



General Assembly

**Substitute Bill No. 299**

February Session, 2014



**AN ACT CONCERNING HEATING FUEL DELIVERY FEES, CHARGES AND SURCHARGES AND PREPAID GUARANTEED HEATING FUEL PRICE PLANS.**

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

1 Section 1. Subsection (g) of section 16a-21 of the general statutes is  
2 repealed and the following is substituted in lieu thereof (*Effective July*  
3 *1, 2014*):

4 (g) No heating fuel dealer shall assess a fee, charge or surcharge on  
5 the price per gallon or total delivery charge for any heating fuel  
6 delivery initiated by a consumer, except when:

7 (1) The heating fuel delivery is [not more] less than one hundred  
8 gallons;

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

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

13 (4) The dealer incurs extraordinary labor costs for the heating fuel  
14 delivery.

15 Sec. 2. Section 16a-23m of the general statutes is repealed and the

16 following is substituted in lieu thereof (*Effective July 1, 2014*):

17 (a) As used in this section, [and] sections 16a-23n to [16a-23r,] 16a-  
18 23s, inclusive, as amended by this act, and section 7 of this act:

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

23 (2) "Commissioner" means the Commissioner of Consumer  
24 Protection;

25 (3) "Consumer" means a direct purchaser of heating fuel from a  
26 heating fuel dealer, when such fuel is the primary source of heating  
27 fuel for residential heating or domestic hot water to one or more  
28 dwelling units within a structure having not more than four dwelling  
29 units;

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

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

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

39 (7) "Guaranteed price plan", also known as "guaranteed plan", "fixed  
40 price", ["buy ahead", "prebuy", "prebought", "prepaid,] "full price",  
41 "lock in", "capped", "price cap", or other similar terminology, when  
42 used to describe a contract, means a type of contract that is not paid in  
43 advance of delivery, offering heating fuel at a guaranteed future price  
44 or at a maximum future price;

45 (8) "Heating fuel" means any petroleum-based fuel used as a  
46 primary source of residential heating or domestic hot water, including  
47 petroleum products regulated pursuant to chapter 250;

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

52 (10) "Heating oil" means a predominantly liquefied petroleum  
53 product at ambient temperatures, that is sold as a commodity and is a  
54 primary source of residential heating or domestic hot water, including  
55 products known as #2 oil (heating oil), #1 oil (kerosene), #4 oil, bio  
56 fuels, or any bio fuel blended with conventionally refined fossil fuel  
57 commodities and that meets the requirements of the American Society  
58 for Testing and Materials Standard D396, as amended from time to  
59 time;

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

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

67 (13) "Prepaid guaranteed price plan", also known as "buy ahead",  
68 "prebuy", "prebought", or other similar terminology, when used to  
69 describe a contract, means a type of contract offering heating fuel at a  
70 guaranteed price, paid for in advance of delivery;

71 [(13)] (14) "Propane" or "liquefied petroleum gas (LPG)" means a  
72 petroleum product that meets ASTM specification D1835, as amended  
73 from time to time, and is composed predominantly of any of the  
74 following hydrocarbons or mixtures thereof: Propane, propylene,  
75 butanes (normal butane or isobutane), and butylenes and is intended

76 for use, among other things, as a fuel for residential heating; and

77 [(14)] (15) "Surety bond" means a bond issued by a licensed  
78 insurance company or banking institution as surety for a dealer  
79 obligating the surety to the commissioner in a sum certain in guaranty  
80 of the full and faithful performance by the dealer of prepaid  
81 guaranteed price plan contracts entered into pursuant to this chapter.

82 (b) No heating fuel dealer shall engage in the sale of heating fuel  
83 without a certificate of registration as a heating fuel dealer issued  
84 pursuant to this section. No federally established heating assistance  
85 agency shall be required to register. Only one registration shall be  
86 required of a dealer to engage in both the retail sale of heating oil and  
87 propane. A separate certificate of registration is required for each name  
88 that a heating fuel dealer does business as or advertises.

