

[Third Reprint]

ASSEMBLY, No. 3851

STATE OF NEW JERSEY
216th LEGISLATURE

INTRODUCED OCTOBER 23, 2014

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**Assemblyman Fiocchi, Assemblywoman Simon, Assemblyman Wimberly,
Assemblywoman Jasey and Senator Greenstein**

SYNOPSIS

Imposes contract standards between customers and third-party electric power and gas suppliers.

CURRENT VERSION OF TEXT

As amended by the General Assembly on March 9, 2015.

(Sponsorship Updated As Of: 10/23/2015)

1 AN ACT concerning third-party electric power and gas supplier
2 customer contracts, and amending P.L.1999, c.23.

3

4 **BE IT ENACTED** by the Senate and General Assembly of the State
5 of New Jersey:

6

7 1. Section 36 of P.L.1999, c.23 (C.48:3-85) is amended to read
8 as follows:

9 36. a. Notwithstanding any provisions of the "Administrative
10 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
11 contrary, the board, in consultation with the Division of Consumer
12 Affairs in the Department of Law and Public Safety, shall initiate a
13 proceeding and shall adopt, after notice, provision of the
14 opportunity for comment, and public hearing, interim consumer
15 protection standards for electric power suppliers or gas suppliers,
16 within 90 days of February 9, 1999, including, but not limited to,
17 standards for collections, credit, contracts, and authorized changes
18 of an energy ¹**[consumer's]** customer's¹ electric power supplier or
19 gas supplier, for the prohibition of discriminatory marketing, for
20 advertising and for disclosure. ¹**[Such]** The¹ standards shall be
21 effective as regulations immediately upon filing with the Office of
22 Administrative Law and shall be effective for a period not to exceed
23 18 months, and may, thereafter, be amended, adopted, or readopted
24 by the board in accordance with the provisions of the
25 "Administrative Procedure ¹**[Act.]** Act," P.L.1968, c.410
26 (C.52:14B-1 et seq.).¹

27 (1) ²(a)² An electric power supplier or gas supplier shall not
28 provide electric generation service or gas supply service to a
29 customer in this State unless the electric power supplier or gas
30 supplier has provided the customer ¹**[a contract in written form,**
31 including]¹ a one-page information sheet summarizing the material
32 terms and conditions of the contract as determined by the board ¹**[,**
33 for the customer to review for a period of time to be determined by
34 the board, prior to the execution or renewal of a contract for electric
35 generation service or gas supply service]¹. Contract standards shall
36 include, but not be limited to, requirements that electric power
37 supply contracts or gas supply contracts **[must]** conspicuously
38 disclose the duration of the contract; state the price per kilowatt
39 hour or per therm or other pricing determinant approved by the
40 board; use a 12-point font; provide a one-page information sheet in
41 a 12-point font summarizing the material terms and conditions of
42 the contract in English and Spanish, as determined by the board;
43 and state, in a 12-point, boldface font, whether the contract is for a
44 fixed rate or a variable rate, and provide a brief explanation of the

EXPLANATION – Matter enclosed in bold-faced brackets **[thus]** in the above bill is not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

Matter enclosed in superscript numerals has been adopted as follows:

¹Assembly ATU committee amendments adopted December 4, 2014.

²Assembly floor amendments adopted January 29, 2015.

³Assembly floor amendments adopted March 9, 2015.

1 difference between a fixed rate and a variable rate that is easily
2 understandable by the general public, including an explanation on
3 how weather fluctuations may affect the price of variable rate
4 contracts; have the customer's [written] ¹written¹ signature [; the
5 customer's electronic signature; an audio recording of a telephone
6 call initiated by the customer; independent, third-party verification,
7 in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a
8 telephone call initiated by an electric power supplier, gas supplier
9 or private aggregator; or such alternative forms of verification as
10 the board, in consultation with the Division of Consumer Affairs,
11 may permit] ¹[in written form only] or electronic signature; an
12 audio recording of a telephone call initiated by the customer;
13 independent, third-party verification, in accordance with section 37
14 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by an
15 electric power supplier, gas supplier, or private aggregator; or any
16 alternative forms of verification as the board, in consultation with
17 the Division of Consumer Affairs in the Department of Law and
18 Public Safety, may permit¹ for switching electric power suppliers or
19 gas suppliers and for contract renewal; and include termination
20 procedures, notice of any fees, and toll-free or local telephone
21 numbers for the electric power supplier or gas supplier and for the
22 board. An electric power supplier or gas supplier shall not provide
23 the customer's telephone number, ¹[e-mail] electronic mail¹
24 address, or postal address to other electric power suppliers or gas
25 suppliers if the customer's telephone number appears on the no
26 telemarketing call list established and maintained by the Division of
27 Consumer Affairs, pursuant to the provisions of section 9 of
28 P.L.2003, c.76 (C.56:8-127), or the national do-not-call registry as
29 maintained by the Federal Trade Commission.

