

COUNTY OF SUFFOLK



OFFICE OF THE COUNTY EXECUTIVE

Steve Levy  
COUNTY EXECUTIVE

January 15, 2009

Presiding Officer William J. Lindsay and  
Members of the Suffolk County Legislature  
William H. Rogers Legislative Building  
725 Veterans Memorial Highway  
Smithtown, New York 11787

RECEIVED  
2009 JAN 15 P 4: 29  
COUNTY LEGISLATURE  
SUFFOLK COUNTY, N.Y.  
HAUPPAUGE

**RE: RESOLUTION NO. 1128 -2008, ADOPTING LOCAL LAW NO. -2008, A LOCAL LAW AMENDING THE SUFFOLK COUNTY CODE TO PREVENT DECEPTIVE PRACTICES IN THE HOME HEATING OIL INDUSTRY**

Dear Presiding Officer Lindsay and Members of the Legislature:

I am returning herein RESOLUTION NO. 1128 -2008, ADOPTING LOCAL LAW NO. -2008, A LOCAL LAW AMENDING THE SUFFOLK COUNTY CODE TO PREVENT DECEPTIVE PRACTICES IN THE HOME HEATING OIL INDUSTRY vetoed in its entirety because while well intended, the bill would have the unintended consequence of preventing a consumer from getting the lowest price possible.

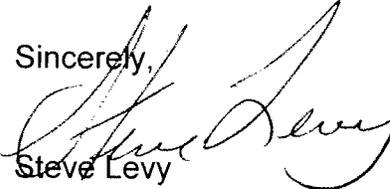
The bill would eliminate the ability for a consumer to lock-in a price over the telephone and require a written contract to be sent to the consumer via the mail. This practice of a written contract could lead to an increase in price, possibly 20-40 cents per gallon from the date of the telephone conversation to the execution of the written contract.

We recommend an alternative to this legislation, where the consumer will still have the ability to lock-in a price through an electronic contract recorded via email, a web transaction or a recorded voice transaction, which shall be held on file, but the home heating oil company shall also, within a reasonable time after the recording of the electronic contract, provide a printed copy of the agreement to the consumer. The printed copy shall at a minimum state the duration of the contract, the price per gallon, any surcharges per gallon for maintaining the fixed price, terms stating whether the price is firm or a cap on the maximum price per

gallon for the duration of the contract, whether the contract provides for budget payments throughout the entire year or requires immediate payment in full, and penalty provisions for cancellation of the contract by the consumer.

The written contract can serve as a confirmation of the price locked into a week earlier. If the terms of the written contract match the verbal recording, the contract stands. If it varies, the consumer will be able to void the contract. This would be a method that could give consumers the best of both worlds. We look forward to working with the sponsors and the legislature to draft such a bill.

For the reason stated above, I urge the Legislature to sustain my veto.

Sincerely,  
  
Steve Levy  
County Executive of Suffolk County

SL:ir

cc: All Suffolk County Legislators  
Tim Laube, Clerk of the Legislature  
Christine Malafi, Esq., Suffolk County Attorney  
Lynne A. Bizzarro, Esq., Chief Deputy County Attorney  
James A. Morgo, Chief Deputy County Executive  
Frederick B. Pollert, Deputy County Executive for Finance and Management  
Jeffrey W. Szabo, Deputy County Executive and Chief of Staff  
Ben Zwirn, Deputy County Executive  
Connie Corso, Budget Director  
Dan Aug, Director of Communications  
Mark Smith, Deputy Director of Communications

Intro. Res. 2033 Res. No. 1128

December 16, 2008

**Motion:**  
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Co-Sponsors:**  
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

**Second:**  
 Romaine, Schneiderman, Browning, Beedenbender, Losquadro  
 Eddington, Montano, Alden, Lindsay, Viloría-Fisher, Barraga,  
 Kennedy, Nowick, Horsley, Gregory, Stern, D'Amaro, Cooper

LD	Legislator	Yes	No	Abs	NP	R
1	Edward P. ROMAINE	✓		✓		
2	Jay H. SCHNEIDERMAN	✓				
3	Kate M. BROWNING	✓				
4	Brian BEEDENBENDER	✓				
6	Daniel P. LOSQUADRO	✓				
7	Jack EDDINGTON	✓				
9	Ricardo MONTANO R	✓				
10	Cameron ALDEN			✓		
11	Thomas F. BARRAGA		✓			
12	John M. KENNEDY, JR. R		✓			
13	Lynne C. NOWICK			✓		
14	Wayne R. HORSLEY	✓				
15	DuWayne GREGORY	✓				
16	Steven H. STERN	✓				
17	Lou D'AMARO	✓				
18	Jon COOPER	✓				
5	Vivian VILORIA-FISHER, D.P.O.	✓				
8	William J. LINDSAY, P.O.	✓				
	Totals	13	2	3	—	

**MOTION**

Approve

\_\_\_ Table: \_\_\_\_\_

\_\_\_ Send To Committee

\_\_\_ Table Subject To Call

\_\_\_ Lay On The Table

\_\_\_ Discharge

\_\_\_ Take Out of Order

\_\_\_ Reconsider

\_\_\_ Waive Rule \_\_\_\_\_

\_\_\_ Override Veto

\_\_\_ Close

\_\_\_ Recess

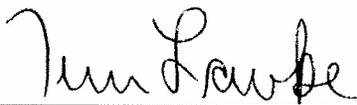
APPROVED  FAILED \_\_\_\_\_

No Motion \_\_\_\_\_ No Second \_\_\_\_\_

**RESOLUTION DECLARED**

ADOPTED

\_\_\_ NOT ADOPTED

  
 \_\_\_\_\_  
 Tim Laube, Clerk of the Legislature

Roll Call  Voice Vote \_\_\_\_\_

**RESOLUTION NO. 1128 -2008, ADOPTING LOCAL LAW  
NO. -2008, A LOCAL LAW AMENDING THE SUFFOLK  
COUNTY CODE TO PREVENT DECEPTIVE PRACTICES IN  
THE HOME HEATING OIL INDUSTRY**

