

SENATE, No. 3535

STATE OF NEW JERSEY
219th LEGISLATURE

INTRODUCED MARCH 11, 2021

Sponsored by:

Senator SHIRLEY K. TURNER

District 15 (Hunterdon and Mercer)

SYNOPSIS

Requires electric power suppliers and gas suppliers to receive written or electronic signature from person prior to switching provision of electric generation service or gas supply service.

CURRENT VERSION OF TEXT

As introduced.



1 **AN ACT** concerning the provision of electric generation service and
2 gas supply service 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 customer's electric power supplier or gas supplier, for
19 the prohibition of discriminatory marketing, for advertising and for
20 disclosure. The standards shall be effective as regulations
21 immediately upon filing with the Office of Administrative Law and
22 shall be effective for a period not to exceed 18 months, and may,
23 thereafter, be amended, adopted, or readopted by the board in
24 accordance with the provisions of the "Administrative Procedure
25 Act," P.L.1968, c.410 (C.52:14B-1 et seq.).

26 (1) (a) An electric power supplier or gas supplier shall not
27 provide electric generation service or gas supply service to a
28 customer in this State unless the electric power supplier or gas
29 supplier has provided the customer a one-page information sheet
30 summarizing the material terms and conditions of the contract as
31 determined by the board. Contract standards shall include, but not
32 be limited to, requirements that electric power supply contracts or
33 gas supply contracts conspicuously disclose the duration of the
34 contract; state the price per kilowatt hour or per therm or other
35 pricing determinant approved by the board; use a 12-point font;
36 provide a one-page information sheet in a 12-point font
37 summarizing the material terms and conditions of the contract in
38 English and Spanish, as determined by the board; and state, in a 12-
39 point, boldface font, whether the contract is for a fixed rate or a
40 variable rate, and provide a brief explanation of the difference
41 between a fixed rate and a variable rate that is easily understandable
42 by the general public, including an explanation on how weather
43 fluctuations may affect the price of variable rate contracts; have the
44 customer's written signature **[**or electronic signature; an audio
45 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 thus is new matter.

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

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

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

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

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

45 (5) Billing standards shall include, at a minimum, provisions
46 prohibiting electric public utilities, gas public utilities, electric
47 power suppliers, and gas suppliers from charging a fee to residential

1 customers for either the commencement or termination of electric
2 generation service or gas supply service.

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

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

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

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

1 subject to the provisions of section 34 of P.L.1999, c.23 (C.48:3-
2 83).

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

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

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

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

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

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

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

1 c. The board shall establish and maintain a database for the
2 purpose of recording customer complaints concerning electric and
3 gas public utilities, electric power suppliers, gas suppliers, private
4 aggregators, and energy agents.

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

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

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

23 e. (Deleted by amendment, P.L.2003, c.24).

24 f. (1) In addition to the advertising standards adopted by the
25 board pursuant to paragraph (3) of subsection a. of this section, the
26 board, in consultation with the Division of Consumer Affairs in the
27 Department of Law and Public Safety, shall adopt, pursuant to the
28 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
29 seq.) interim advertising and marketing standards for electric power
30 suppliers, gas suppliers, brokers, energy agents, marketers, private
31 aggregators, sales representatives, and telemarketers applicable to
32 potential residential customers, within 270 days of the effective date
33 of P.L.2013, c.263, which standards shall include, but not be limited
34 to, prohibiting electric power suppliers, gas suppliers, brokers,
35 energy agents, marketers, private aggregators, sales representatives,
36 and telemarketers from: (a) making false or misleading advertising
37 claims to a potential residential customer; or (b) contacting a
38 potential residential customer by telephone for the purpose of
39 making an unsolicited advertisement if the electric power supplier,
40 gas supplier, broker, energy agent, marketer, private aggregator,
41 sales representative, or telemarketer does not have an existing
42 business relationship with the potential residential customer and the
43 residential customer's telephone number appears on the no
44 telemarketing call list established and maintained by the Division of
45 Consumer Affairs, pursuant to the provisions of section 9 of
46 P.L.2003, c.76 (C.56:8-127), or the national do-not-call registry as
47 maintained by the Federal Trade Commission. The standards shall
48 be effective as regulations immediately upon filing with the Office

1 of Administrative Law and shall be effective for a period not to
2 exceed 18 months, and may, thereafter, be amended, adopted, or
3 readopted by the board in accordance with the provisions of the
4 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
5 seq.).