30 ²(b) As used in this paragraph, "customer" means a residential
31 customer ³[.] or³ a commercial electric customer ³[utilizing 400]
32 with a cumulative peak load of 50³ kilowatts or less ³[in the last 12
33 months]³, or a commercial gas customer ³[utilizing] with a
34 cumulative peak load of³ 5,000 therms or less ³[in the last 12
35 months]³.²

36 (2) Standards for the prohibition of discriminatory marketing
37 shall provide^{1,1} at a minimum ^{1,1} that a decision made by an
38 electric power supplier or a gas supplier to accept or reject a
39 customer shall not be based on race, color, national origin, age,
40 gender, religion, source of income, receipt of public benefits, family
41 status, sexual preference, or geographic location. The board shall
42 adopt reporting requirements to monitor compliance with ¹[such]
43 its¹ standards.

44 (3) Advertising standards for electric power suppliers or gas
45 suppliers shall provide, at a minimum, that optional charges to the
46 ¹[consumer] customer¹ will not be added to any advertised cost per
47 kilowatt hour or per therm, and that the only unit of measurement

1 that may be used in advertisements is cost per kilowatt hour or per
2 therm, unless otherwise approved by the board. If an electric power
3 supplier or gas supplier does not advertise using cost per kilowatt
4 hour or per therm, the electric power supplier or gas supplier shall
5 provide, at the ¹['consumer's'] customer's¹ request, an estimate of
6 the cost per kilowatt hour or per therm. Any optional charges to the
7 ¹['consumer'] customer¹ shall be identified separately and denoted
8 as optional.

9 (4) Credit standards shall include, at a minimum, that the credit
10 requirements used to make decisions must be the same for all
11 residential customers and that electric power suppliers, gas
12 suppliers, and private aggregators not impose unreasonable income
13 or credit requirements.

14 (5) Billing standards shall include, at a minimum, provisions
15 prohibiting electric public utilities, gas public utilities, electric
16 power suppliers, and gas suppliers from charging a fee to residential
17 customers for either the commencement or termination of electric
18 generation service or gas supply service.

19 b. (1) Except as provided in paragraph (2) of this subsection,
20 an electric power supplier, a gas supplier, an electric public utility,
21 and a gas public utility shall not disclose, sell, or transfer individual
22 proprietary information, including, but not limited to, a customer's
23 name, address, telephone number, energy usage, and electric power
24 payment history, to a third party without the consent of the
25 customer.

26 (2) (a) An electric public utility or a gas public utility may
27 disclose and provide, in an electronic format, which may include a
28 CD rom, diskette, and other format as determined by the board,
29 without the consent of a residential customer, a residential
30 customer's name, rate class, and account number, to a government
31 aggregator that is a municipality or a county, or to an energy agent
32 acting as a consultant to a government aggregator that is a
33 municipality or a county, if the customer information is to be used
34 to establish a government energy aggregation program pursuant to
35 sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; 48:3-92; and
36 48:3-94). The number of residential customers and their rate class,
37 and the load profile of non-residential customers who have
38 affirmatively chosen to be included in a government energy
39 aggregation program pursuant to paragraph (3) of subsection a. of
40 section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant
41 to this paragraph prior to the request by the government aggregator
42 for bids pursuant to paragraph (1) of subsection b. of section 45 of
43 P.L.1999, c.23 (C.48:3-94), and the name, address, and account
44 number of a residential customer and the name, address, and
45 account number of non-residential customers who have
46 affirmatively chosen to be included in a government energy
47 aggregation program pursuant to paragraph (3) of subsection a. of
48 section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant

1 to this paragraph upon the awarding of a contract to a licensed
2 power supplier or licensed gas supplier pursuant to paragraph (2) of
3 subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94). Any
4 customer information disclosed pursuant to this paragraph shall not
5 be considered a government record for the purposes of, and shall be
6 exempt from the provisions of P.L.2001, c.404 ¹(C.47:1A-5 et al.)¹.