89 (c) Each person, firm or corporation seeking registration as a heating  
90 fuel dealer shall apply annually for a certificate of registration with the  
91 Department of Consumer Protection on forms prescribed by the  
92 commissioner. Each heating fuel dealer shall disclose on such forms all  
93 affiliated companies registered with the department that are under  
94 common ownership or have interlocking boards of directors. Each  
95 applicant shall pay a registration fee of two hundred dollars. The  
96 commissioner shall require all applicants for registration as a heating  
97 fuel dealer to provide evidence of general liability insurance coverage  
98 and insurance to cover any potential environmental damage due to  
99 heating fuel spills or leaks caused by such applicant as a registered  
100 dealer which coverage shall be not less than one million dollars. Each  
101 registered dealer shall provide the department with evidence of each  
102 renewal of or change to such insurance coverage not later than five  
103 days after such renewal or change during the period of registration,  
104 which renewal or change shall meet the requirements of this  
105 subsection.

106 (d) Each registered dealer shall display its registration number in all  
107 advertisements and other materials prepared or issued by the dealer,

108 which contain information regarding such dealer, including, but not  
109 limited to, all contracts, delivery tickets, letters and vehicle  
110 advertisements.

111 (e) The insurance company of a heating fuel dealer shall notify the  
112 commissioner, in writing, upon cancellation of insurance required by  
113 subsection (c) of this section by any heating fuel dealer. The  
114 commissioner shall revoke the registration of any such dealer without  
115 the insurance coverage required by subsection (c) of this section.

116 (f) Prior to offering a prepaid guaranteed price plan to a consumer, a  
117 dealer shall disclose the details of such offering, including such  
118 dealer's method of compliance with section 16a-23n, as amended by  
119 this act, on a form prescribed by the commissioner.

120 Sec. 3. Section 16a-23n of the general statutes is repealed and the  
121 following is substituted in lieu thereof (*Effective July 1, 2014*):

122 (a) A contract for the retail sale of heating fuel that offers a  
123 guaranteed price plan or a prepaid guaranteed price plan shall be in  
124 writing. [and the] The terms and conditions of such guaranteed price  
125 plan or prepaid guaranteed price plan shall be disclosed [. Such  
126 disclosure shall be] in plain language and shall immediately follow the  
127 language concerning the price or service that could be affected, if  
128 applicable, and shall be printed in no less than twelve-point boldface  
129 type of uniform font.

130 (b) A heating fuel dealer that advertises a price shall offer such price  
131 for a period of no less than twenty-four hours or until the next  
132 advertised price is publicized, whichever occurs first.

133 (c) Each capped price plan and any guaranteed price plan that  
134 includes the terms "cap", "capped", "maximum", "not to exceed" or any  
135 other similar term or description shall not increase above a specified  
136 price per gallon. The contract for such plan or for a prepaid guaranteed  
137 price plan shall contain clear and specific language stating how and  
138 under what circumstances the price will decrease, if applicable.

139 (d) (1) A heating fuel dealer shall, not later than five business days  
140 after entering into a prepaid guaranteed price plan contract, either:  
141 [(1)] (A) Obtain heating fuel physical inventory to which such dealer  
142 holds title, heating fuel futures or forwards contracts, physical supply  
143 contracts or other similar commitments the total amount of which  
144 allow such dealer to purchase, at a fixed price, heating fuel in an  
145 amount not less than eighty per cent of the maximum number of  
146 gallons or amount that such dealer is committed to deliver pursuant to  
147 all prepaid guaranteed price contracts entered into by such dealer, or  
148 [(2)] (B) obtain a surety bond in an amount not less than fifty per cent  
149 of the total amount of funds paid to the dealer by consumers pursuant  
150 to prepaid guaranteed price plan contracts.

151 (2) A heating fuel dealer shall, not later than five business days after  
152 entering into a guaranteed price plan contract, [that is not prepaid,]  
153 obtain heating fuel physical inventory to which such dealer holds title,  
154 heating fuel futures or forwards contracts, physical supply contracts or  
155 other similar commitments the total amount of which allow such  
156 dealer to purchase, at a fixed price, heating fuel in an amount not less  
157 than eighty per cent of the maximum number of gallons or amount  
158 that such dealer is committed to deliver pursuant to all guaranteed  
159 price plan contracts entered into by such dealer.