6 (2) In addition to any other penalties, fines, or remedies
7 authorized by law, an electric power supplier, gas supplier, broker,
8 energy agent, marketer, private aggregator, sales representative, or
9 telemarketer that violates subparagraph (a) of paragraph (1) of this
10 subsection and collects charges for electric generation service or
11 gas supply service supplied to a residential customer, who was
12 subjected to false or misleading advertising claims by the electric
13 power supplier, gas supplier, broker, energy agent, marketer,
14 private aggregator, sales representative, or telemarketer in violation
15 of subparagraph (a) of paragraph (1) of this subsection, shall be
16 liable to the residential customer in an amount equal to all charges
17 paid by the residential customer after such violation occurs in
18 accordance with any procedures as the board may prescribe,
19 whether the electric power supplier or gas supplier provided the
20 electric generation service or gas supply service to that customer, or
21 the electric generation service or gas supply service was provided to
22 the customer by a broker, energy agent, marketer, private
23 aggregator, sales representative, or telemarketer who contacted the
24 customer on behalf of the electric power supplier or gas supplier.
25 An electric power supplier, gas supplier, broker, energy agent,
26 marketer, private aggregator, sales representative, or telemarketer
27 that violates this subsection shall also be liable for a civil penalty
28 pursuant to section 34 of P.L.1999, c.23 (C.48:3-83). The board is
29 hereby authorized to revoke the license of any electric power
30 supplier, gas supplier, broker, energy agent, marketer, or private
31 aggregator that violates this subsection.
32 (cf: P.L.2015, c.164, s.1)

33

34 2. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read
35 as follows:

36 37. a. Notwithstanding any provisions of the "Administrative
37 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
38 contrary, the board, in consultation with the Division of Consumer
39 Affairs in the Department of Law and Public Safety, shall initiate a
40 proceeding and shall adopt, after notice, provision of the
41 opportunity for comment, and public hearing, interim standards for
42 electric power suppliers or gas suppliers, within 90 days of
43 February 9, 1999, to prevent and establish penalties for
44 unauthorized changes of a consumer's electric power supplier or gas
45 supplier, a practice commonly known as "slamming." Such
46 standards shall be effective as regulations immediately upon filing
47 with the Office of Administrative Law and shall be effective for a
48 period not to exceed 18 months, and may, thereafter, be amended,

1 adopted or readopted by the board in accordance with the provisions
2 of the "Administrative Procedure Act."

3 b. Standards for the prohibition of unauthorized changes in a
4 customer's electric power supplier or gas supplier shall include:

5 (1) An electric power supplier, an electric public utility, a gas
6 supplier or a gas public utility shall not cause an unauthorized
7 change in a customer's electric power supplier or gas supplier, a
8 practice known as "slamming." A change in a customer's electric
9 power supplier or gas supplier shall be deemed to be unauthorized
10 unless the customer has done so affirmatively and voluntarily and
11 the electric power supplier or gas supplier has obtained the
12 customer's approval, which approval shall be evidenced by the
13 customer's written signature **■**; the customer's electronic signature;
14 an audio recording of a telephone call initiated by the customer;
15 independent, third-party verification, in accordance with paragraph
16 (2) of this subsection, of a telephone call initiated by an electric
17 power supplier, electric public utility, gas supplier or gas public
18 utility; or such alternative forms of verification as the board, in
19 consultation with the Division of Consumer Affairs, may permit **■** or
20 electronic signature prior to switching electric power suppliers or
21 gas suppliers and for contract renewal;

22 (2) **■**(a) A company performing independent, third-party
23 verification shall: (i) be independent from the entity that seeks to
24 provide the new service; (ii) not be directly or indirectly managed,
25 controlled, directed or owned, wholly or in part, by the entity that
26 seeks to provide the new service, or by any affiliate of that entity;
27 (iii) operate from facilities physically separate from those of the
28 entity that seeks to provide the new service; and (iv) not derive any
29 commission or compensation based upon the number of sales
30 confirmed;

