ASSEMBLY, No. 2585

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 13, 2020

Sponsored by:
Assemblyman WAYNE P. DEANGELO
District 14 (Mercer and Middlesex)

SYNOPSIS

Directs BPU to require certain energy businesses to maintain recordings of telemarketing sales calls for three years.

CURRENT VERSION OF TEXT

As introduced.

AN ACT concerning certain telemarketing sales calls and amending P.L.1999, c.23.

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

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

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

(1) (a) An electric power supplier or gas supplier shall not provide electric generation service or gas supply service to a customer in this State unless the electric power supplier or gas supplier has provided the customer a one-page information sheet summarizing the material terms and conditions of the contract as determined by the board. Contract standards shall include, but not be limited to, requirements that electric power supply contracts or gas supply contracts conspicuously disclose the duration of the contract; state the price per kilowatt hour or per therm or other pricing determinant approved by the board; use a 12-point font; provide a one-page information sheet in a 12-point font summarizing the material terms and conditions of the contract in English and Spanish, as determined by the board; and state, in a 12-point, boldface font, whether the contract is for a fixed rate or a variable rate, and provide a brief explanation of the difference between a fixed rate and a variable rate that is easily understandable by the general public, including an explanation on how weather fluctuations may affect the price of variable rate contracts; have the customer's written signature or electronic signature; an audio recording of a telephone call initiated by the customer; independent,

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 <u>thus</u> is new matter.

third-party verification, in accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by an electric power supplier, gas supplier, or private aggregator; or any alternative forms of verification as the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, may permit for switching electric power suppliers or gas suppliers and for contract renewal; and include termination procedures, notice of any fees, and toll-free or local telephone numbers for the electric power supplier or gas supplier and for the board. An electric power supplier or gas supplier shall not provide the customer's telephone number, electronic mail address, or postal address to other electric power suppliers or gas suppliers if the customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to the provisions of section 9 of P.L.2003, c.76 (C.56:8-127), or the national do-not-call registry as maintained by the Federal Trade Commission.

(b) As used in this paragraph, "customer" means a residential customer or a commercial electric customer with a cumulative peak load of 50 kilowatts or less, or a commercial gas customer with a cumulative peak load of 5,000 therms or less.

(2) Standards for the prohibition of discriminatory marketing shall provide, at a minimum, that a decision made by an electric power supplier or a gas supplier to accept or reject a customer shall not be based on race, color, national origin, age, gender, religion, source of income, receipt of public benefits, family status, sexual preference, or geographic location. The board shall adopt reporting requirements to monitor compliance with its standards.

(3) Advertising standards for electric power suppliers or gas suppliers shall provide, at a minimum, that optional charges to the customer will not be added to any advertised cost per kilowatt hour or per therm, and that the only unit of measurement that may be used in advertisements is cost per kilowatt hour or per therm, unless otherwise approved by the board. If an electric power supplier or gas supplier does not advertise using cost per kilowatt hour or per therm, the electric power supplier or gas supplier shall provide, at the customer's request, an estimate of the cost per kilowatt hour or per therm. Any optional charges to the customer shall be identified separately and denoted as optional.

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

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

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

(2) (a) An electric public utility or a gas public utility may disclose and provide, in an electronic format, which may include a CD rom, diskette, and other format as determined by the board, without the consent of a residential customer, a residential customer's name, rate class, and account number, to a government aggregator that is a municipality or a county, or to an energy agent acting as a consultant to a government aggregator that is a municipality or a county, if the customer information is to be used to establish a government energy aggregation program pursuant to sections 42, 43, and 45 of P.L.1999, c.23 (C.48:3-91; ⟦48:3-92⟧ C.48:3-92; and ⟦48:3-94⟧ C.48:3-94). The number of residential customers and their rate class, and the load profile of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant to this paragraph prior to the request by the government aggregator for bids pursuant to paragraph (1) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94), and the name, address, and account number of a residential customer and the name, address, and account number of non-residential customers who have affirmatively chosen to be included in a government energy aggregation program pursuant to paragraph (3) of subsection a. of section 45 of P.L.1999, c.23 (C.48:3-94) may be disclosed pursuant to this paragraph upon the awarding of a contract to a licensed power supplier or licensed gas supplier pursuant to paragraph (2) of subsection b. of section 45 of P.L.1999, c.23 (C.48:3-94). Any customer information disclosed pursuant to this paragraph shall not be considered a government record for the purposes of, and shall be exempt from the provisions of P.L.2001, c.404 (C.47:1A-5 et al.).