160 (3) Such dealer shall maintain such total amount of futures or  
161 forwards or physical supply contracts or other similar commitments or  
162 the amount of the surety bond required [by] under this subsection for  
163 the period of time for which such guaranteed price plan contracts are  
164 effective, except that the total amount of such futures or forwards or  
165 guaranteed price plan contracts or other similar commitments or the  
166 amount of the surety bond may be reduced during such period of time  
167 to reflect any amount of heating fuel already delivered to and paid for  
168 by the consumer.

169 (e) No guaranteed price plan contract or prepaid guaranteed price  
170 plan contract shall require any consumer commitment to purchase  
171 heating fuel pursuant to the terms of such contract for a period of more

172 than eighteen months. A guaranteed price plan contract or prepaid  
173 guaranteed price plan contract for the purchase of heating fuel may  
174 not contain an automatic contract renewal or extension clause.

175 (f) Any guaranteed price plan contract or prepaid guaranteed price  
176 plan contract shall indicate, in clear and specific language: (1) The  
177 amount of funds paid by the consumer to the heating fuel dealer under  
178 such contract, (2) the maximum number of gallons of heating fuel  
179 committed by the dealer for delivery to the consumer pursuant to such  
180 contract, (3) that performance of such guaranteed price plan contract  
181 or prepaid guaranteed price plan contract is secured by one of the  
182 options described in subsection (d) of this section, and (4) if the price of  
183 heating fuel is subject to fluctuation, the circumstances under which  
184 the price may fluctuate. Any such contract shall provide that the  
185 contract price of any undelivered heating fuel owed to the consumer  
186 under the contract, on the end date of such contract, shall be  
187 reimbursed to the consumer not later than thirty days after the end  
188 date of such contract unless the parties to such contract agree  
189 otherwise.

190 (g) Each heating fuel dealer who enters into guaranteed price plan  
191 contracts or prepaid guaranteed price plan contracts shall inform the  
192 Commissioner of Consumer Protection, in writing, that such dealer is  
193 entering into such contracts and shall identify any entity from which  
194 the dealer has secured heating fuel futures or forwards contracts,  
195 physical supply contracts or other similar commitments or a surety  
196 bond pursuant to subsection (d) of this section. Each such dealer shall  
197 notify the commissioner if at any time the total amount of such secured  
198 futures or forwards contracts, physical supply contracts or other such  
199 similar commitments held by the dealer is less than eighty per cent of  
200 the maximum number of gallons or amount that such dealer is  
201 committed to deliver pursuant to all such contracts entered into by  
202 such dealer or, if the total amount of such surety bond is not more than  
203 fifty per cent of the remaining balance of funds consumers paid  
204 pursuant to prepaid guaranteed price plan contracts. The

205 commissioner shall prescribe the form in which such information shall  
206 be reported.

207 (h) Each person from which a heating fuel dealer has secured a  
208 futures, forwards or physical supply contract or other similar  
209 commitment or a surety bond pursuant to subsection (d) of this section  
210 shall notify the Commissioner of Consumer Protection, in writing, of  
211 the cancellation of such contract or other similar commitment or surety  
212 bond not later than three business days after such cancellation.

213 Sec. 4. Section 16a-23p of the general statutes is repealed and the  
214 following is substituted in lieu thereof (*Effective July 1, 2014*):

215 The Department of Consumer Protection may suspend or revoke  
216 any registration issued under section 16a-23m, as amended by this act,  
217 if the holder of such registration is grossly incompetent, engages in  
218 malpractice or unethical conduct or knowingly makes false,  
219 misleading or deceptive representations regarding such holder's work,  
220 violates any provision of section 16a-23n, as amended by this act, or  
221 section 7 of this act, fails to comply with any subpoena issued pursuant  
222 to this section or violates any regulations adopted under section 16a-  
223 23q. Before any such registration is suspended or revoked, such holder  
224 shall be given notice and opportunity for hearing as provided in  
225 regulations adopted by said commissioner in accordance with the  
226 provisions of chapter 54. Said commissioner may compel by subpoena,  
227 at his or her discretion, the production of any documents from any  
228 heating fuel dealer or from any provider of futures or forwards  
229 contracts, physical supply contracts or other similar commitments or a  
230 surety bond, regarding compliance with the provisions of sections 16a-  
231 23m to 16a-23r, inclusive, as amended by this act, or section 7 of this  
232 act.

