

AG: Pre-buy oil contract law offers little protection

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In the wake of the financial fallout of the Flynn's Oil case, in which more than 300 customers of the Exeter-based company never received a total of \$554,603 worth of oil they prepaid for, at least one consumer embroiled in the controversy is outraged at the lack of protection that currently exists for consumers.

Christine Davis, 39, entered into a \$1,200 pre-buy contract with Flynn's Oil, which was supposed to supply 800 gallons to heat her home last winter. The automatic-fill agreement meant Flynn's would deliver oil to Davis's home when her tank was low without her having to schedule a delivery. Though Flynn's made a delivery in October 2009 it delivered just 50 gallons on Dec. 21. As of Jan. 1, when she ran out of oil, Davis still hadn't received a delivery. The 39-year-old, single mother of two was forced to utilize the services of Hartmann Oil of Exeter, which was open on New Year's Day, to fill her tank at a cost of another \$600.

Even in light of the Flynn's case, Davis said the state statute governing guaranteed price plans and prepaid contracts for oil is not offering consumers the greatest level of protection. The statute maintains no home heating oil, kerosene or liquefied petroleum gas dealer can enter into a prepaid contract to provide their product to a consumer unless that dealer has, within seven days of the acceptance of the contract, obtained and maintained one of the following:

A firm commitment in the form of a futures contract that guarantees the dealer may purchase the product at a fixed price in an amount not less than 75 percent of the maximum number of gallons that the dealer is committed to deliver; a surety bond, made payable to the state attorney general in an amount not less than 50 percent of the total amount of funds paid to the dealer by consumers; or a letter of credit, made payable to the attorney general, from an FDIC-insured institution in an amount that represents 100 percent of the cost to the dealer of the maximum number of gallons the dealer is committed to deliver.

Although the surety bond and letter of credit are required to be made out to the state attorney general's office, Assistant Attorney General James Bofetti said the statute does not require companies to file anything with his office.

"That's one of the problems with the statute," he said. "There's nothing in the statute that requires them to file anything with us."

"I'm so disappointed and so let down by the attorney general's office that they require something yet never ask you to produce it," Davis said. "If they never ask you to file it you have zero incentive to actually file it."

Davis said the Flynn's case should have served as a wake-up call to change the statute.

"People are losing their money and yet they still don't fix it," she said. "I'm shocked that after (Flynn's) happened they didn't immediately take action and say, 'We've got a

problem and we need to rectify it.' How many people have to get hurt before you actually do something? They're supposed to be protecting us and there is no protection here at all."

Bofetti said in light of recent events such as the Flynn's case the attorney general's office is making the statute a priority.

"If a company's not complying with the statute, that's a problem and that's a law enforcement problem that we usually find out after the crime is committed," he said. "This is a statute that needs to be looked at in light of the experience that we've had over the last few years.

"I can tell you that it is clearly on our radar, that we are looking at this issue and we are talking to people in the industry, we are talking to consumers, to people who run these oil co-ops, and I know it's certainly of interest among the legislators to look at this."

According to Bofetti, the statute has other inherent problems that may not be providing the optimal protection for consumers. He said the language pertaining to the futures contract is problematic in that it does not require the money be secured in some way. It merely requires that companies enter into a contract with a promise to buy oil at a future time.

"Sometimes the price of oil they're going to pay for is not even set yet, so that the oil company may be trying to play the market and buy the oil at a time that is the best price for them to maximize their profit," he said. "People think that a futures contract means that you've bought the oil and that somehow that oil is secured and I can tell you that that's not always the case."

Bofetti said he thinks most consumers believe there is more of a guarantee of their money than what there really is. "That's the problem as the statute does not provide that sort of guarantee," he said. "Ask your typical pre-buy consumer what they think is happening when they enter into a pre-buy and they give their oil company \$2,000. They think that money is being put aside or the oil is being bought ready for them so that when the heating season comes in October they'll have oil. That's not how it works and that's not how the statute is written."

When asked what could be done to strengthen protection, Bofetti said language in futures contracts could be drafted to provide more security of the consumers' money. Such measures could include stipulating any money an oil company receives from consumers must be put into an escrow account.

"You can change the language of the futures contract in that statute to make it more difficult for dealers to use that money for other things other than buying oil for the consumers when entering into a pre-buy contract," Bofetti said. "There are ways of doing it, and frankly we're looking at all that and we're looking at the language and considering how to draft language that is much more protective of the consumers."

When such changes could be enacted is up to the Legislature, said Bofetti, who will have to hold public hearings with testimony from consumers, the attorney general's office and oil companies before any changes can be made.