31 (b) A company performing independent, third-party verification
32 shall obtain a customer's oral confirmation regarding the change and
33 shall record that confirmation by obtaining appropriate verification
34 data. The record shall be available to the customer upon request.
35 Information obtained from a customer through confirmation shall
36 not be used for marketing purposes; **■** (Deleted by amendment,
37 P.L. , c.) (pending before the Legislature as this bill)

38 (3) An electric power supplier, an electric public utility, a gas
39 supplier or a gas public utility shall not fail to cause a change in a
40 customer's electric power supplier or gas supplier, within a period
41 of time determined to be appropriate by the board, when a supplier
42 or utility is in receipt of a change order provided that such change
43 order has been received in a manner that complies with federal and
44 State rules and regulations, including as provided in this subsection;

45 (4) The acts of an agent of an electric power supplier, an electric
46 public utility, a gas supplier or a gas public utility shall be
47 considered the acts of the electric power supplier, electric public
48 utility, gas supplier or gas public utility.

1 c. A customer's new electric power supplier, electric public
2 utility, gas supplier or gas public utility shall notify the customer of
3 the change in the customer's electric or gas supplier within 30 days
4 in a manner to be determined by the board.

5 d. Bills to customers from an electric power supplier, electric
6 public utility, gas supplier or gas public utility shall contain the
7 name and telephone number of each supplier for whom billing is
8 provided, and any other information deemed applicable by the
9 board.

10 e. In addition to any other penalties, fines or remedies
11 authorized by law, any electric power supplier, electric public
12 utility, gas supplier or gas public utility that violates this section
13 and collects charges for electric power supply or gas supply
14 services from a customer or through an entity providing customer
15 account services shall be liable to the electric power supplier,
16 electric public utility, gas supplier or gas public utility previously
17 selected by the customer in an amount equal to all charges paid by
18 the customer after such violation in accordance with such
19 procedures as the board may prescribe. Any electric power
20 supplier, electric public utility, gas supplier or gas public utility that
21 violates this section shall also be liable for a civil penalty pursuant
22 to section 34 of P.L.1999, c.23 (C.48:3-83); and the board is hereby
23 authorized to revoke the license of any entity that violates this
24 section.

25 (cf: P.L.2001, c.242, s.3)

26
27 3. Section 41 of P.L.1999, c.23 (C.48:3-90) is amended to read
28 as follows:

29 41. a. A private aggregator shall register with the board, which
30 shall include the filing of basic information pertaining to the
31 supplier, such as name, address, telephone number, and company
32 background and profile. A private aggregator shall provide annual
33 updates of this information to the board. The registration shall also
34 include evidence of financial integrity, as determined by the board,
35 and evidence that the private aggregator has knowledge of the
36 energy industry.

37 b. Any residential customer that elects to purchase electric
38 generation service or gas supply service, after the implementation
39 of gas unbundling pursuant to section 10 of P.L.1999, c.23 (C.48:3-
40 58), through a private aggregator must do so affirmatively and
41 voluntarily, **[either]** through **[a]** the customer's written signature
42 **;** the customer's electronic signature; an audio recording of a
43 telephone call initiated by the customer; independent, third-party
44 verification, in accordance with section 37 of P.L.1999, c.23
45 (C.48:3-86), of a telephone call initiated by a private aggregator; or
46 such alternative forms of verification as the board, in consultation
47 with the Division of Consumer Affairs in the Department of Law
48 and Public Safety, may permit **]** or electronic signature prior to

1 switching electric power suppliers or gas suppliers and for contract
2 renewal.

3 (cf: P.L.2001, c.242, s.4)

4

5 4. This act shall take effect immediately.

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7

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STATEMENT

9

10 This bill retains a written or electronic signature as a method of
11 approval to provide electric generation service or gas supply service
12 and removes the other methods of approval, thereby requiring an
13 electric power supplier and gas supplier (energy supplier) to receive
14 a written or electronic signature from a person prior to providing
15 the person with electric generation service or gas supply service and
16 for the renewal of a contract for those services. Current law allows
17 an energy supplier to receive a person's approval to provide electric
18 generation service or gas supply service if the energy supplier first
19 receives the person's approval through: 1) a written signature; 2)
20 electronic signature; 3) an audio recording of a telephone call
21 initiated by the person; 4) an independent, third-party verification
22 of a telephone call initiated by an energy supplier; or 5) any
23 alternative forms of verification as the Board of Public Utilities may
24 permit.