233 Sec. 5. Section 16a-23r of the general statutes is repealed and the  
234 following is substituted in lieu thereof (*Effective July 1, 2014*):

235 (a) A violation of the provisions of section 16a-23m, as amended by

236 this act, 16a-23n, as amended by this act, [or] 16a-23o or section 7 of  
237 this act constitutes an unfair trade practice under subsection (a) of  
238 section 42-110b.

239 (b) In accordance with the provisions of section 53a-11, any heating  
240 fuel dealer who knowingly violates the provisions of subsection (d) of  
241 section 16a-23n, as amended by this act, shall have committed a class A  
242 misdemeanor. The commissioner shall report such violation to the  
243 office of the state's attorney for the judicial district in which such  
244 violation occurred.

245 (c) Any person, firm or corporation who violates the provisions of  
246 section 16a-23m, as amended by this act, 16a-23n, as amended by this  
247 act, [or] 16a-23o or section 7 of this act shall be fined not more than five  
248 hundred dollars for the first offense, not more than seven hundred  
249 fifty dollars for a second offense occurring not more than three years  
250 after a prior offense and not more than one thousand five hundred  
251 dollars for a third or subsequent offense occurring not more than three  
252 years after a prior offense.

253 Sec. 6. Section 16a-23s of the general statutes is repealed and the  
254 following is substituted in lieu thereof (*Effective July 1, 2014*):

255 (a) The Department of Consumer Protection shall establish a list of  
256 all [registered home heating oil and propane gas] heating fuel dealers.  
257 The department shall make the list available to all wholesalers of  
258 [home heating oil or propane gas] heating fuel doing business in the  
259 state and such wholesalers shall only sell to the [registered home  
260 heating oil or propane gas] heating fuel dealers on said list.

261 (b) The Department of Consumer Protection shall establish a list of  
262 all heating fuel dealers that have disclosed offerings of prepaid  
263 guaranteed price plans to consumers pursuant to subsection (c) of  
264 section 16a-23m, as amended by this act. Such list shall be made  
265 available to the public on the department's Internet web site.

266 Sec. 7. (NEW) (*Effective July 1, 2014*) (a) On and after July 1, 2014, no

267 heating fuel dealer shall offer a prepaid guaranteed price plan to a  
 268 consumer during the period beginning on November first and ending  
 269 on March thirty-first. The provisions of this subsection shall not  
 270 prohibit the delivery of heating fuel by a heating fuel dealer to a  
 271 consumer during said period if the consumer entered into a prepaid  
 272 guaranteed price plan contract with the heating fuel dealer to provide  
 273 for the delivery of heating fuel during said period and such contract  
 274 was entered into prior to July 1, 2014, or outside of said period.

275 (b) A heating fuel dealer shall, prior to entering into a prepaid  
 276 guaranteed price plan contract with a consumer, provide the consumer  
 277 with a conspicuous statement, printed in no less than twelve-point  
 278 boldface type of uniform font, in substantially the following form:

279 "DISCLOSURE NOTICE CONCERNING CREDIT CARD  
 280 PAYMENT OPTION. If you pay by credit card for a prepaid  
 281 guaranteed heating fuel price plan contract, you may be entitled to  
 282 recovery payments if heating fuel is not delivered to you in accordance  
 283 with the contract."

284 Sec. 8. (NEW) (*Effective from passage*) Not later than June fifteenth  
 285 each year, the Commissioner of Revenue Services shall notify the  
 286 Department of Consumer Protection of any outstanding tax  
 287 delinquencies owed to the state by any heating fuel dealer, as defined  
 288 in section 16a-23m of the general statutes, as amended by this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>July 1, 2014</i>	16a-21(g)
Sec. 2	<i>July 1, 2014</i>	16a-23m
Sec. 3	<i>July 1, 2014</i>	16a-23n
Sec. 4	<i>July 1, 2014</i>	16a-23p
Sec. 5	<i>July 1, 2014</i>	16a-23r
Sec. 6	<i>July 1, 2014</i>	16a-23s
Sec. 7	<i>July 1, 2014</i>	New section
Sec. 8	<i>from passage</i>	New section

**Statement of Legislative Commissioners:**

In section 2, "that is not paid in advance of delivery," was added to the definition of "Guaranteed price plan" for clarity.

**GL**        *Joint Favorable Subst.*