



General Assembly

February Session, 2014

Raised Bill No. 299

LCO No. 1716



Referred to Committee on GENERAL LAW

Introduced by:
(GL)

***AN ACT ESTABLISHING A PREPAID CONSUMER HEATING FUEL
CONTRACT GUARANTY FUND.***

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

- 1 Section 1. (NEW) (*Effective July 1, 2014*) (a) As used in this section:
- 2 (1) "Commissioner" means the Commissioner of Consumer
3 Protection;
- 4 (2) "Consumer" means a direct purchaser of heating fuel from a
5 heating fuel dealer, when such fuel is the primary source of heating
6 fuel for residential heating or domestic hot water to one or more
7 dwelling units within a structure having not more than four dwelling
8 units;
- 9 (3) "Guaranty fund" means the Prepaid Consumer Heating Fuel
10 Contract Guaranty Fund established in subsection (b) of this section;
11 and
- 12 (4) "Heating fuel dealer" or "dealer" has the meaning provided in
13 section 16a-17 of the general statutes.

14 (b) The commissioner shall establish and maintain the Prepaid
15 Consumer Heating Fuel Contract Guaranty Fund.

16 (c) Each heating fuel dealer who holds a certificate of registration
17 issued pursuant to section 16a-23m of the general statutes on July 1,
18 2014, shall pay a fee of three thousand nine hundred dollars to the
19 guaranty fund. After July 1, 2014, a fee of five hundred dollars shall be
20 payable with the fee for an application for a certificate or renewal
21 thereof.

22 (d) Payments received under subsection (b) of this section shall be
23 credited to the guaranty fund until the balance in such fund equals five
24 million dollars. Annually, if such fund has an excess, the first five
25 hundred thousand dollars of the excess shall be deposited into the
26 consumer protection enforcement account established in section 21a-8a
27 of the general statutes, and any excess thereafter shall be deposited in
28 the General Fund. Any money in the guaranty fund may be invested
29 or reinvested in the same manner as funds of the state employees
30 retirement system, and the interest arising from such investments shall
31 be credited to the guaranty fund.

32 (e) Whenever a consumer obtains a court judgment against a
33 heating fuel dealer holding a certificate of registration or who has held
34 a certificate of registration under section 16a-23m of the general
35 statutes within the past two years of the effective date of entering into
36 the contract with the consumer, for loss or damages sustained by
37 reason of nonperformance by the heating fuel dealer of a prepaid
38 consumer heating fuel contract, such consumer may, upon the final
39 determination of, or expiration of time for, appeal in connection with
40 such judgment, apply to the commissioner for an order directing
41 payment out of the guaranty fund of the amount unpaid upon the
42 judgment for actual damages and costs taxed by the court against the
43 heating fuel dealer, exclusive of punitive damages. The consumer shall
44 apply on forms provided by the commissioner and shall attach a copy
45 of the court judgment obtained against the heating fuel dealer together

46 with a notarized affidavit, signed and sworn to by the consumer,
47 affirming that the consumer: (1) Has complied with all the
48 requirements of this subsection; (2) has obtained a judgment stating
49 the amount thereof and the amount owing thereon at the date of
50 application; and (3) has caused to be issued a writ of execution upon
51 said judgment, and the officer executing the writ of execution has
52 made a return showing that no bank accounts or personal property of
53 the heating fuel dealer to be levied upon in satisfaction of the
54 judgment could be found, or that the amount realized on the sale of
55 such accounts or personal property or of such accounts or personal
56 property as were found, under the writ of execution, was insufficient
57 to satisfy the actual damages portion of the judgment or stating the
58 amount realized and the balance remaining due on the judgment after
59 application thereon of the amount realized. A true and attested copy of
60 the executing officer's return, when required, shall be attached to such
61 application and affidavit. No application for an order directing
62 payment out of the guaranty fund shall be made later than two years
63 from the final determination of, or expiration time for, appeal of such
64 court judgment.

65 (f) Upon receipt of such application together with a copy of the
66 court judgment, notarized affidavit and true and attested copy of the
67 executing officer's return, the commissioner shall inspect such
68 documents for their veracity and upon a determination that such
69 documents are complete and authentic, and a determination that the
70 consumer has not been paid, the commissioner shall order payment
71 out of the guaranty fund of the amount unpaid upon the judgment for
72 actual damages and costs taxed by the court against the heating fuel
73 dealer, exclusive of punitive damages.

74 (g) Whenever a consumer is awarded an order of restitution against
75 any heating fuel dealer for loss or damages sustained by reason of
76 nonperformance by the heating fuel dealer of a prepaid consumer
77 heating fuel contract, in a proceeding brought by the commissioner
78 pursuant to this section or subsection (d) of section 42-110d of the

79 general statutes, or in a proceeding brought by the Attorney General
80 pursuant to subsection (a) of section 42-110m of the general statutes or
81 subsection (d) of section 42-110d of the general statutes, or a
82 proceeding pursuant to section 16a-23r of the general statutes, such
83 consumer may, upon the final determination of, or expiration of time
84 for, appeal in connection with any such order of restitution, apply to
85 the commissioner for an order directing payment out of the guaranty
86 fund of the amount unpaid upon the order of restitution. The
87 commissioner may issue such order upon a determination that the
88 consumer has not been paid.