**WHEREAS**, there was duly presented and introduced to this County Legislature at a meeting held on November 18, 2008, a proposed local law entitled, "**A LOCAL LAW AMENDING THE SUFFOLK COUNTY CODE TO PREVENT DECEPTIVE PRACTICES IN THE HOME HEATING OIL INDUSTRY;**" now, therefore be it

**RESOLVED**, that said local law be enacted in form as follows:

**LOCAL LAW NO. -2008, SUFFOLK COUNTY, NEW YORK**

**A LOCAL LAW AMENDING THE SUFFOLK COUNTY CODE TO  
PREVENT DECEPTIVE PRACTICES IN THE HOME HEATING OIL  
INDUSTRY**

**BE IT ENACTED BY THE COUNTY LEGISLATURE OF THE COUNTY OF  
SUFFOLK**, as follows:

**Section 1. Legislative Intent.**

This Legislature hereby finds and determines that many Suffolk County consumers who heat their homes with oil "locked in" their home heating costs for the 2008-09 winter when oil prices were at or near new historic highs of one hundred forty dollars (\$140) per barrel.

This Legislature also determines that as a result of these price lock-ins, consumers will suffer severe economic strains while local oil companies realize a windfall.

This Legislature further finds and determines that some consumers verbally agreed to their price lock-ins without having had an opportunity to carefully review and consider the terms and conditions of their agreement.

This legislature further finds that many of the "lock in" contracts used by home heating oil companies have very specific terms, detailed cost structures based on the type of plan selected by the consumer, and penalties in the event that a consumer terminates the contract.

This Legislature finds that consumers are more likely to understand the ramifications of a price lock-in when they are provided with a written copy of a contract that can be carefully read and scrutinized prior to execution.

This Legislature further determines that the practice of some oil companies to lock a consumer into a high price through a "hard sell", with no ability on the part of the consumer to review written materials that fully explain the agreement, is unconscionable and

inherently deceptive. This is particularly true because the commodity involved is an absolute necessity for survival.

Therefore, the purpose of this local law is to protect Suffolk County Consumers from home heating oil companies that engage in unconscionable and deceptive "price lock-in" practices.

**Section 2. Amendments**

Chapter 249 of the SUFFOLK COUNTY CODE is hereby amended as follows:

**Chapter 249: Consumer Protection**

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**§249-2. Definitions.**

As used in this chapter, the following terms shall have the meanings indicated:

\*\*\*\*

DECEPTIVE TRADE PRACTICES – Any false, falsely disparaging or misleading oral or written statement, visual description or other representation of any kind, which has the capacity, tendency or effect of deceiving or misleading consumers and is made in connection with the sale, lease, rental or loan of consumer goods or services, the offering for sale, lease, rental or loan of consumer goods or services, the extension of consumer credit or the collection of consumer debts. "Deceptive trade practices" include but are not limited to:

\*\*\*\*

L. Failure of a person delivering home heating fuel to enter into a written contract with a consumer when agreeing to deliver home heating fuel at a fixed price for a period longer than ninety (90) days ("price lock-in agreement") which includes the duration of the contract, the price per gallon, any surcharges per gallon for maintaining the fixed price, terms stating whether the price is firm or a cap on the maximum price per gallon for the duration of the contract, whether the contract provides for budget payments throughout the entire year or requires immediate payment in full, and penalty provisions for cancellation of the contract by the consumer.

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**Section 4. Applicability.**

This law shall apply to actions occurring on or after the effective date of this law.

**Section 5. Severability.**

If any clause, sentence, paragraph, subdivision, section, or part of this law or the application thereof to any person, individual, corporation, firm, partnership, entity, or circumstance shall be adjudged by any court of competent jurisdiction to be invalid or unconstitutional, such order or judgment shall not affect, impair, or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, section, or part of this law, or in its application to the person, individual, corporation, firm,

partnership, entity, or circumstance directly involved in the controversy in which such order or judgment shall be rendered.

**Section 6. SEQRA Determination.**

This Legislature, being the State Environmental Quality Review Act (SEQRA) lead agency, hereby finds and determines that this law constitutes a Type II action pursuant to Section 617.5(c)(20), (21), and/or (27) of Title 6 of the NEW YORK CODE OF RULES AND REGULATIONS (6 NYCRR) and within the meaning of Section 8-0109(2) of the NEW YORK ENVIRONMENTAL CONSERVATION LAW as a promulgation of regulations, rules, policies, procedures, and legislative decisions in connection with continuing agency administration, management and information collection. The Suffolk County Council on Environmental Quality (CEQ) is hereby directed to circulate any appropriate SEQRA notices of determination of non-applicability or non-significance in accordance with this law.

**Section 7. Effective Date.**

This law shall take effect sixty (60) days after its filing in the Office of the Secretary of State.

[ ] Brackets denote deletion of existing language  
\_\_\_ Underlining denotes addition of new language

DATED: December 16, 2008

APPROVED BY:

**VETOED**

County Executive of Suffolk County

Date: /- 15 - 09