7 (b) An electric public utility or a gas public utility disclosing
8 customer information pursuant to this paragraph shall exercise
9 reasonable care in the preparation of this customer information, but
10 shall not be responsible for errors or omissions in the preparation or
11 the content of the customer information.

12 (c) Any person using any information disclosed pursuant to this
13 paragraph for any purpose other than to establish a government
14 energy aggregation program pursuant to sections 42, 43, and 45 of
15 P.L.1999, c.23 (C.48:3-91; 48:3-92; and 48:3-94) shall be subject to
16 the provisions of section 34 of P.L.1999, c.23 (C.48:3-83).

17 (d) The role of an electric public utility or a gas public utility in
18 a government energy aggregation program established pursuant to
19 P.L.1999, c.23 (C.48:3-49 et al.) shall be limited to the provisions
20 of this paragraph.

21 (3) Whenever any individual proprietary information is
22 disclosed, sold, or transferred, pursuant to paragraph (1) or
23 paragraph (2) of ¹**【subsection b. of this section】** this subsection¹, it
24 shall be used only for the provision of continued electric generation
25 service, electric related service, gas supply service, or gas related
26 service to that customer. In the case of a transfer or sale of a
27 business, customer consent shall not be required for the transfer of
28 customer proprietary information to the subsequent owner of the
29 business for maintaining the continuation of ¹**【such】** those¹
30 services.

31 (4) Notwithstanding any provisions of the "Administrative
32 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
33 contrary, the board shall, within 90 days of the effective date of
34 P.L.2003, c.24 (C.48:3-93.1 et al.), review existing regulations
35 including, without limitation, Chapter 4 of Title 14 of the New
36 Jersey Administrative Code (Energy Competition Standards), to
37 determine their consistency with the provisions of section 36 of
38 P.L.1999, c.23 (C.48:3-85), section 43 of P.L.1999, c.23 (C.48:3-
39 92) and section 45 of P.L.1999, c.23 (C.48:3-94), repeal or modify
40 any regulations that are inconsistent with the provisions thereof, and
41 shall adopt regulations and standards implementing the provisions
42 thereof permitting disclosure of customer information without the
43 consent of the customer including, without limitation, provisions for
44 the development of a board-approved agreement between the
45 disclosing party and the receiving party and the creation of a
46 mechanism for the recovery by the disclosing electric public utility
47 or gas public utility of its reasonable incremental costs of providing

- 1 '【such】 the customer' information if '【such】 those' costs are not
2 covered in an existing third party supplier agreement.
- 3 (5) An electric power supplier, a gas supplier, a gas public
4 utility, or an electric public utility may use individual proprietary
5 information that it has obtained by virtue of its provision of electric
6 generation service, electric related service, gas supply service, or
7 gas related service to:
- 8 (a) Initiate, render, bill, and collect for '【such】 these' services
9 to the extent otherwise authorized to provide billing and collection
10 services;
- 11 (b) Protect the rights or property of the electric power supplier,
12 gas supplier, or public utility; and
- 13 (c) Protect consumers of '【such】 these' services and other
14 electric power suppliers, gas suppliers, or electric and gas public
15 utilities from fraudulent, abusive, or unlawful use of, or
16 subscription to, '【such】 these' services.
- 17 c. The board shall establish and maintain a database for the
18 purpose of recording customer complaints concerning electric and
19 gas public utilities, electric power suppliers, gas suppliers, private
20 aggregators, and energy agents.
- 21 d. The board, in consultation with the Division of Consumer
22 Affairs in the Department of Law and Public Safety, shall establish,
23 or cause to be established, a multi-lingual electric and gas consumer
24 education program. The goal of the consumer education program
25 shall be to educate residential, small business, and special needs
26 consumers about the implications for consumers of the restructuring
27 of the electric power and gas industries. The consumer education
28 program shall include, but need not be limited to, the dissemination
29 of information to enable consumers to make informed choices
30 among available electricity and gas services and suppliers, and the
31 communication to consumers of the consumer protection provisions
32 of P.L.1999, c.23 (C.48:3-49 et al.).
- 33 The board shall ensure the neutrality of the content and message
34 of advertisements and materials.
- 35 The board shall promulgate standards for the recovery of
36 consumer education program costs from customers which include
37 reasonable measures and criteria to judge the success of the
38 program in enhancing customer understanding of retail choice.
- 39 e. (Deleted by amendment, P.L.2003, c.24).
- 40 f. (1) In addition to the advertising standards adopted by the
41 board pursuant to paragraph (3) of subsection a. of this section, the
42 board, in consultation with the Division of Consumer Affairs in the
43 Department of Law and Public Safety, shall adopt, pursuant to the
44 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
45 seq.) interim advertising and marketing standards for electric power
46 suppliers, gas suppliers, brokers, energy agents, marketers, private
47 aggregators, sales representatives, and telemarketers applicable to
48 potential residential customers, within 270 days of the effective

