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DOWN THE TUBES?

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Jackson Oil clients may have a long wait for money

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A week after learning of the abrupt closure of a Keene heating oil company, state consumer protection officials say they are working to determine the scope and financial effects on the company's customers.

Senior Assistant Attorney General Constance N. Stratton said officials don't yet know if or when Jackson Energy's pre-buy and budget plan customers might get their money back.

The N.H. Attorney General's Office Consumer Protection and Antitrust Bureau had received six complaints against Jackson Energy LLC as of Friday afternoon, Stratton said.

The company, which had an office on Central Square, reportedly stopped delivering oil days after 45-year-old owner Bradley C. Jackson's death on Feb. 17. State officials learned of the closure on Feb. 25, Stratton said.

Jackson Energy's closure comes on the heels of a push by some state legislators, the Attorney General's Office and an oil industry group to enact tougher regulations on pre-buy oil dealers.

The controversial legislation, which was sparked by the demise of an Exeter-based oil company in late 2009, was retained in the N.H. House Commerce and Consumer Affairs Committee this week after a public hearing.

It likely won't reach the full Legislature until 2012 if it gets out of the committee, lawmakers said.

And if the recent resolution of the Exeter dealer's case is any indication, Jackson Energy customers could spend years waiting to recover their money, if at all.

Crunching the numbers

Since learning of Jackson Energy's closure, state officials have been working to determine how many customers are affected and how much money is at stake in pre-buy and budget plan accounts, Stratton said.

She urges customers to file written complaints with the consumer protection agency. (A form can be downloaded on the agency's website.)

Customers who file complaints "will get a response from our office, but I can't say what that response will be yet because I don't know," Stratton said. "As soon as we have some more concrete information we will share that information."

Officials from one local community and five school districts in School Administrative Unit 29 told The Sentinel this week they pre-paid for heating oil that will not be delivered. Numerous other customers report outstanding account balances for pre-buy and budget plans, in which they made monthly payments and received automatic oil deliveries.

Customers were not directly notified of the company's closure, and several say they learned of it only after their oil tanks ran dry.

State officials are also working to determine whether the company had in place any protection required by state law, Stratton said.

"I don't believe they have, but I'm not positive," she said.

State law, which was amended in 2007 after the closure of a Concord dealer, requires oil companies offering pre-buy contracts to have a futures contract, a surety bond or a letter of credit.

"If (dealers) post a bond or letter of credit with the state of New Hampshire as a beneficiary, that's like having the money," Stratton said. "If they go out of business, customers could get some restitution."

A futures contract is a company's reservation of oil from a supplier.

"It doesn't mean that they've already paid for the oil, just that they've reserved that amount," Stratton said. "That doesn't protect the customers' money."

"If they go bankrupt, there's no way to recover the money."

But while companies are obligated to obtain at least one of these protections, they do not have to report their intention to offer pre-buy contracts or notify state officials that they're in compliance.

Dissatisfaction with the current law led the Attorney General's Office to work with state legislators on House Bill 581, Stratton said.

The bill, which is sponsored by Rep. Marshall "Lee" Quandt, R-Exeter, and five co-sponsors, would require dealers to put 75 percent of the money they collect from pre-buy customers in an escrow account.

Advocates of the bill say it will keep oil dealers from using customers' money like an interest-free loan for operating expenses.

"We do not want to run the oil business and we don't want to tell oil companies how to run their businesses," Quandt said. "But we want some protection for our consumers so that if a company closes they get the money back or they get their home heating oil."

Robert J. Sculley, executive director of the Oil Heat Council of N.H., which also helped draft the legislation, said the group supports the increased consumer protection it would provide.

"You have some companies go out of business and they have their customers' money and the customers don't have their oil ..." Sculley said. "All the other home heating companies that don't do (that) get painted with the same brush and get a black eye."

But some oil dealers voiced objections during a House committee hearing on the bill this week, said Rep. John B. Hunt, chairman of the committee.

Hunt also takes issue with the proposed legislation, which he says doesn't address the problem.

Rather than requiring escrow accounts, Hunt wants new legislation to require companies to notify state officials that they're offering pre-buy contracts and tell which of the currently-required protections they have in place.

"The AG's office doesn't know whether they (are complying with the law) until there's a problem," Hunt said. "And it's never going to know until the problem rears its head, and then the money's gone."

Hunt said he wants to hold the bill in committee until next year to re-work the language.

But Quandt said Jackson Energy's closure is an indication that legislators shouldn't drag their feet.

"For a lot of businesses, if their oil company goes out of business and takes their money, they're done," he said. "And if people lose that money, they are going to go to local agencies for help with heating expenses and the cost shifts to everyone."

Waiting for years?

Whether pre-buy and budget plan customers get their money back when an oil company goes out of business depends on several factors, including a company's assets and amount of debt, according to Stratton, of the Attorney General's Office.

If a company goes bankrupt and did not break any laws, for example, its debts may be erased, she said.

After Exeter-based Flynn's Oil Co. closed in December 2009, state officials spent months working out a resolution between the company and the more than 300 customers who pre-paid \$554,603 for oil they never received.

Company officials pleaded guilty in Rockingham Superior Court to violating the Consumer Protection Act, according to a release from the Attorney General's Office. A \$100,000 fine was suspended until customers receive restitution.

In April 2010, Hilton Family Oil bought the company and the \$36,882.15 from the sale was divided among customers in September, according to state officials.

Customers will likely be waiting several years for the rest of the money.

According to an agreement with the Attorney General's Office, Hilton Family Oil will put a percentage of its monthly income for the next three years into an escrow account and the Flynn's, who plan to lease a car wash they own, will put half of the yearly income from that business into an account until the debt is paid.

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