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

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

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

(3) Whenever any individual proprietary information is disclosed, sold, or transferred, pursuant to paragraph (1) or paragraph (2) of this subsection, it shall be used only for the provision of continued electric generation service, electric related service, gas supply service, or gas related service to that customer. In the case of a transfer or sale of a business, customer consent shall not be required for the transfer of customer proprietary information to the subsequent owner of the business for maintaining the continuation of those services.

(4) Notwithstanding any provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the contrary, the board shall, within 90 days of the effective date of P.L.2003, c.24 (C.48:3-93.1 et al.), review existing regulations including, without limitation, Chapter 4 of Title 14 of the New Jersey Administrative Code (Energy Competition Standards), to determine their consistency with the provisions of section 36 of P.L.1999, c.23 (C.48:3-85), section 43 of P.L.1999, c.23 (C.48:3-92) and section 45 of P.L.1999, c.23 (C.48:3-94), repeal or modify any regulations that are inconsistent with the provisions thereof, and shall adopt regulations and standards implementing the provisions thereof permitting disclosure of customer information without the consent of the customer including, without limitation, provisions for the development of a board-approved agreement between the disclosing party and the receiving party and the creation of a mechanism for the recovery by the disclosing electric public utility or gas public utility of its reasonable incremental costs of providing the customer information if those costs are not covered in an existing third party supplier agreement.

(5) An electric power supplier, a gas supplier, a gas public utility, or an electric public utility may use individual proprietary information that it has obtained by virtue of its provision of electric generation service, electric related service, gas supply service, or gas related service to:

(a) Initiate, render, bill, and collect for these services to the extent otherwise authorized to provide billing and collection services;

(b) Protect the rights or property of the electric power supplier, gas supplier, or public utility; and

(c) Protect consumers of these services and other electric power suppliers, gas suppliers, or electric and gas public utilities from fraudulent, abusive, or unlawful use of, or subscription to, these services.

c. The board shall establish and maintain a database for the purpose of recording customer complaints concerning electric and

gas public utilities, electric power suppliers, gas suppliers, private aggregators, and energy agents.

d. The board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall establish, or cause to be established, a multi-lingual electric and gas consumer education program. The goal of the consumer education program shall be to educate residential, small business, and special needs consumers about the implications for consumers of the restructuring of the electric power and gas industries. The consumer education program shall include, but **[**need**]** not be limited to, the dissemination of information to enable consumers to make informed choices among available electricity and gas services and suppliers, and the communication to consumers of the consumer protection provisions of P.L.1999, c.23 (C.48:3-49 et al.).

The board shall ensure the neutrality of the content and message of advertisements and materials.

The board shall promulgate standards for the recovery of consumer education program costs from customers which include reasonable measures and criteria to judge the success of the program in enhancing customer understanding of retail choice.

e. (Deleted by amendment, P.L.2003, c.24)**[**.**]**

f. (1) In addition to the advertising standards adopted by the board pursuant to paragraph (3) of subsection a. of this section, the board, in consultation with the Division of Consumer Affairs in the Department of Law and Public Safety, shall adopt, pursuant to the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) interim advertising and marketing standards for electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers applicable to potential residential customers, within 270 days of the effective date of P.L.2013, c.263, which standards shall include, but not be limited to, prohibiting electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers from: (a) making false or misleading advertising claims to a potential residential customer; or (b) contacting a potential residential customer by telephone for the purpose of making an unsolicited advertisement if the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, or telemarketer does not have an existing business relationship with the potential residential customer and the residential customer's telephone number appears on the no telemarketing call list established and maintained by the Division of Consumer Affairs, pursuant to the provisions of section 9 of P.L.2003, c.76 (C.56:8-127), or the national do-not-call registry as maintained by the Federal Trade Commission. <u>The standards shall require an electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, and telemarketer to maintain a recording of each telemarketing sales call</u>

to a customer made by, or on behalf of, the electric power supplier, gas supplier, broker, energy agent, marketer, private aggregator, sales representative, and telemarketer for a period of three years from the date the telemarketing sales call was recorded. The standards shall be effective as regulations immediately upon filing with the Office of Administrative Law and shall be effective for a period not to exceed 18 months, and may, thereafter, be amended, adopted, or readopted by the board in accordance with the provisions of the "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

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

(cf: P.L.2015, c.164, s.1)

2. This act shall take effect immediately.

STATEMENT

This bill directs the Board of Public Utilities (BPU) to require electric power suppliers, gas suppliers, brokers, energy agents, marketers, private aggregators, sales representatives, and telemarketers (energy business) to keep a recording of each telemarketing sales call to a customer made by, or behalf of, the

energy business for a period of three years from the date the telemarketing sales call was recorded.

Currently, BPU regulations allow for the disposal of the marketing portion of calls six months after the call was recorded.