1 date of P.L.2013, c.263, which standards shall include, but not
2 limited to, prohibiting electric power suppliers, gas suppliers,
3 brokers, energy agents, marketers, private aggregators, sales
4 representatives, and telemarketers from: (a) making false or
5 misleading advertising claims to a potential residential customer; or
6 (b) contacting a potential residential customer by telephone for the
7 purpose of making an unsolicited advertisement if the electric
8 power supplier, gas supplier, broker, energy agent, marketer,
9 private aggregator, sales representative, or telemarketer does not
10 have an existing business relationship with the potential residential
11 customer and the residential customer's telephone number appears
12 on the no telemarketing call list established and maintained by the
13 Division of Consumer Affairs, pursuant to the provisions of section
14 9 of P.L.2003, c.76 (C.56:8-127), or the national do-not-call
15 registry as maintained by the Federal Trade Commission. **1[Such]**
16 The¹ standards shall be effective as regulations immediately upon
17 filing with the Office of Administrative Law and shall be effective
18 for a period not to exceed 18 months, and may, thereafter, be
19 amended, adopted, or readopted by the board in accordance with the
20 provisions of the "Administrative Procedure Act," P.L.1968, c.410
21 (C.52:14B-1 et seq.).

22 (2) In addition to any other penalties, fines, or remedies
23 authorized by law, an electric power supplier, gas supplier, broker,
24 energy agent, marketer, private aggregator, sales representative, or
25 telemarketer that violates subparagraph (a) of paragraph (1) of this
26 subsection and collects charges for electric generation service or
27 gas supply service supplied to a residential customer, who was
28 subjected to false or misleading advertising claims by the electric
29 power supplier, gas supplier, broker, energy agent, marketer,
30 private aggregator, sales representative, or telemarketer in violation
31 of subparagraph (a) of paragraph (1) of this subsection, shall be
32 liable to the residential customer in an amount equal to all charges
33 paid by the residential customer after such violation occurs in
34 accordance with any procedures as the board may prescribe,
35 whether the electric power supplier or gas supplier provided the
36 electric generation service or gas supply service to that customer, or
37 the electric generation service or gas supply service was provided to
38 the customer by a broker, energy agent, marketer, private
39 aggregator, sales representative, or telemarketer who contacted the
40 customer on behalf of the electric power supplier or gas supplier.
41 An electric power supplier, gas supplier, broker, energy agent,
42 marketer, private aggregator, sales representative, or telemarketer
43 that violates this subsection shall also be liable for a civil penalty
44 pursuant to section 34 of P.L.1999, c.23 (C.48:3-83). The board is
45 hereby authorized to revoke the license of any electric power
46 supplier, gas supplier, broker, energy agent, marketer, or private
47 aggregator that violates this subsection.

48 (cf: P.L.2013, c.263, s.2)

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A3851 [3R] DEANGELO, EUSTACE

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- 1 2. This act shall take effect on the 150th day after the date of
- 2 enactment and shall apply to contracts formed or renewed on or
- 3 after the effective date of this act.