89 (h) Before the commissioner issues any order directing payment out
90 of the guaranty fund to a consumer pursuant to subsection (f) or (g) of
91 this section, the commissioner shall first notify the heating fuel dealer
92 of the consumer's application for an order directing payment out of the
93 guaranty fund and of the heating fuel dealer's right to a hearing to
94 contest the disbursement in the event that the heating fuel dealer has
95 already paid the consumer or is complying with a payment schedule in
96 accordance with a court judgment. Such notice shall be given to the
97 heating fuel dealer within fifteen days of the receipt by the
98 commissioner of the consumer's application for an order directing
99 payment out of the guaranty fund. If the heating fuel dealer requests a
100 hearing in writing by certified mail within fifteen days of receipt of the
101 notice from the commissioner, the commissioner shall grant such
102 request and shall conduct a hearing in accordance with the provisions
103 of chapter 54 of the general statutes. If the commissioner receives no
104 written request by certified mail from the heating fuel dealer for a
105 hearing within fifteen days of the heating fuel dealer's receipt of such
106 notice, the commissioner shall determine that the consumer has not
107 been paid, and the commissioner shall issue an order directing
108 payment out of the guaranty fund for the amount unpaid upon the
109 judgment for actual damages and costs taxed by the court against the
110 heating fuel dealer, exclusive of punitive damages, or for the amount
111 unpaid upon the order of restitution.

112 (i) The commissioner may proceed against any heating fuel dealer
113 holding a certificate of registration or who has held a certificate of
114 registration issued pursuant to section 16a-23m of the general statutes
115 within the past two years of the effective date of entering into the
116 contract with the consumer, for an order of restitution arising from loss
117 or damages sustained by any person by reason of nonperformance by
118 the heating fuel dealer of a prepaid consumer heating fuel contract.
119 Any such proceeding shall be held in accordance with the provisions
120 of chapter 54 of the general statutes. In the course of such proceeding,
121 the commissioner shall decide whether to: (1) Exercise such
122 commissioner's powers pursuant to section 16a-23p of the general
123 statutes, (2) order restitution arising from loss or damages sustained by
124 any person by reason of such heating fuel dealer's nonperformance of
125 a prepaid consumer heating fuel contract, and (3) order payment out of
126 the guaranty fund. Notwithstanding the provisions of chapter 54 of the
127 general statutes, the decision of the commissioner under this
128 subsection shall not be deemed a final decision, as defined in section 4-
129 166 of the general statutes, and shall not be subject to appeal under
130 chapter 54 of the general statutes. The commissioner may hear
131 complaints of all consumers submitting claims against a single heating
132 fuel dealer in one proceeding.

133 (j) No application for an order directing payment out of the
134 guaranty fund shall be made later than two years from the final
135 determination of, or expiration of time for, appeal in connection with
136 any judgment or order of restitution.

137 (k) Whenever the consumer satisfies the commissioner that it is not
138 practicable to comply with the requirements of subdivision (3) of
139 subsection (e) of this section and that the consumer has taken all
140 reasonable steps to collect the amount of the judgment or the
141 unsatisfied part thereof and has been unable to collect the same, the
142 commissioner may in his or her discretion dispense with the necessity
143 for complying with such requirement.

144 (l) In order to preserve the integrity of the guaranty fund, the
145 commissioner, in the commissioner's sole discretion, may order
146 payment out of said fund of an amount less than the actual loss or
147 damages incurred by the consumer or less than the order of restitution
148 awarded by the commissioner or the Superior Court. In no event shall
149 any payment out of said guaranty fund be in excess of fifteen thousand
150 dollars for any single claim by a consumer.

151 (m) If the money deposited in the guaranty fund is insufficient to
152 satisfy any duly authorized claim or portion thereof, the commissioner
153 shall, when sufficient money has been deposited in the fund, satisfy
154 such unpaid claims or portions thereof, in the order that such claims or
155 portions thereof were originally determined.

156 (n) Whenever the commissioner has caused any amount to be paid
157 from the guaranty fund to a consumer, the commissioner shall be
158 subrogated to all of the rights of the consumer up to the amount paid
159 plus reasonable interest, and prior to receipt of any payment from the
160 guaranty fund, the consumer shall assign all of the consumer's right,
161 title and interest in the claim up to such amount to the commissioner,
162 and any amount and interest recovered by the commissioner on the
163 claim shall be deposited to the guaranty fund.

164 (o) If the commissioner orders the payment of any amount as a
165 result of a claim against a heating fuel dealer, the commissioner shall
166 determine if the heating fuel dealer is possessed of assets liable to be
167 sold or applied in satisfaction of the claim on the guaranty fund. If the
168 commissioner discovers any such assets, the commissioner may
169 request that the Attorney General take any action necessary for the
170 reimbursement of the guaranty fund.

171 (p) If the commissioner orders the payment of an amount as a result
172 of a claim against a heating fuel dealer, the commissioner may, after
173 notice and hearing in accordance with the provisions of chapter 54 of
174 the general statutes, revoke the certificate of the heating fuel dealer

175 and the heating fuel dealer shall not be eligible to receive a new or
176 renewed certificate until the heating fuel dealer has repaid such
177 amount in full, plus interest from the time said payment is made from
178 the guaranty fund, at a rate to be in accordance with section 37-3b of
179 the general statutes, except that the commissioner may, in the
180 commissioner's sole discretion, permit a heating fuel dealer to receive a
181 new or renewed certificate after the heating fuel dealer has entered
182 into an agreement with the commissioner under which the heating fuel
183 dealer agrees to repay the guaranty fund in full in the form of periodic
184 payments over a set period of time. Any such agreement shall include
185 a provision providing for the summary suspension of any and all
186 certificates of registration held by the heating fuel dealer if payment is
187 not made in accordance with the terms of the agreement.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	New section

Statement of Purpose:

To establish a prepaid consumer heating fuel contract guaranty fund.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]