penalties to violations of its provisions on retail fuel and tank contracts, guaranteed price plans, delivery, availability, payment plans, advertising, and registration, including the following actions. Under the act, dealers are prohibited from requiring regular consumers to accept as a condition of delivery a minimum heating fuel delivery of at least 100 gallons, or 75% of the primary tank size, whichever is less. Prior law had these requirements, but with more than 100 gallons (CGS § 16a-22a(a)).

Additionally, by law, dealers are:

1. prohibited from conditioning the availability of burner maintenance or repair service on an agreement that the consumer purchase heating fuel

OLR PUBLIC ACT SUMMARY

- from them, but the dealer may give priority for service to consumers with delivery contracts (CGS § 16a-22k(a));
2. required to return to the consumer within 10 days after receiving a future delivery termination notice, any excess money 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));
 3. required to disclose, if they sell under a trade name, the name of the person or entity that filed a certificate to use such trade name on any communication, invoice, or advertising to any consumer or potential consumer (CGS § 16a-22k(c)); and
 4. required, if they offer plumbing or heating work service to (a) submit evidence to the DCP commissioner when registering, that they will only employ licensed people to do the work and (b) display the state license number on all commercial vehicles and in a conspicuous manner on all printed advertisements, bid proposals, contracts, invoices, and business stationery (CGS § 16a-23o).

The act also makes violating its retail contract, delivery, and tank provisions an unfair or deceptive trade practice (CUTPA) (see BACKGROUND). By law, violations of the four provisions above and the guaranteed price plan contract and heating fuel dealer registration requirements are also CUTPA violations. Knowingly failing to secure guaranteed price plan contracts is a class A misdemeanor (see Table on Penalties).

BACKGROUND

Electronic Signature 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 (CGS § 1-266 et seq.). 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 DCP 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. It 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 violating a restraining order.

OLR PUBLIC ACT SUMMARY

OLR Tracking: DC:KLM:PF:ro:tjo