

[First Reprint]

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 BPU, electric power suppliers, and gas suppliers to publish certain information related to filing of customer complaints.

CURRENT VERSION OF TEXT

As reported by the Senate Economic Growth Committee on December 9, 2021, with amendments.



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; ¹provide the
39 phone number and website for filing complaints with the Board of
40 Public Utilities, Division of Customer Assistance, and a one
41 sentence explanation of the practice known as "slamming," which is
42 an unauthorized change of a customer's electric power supplier or
43 gas supplier, in a 12-point, boldface font on the one-page
44 information sheet;¹ and state, in a 12-point, boldface font, whether
45 the contract is for a fixed rate or a variable rate, and provide a brief

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:

¹Senate SEG committee amendments adopted December 9, 2021.

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

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

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

41 (3) Advertising standards for electric power suppliers or gas
42 suppliers shall provide, at a minimum, that optional charges to the
43 customer will not be added to any advertised cost per kilowatt hour
44 or per therm, and that the only unit of measurement that may be
45 used in advertisements is cost per kilowatt hour or per therm, unless
46 otherwise approved by the board. If an electric power supplier or
47 gas supplier does not advertise using cost per kilowatt hour or per

1 therm, the electric power supplier or gas supplier shall provide, at
2 the customer's request, an estimate of the cost per kilowatt hour or
3 per therm. Any optional charges to the customer shall be identified
4 separately and denoted as optional.

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

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

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

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

1 customer information disclosed pursuant to this paragraph shall not
2 be considered a government record for the purposes of, and shall be
3 exempt from the provisions of P.L.2001, c.404 (C.47:1A-5 et al.).

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

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

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

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

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

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

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

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

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

15 c. The board shall establish and maintain a database for the
16 purpose of recording customer complaints concerning electric and
17 gas public utilities, electric power suppliers, gas suppliers, private
18 aggregators, and energy agents. ¹The board shall publish on its
19 website on a quarterly basis a detailed report regarding customer
20 complaints that shall not include the names or other personal
21 information of the customers who complained, but shall include the
22 names of the electric and gas public utilities, electric power
23 suppliers, gas suppliers, private aggregators, and energy agents
24 against which the complaints were filed.¹

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

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

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

43 e. (Deleted by amendment, P.L.2003, c.24)¹**[.]**¹

44 f. (1) In addition to the advertising standards adopted by the
45 board pursuant to paragraph (3) of subsection a. of this section, the
46 board, in consultation with the Division of Consumer Affairs in the
47 Department of Law and Public Safety, shall adopt, pursuant to the

1 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-
2 1 et seq.) interim advertising and marketing standards for electric
3 power suppliers, gas suppliers, brokers, energy agents, marketers,
4 private aggregators, sales representatives, and telemarketers
5 applicable to potential residential customers, within 270 days of the
6 effective date of P.L.2013, c.263, which standards shall include, but
7 not be limited to, prohibiting electric power suppliers, gas suppliers,
8 brokers, energy agents, marketers, private aggregators, sales
9 representatives, and telemarketers from: (a) making false or
10 misleading advertising claims to a potential residential customer; or
11 (b) contacting a potential residential customer by telephone for the
12 purpose of making an unsolicited advertisement if the electric
13 power supplier, gas supplier, broker, energy agent, marketer,
14 private aggregator, sales representative, or telemarketer does not
15 have an existing business relationship with the potential residential
16 customer and the residential customer's telephone number appears
17 on the no telemarketing call list established and maintained by the
18 Division of Consumer Affairs, pursuant to the provisions of section
19 9 of P.L.2003, c.76 (C.56:8-127), or the national do-not-call
20 registry as maintained by the Federal Trade Commission. The
21 standards shall be effective as regulations immediately upon filing
22 with the Office of Administrative Law and shall be effective for a
23 period not to exceed 18 months, and may, thereafter, be amended,
24 adopted, or readopted by the board in accordance with the
25 provisions of the "Administrative Procedure Act," P.L.1968, c.410
26 (C.52:14B-1 et seq.).

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

1 that violates this subsection shall also be liable for a civil penalty
2 pursuant to section 34 of P.L.1999, c.23 (C.48:3-83). The board is
3 hereby authorized to revoke the license of any electric power
4 supplier, gas supplier, broker, energy agent, marketer, or private
5 aggregator that violates this subsection.

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

7
8 2. Section 37 of P.L.1999, c.23 (C.48:3-86) is amended to read
9 as follows:

10 37. a. Notwithstanding any provisions of the "Administrative
11 Procedure Act," P.L.1968, c.410 (C.52:14B-1 et seq.) to the
12 contrary, the board, in consultation with the Division of Consumer
13 Affairs in the Department of Law and Public Safety, shall initiate a
14 proceeding and shall adopt, after notice, provision of the
15 opportunity for comment, and public hearing, interim standards for
16 electric power suppliers or gas suppliers, within 90 days of
17 February 9, 1999, to prevent and establish penalties for
18 unauthorized changes of a consumer's electric power supplier or gas
19 supplier, a practice commonly known as "slamming." Such
20 standards shall be effective as regulations immediately upon filing
21 with the Office of Administrative Law and shall be effective for a
22 period not to exceed 18 months, and may, thereafter, be amended,
23 adopted or readopted by the board in accordance with the provisions
24 of the "Administrative Procedure Act."

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

27 (1) An electric power supplier, an electric public utility, a gas
28 supplier or a gas public utility shall not cause an unauthorized
29 change in a customer's electric power supplier or gas supplier, a
30 practice known as "slamming." A change in a customer's electric
31 power supplier or gas supplier shall be deemed to be unauthorized
32 unless the customer has done so affirmatively and voluntarily and
33 the electric power supplier or gas supplier has obtained the
34 customer's approval, which approval shall be evidenced by the
35 customer's written signature **1**; the customer's electronic signature;
36 an audio recording of a telephone call initiated by the customer;
37 independent, third-party verification, in accordance with paragraph
38 (2) of this subsection, of a telephone call initiated by an electric
39 power supplier, electric public utility, gas supplier or gas public
40 utility; or such alternative forms of verification as the board, in
41 consultation with the Division of Consumer Affairs, may permit **1** or
42 electronic signature ¹; an audio recording of a telephone call
43 initiated by the customer; independent, third-party verification, in
44 accordance with section 37 of P.L.1999, c.23 (C.48:3-86), of a
45 telephone call initiated by an electric power supplier, gas supplier,
46 or private aggregator; or any alternative forms of verification as the
47 board, in consultation with the Division of Consumer Affairs in the

1 Department of Law and Public Safety, may permit¹ prior to
2 switching electric power suppliers or gas suppliers and for contract
3 renewal;

4 (2) **[(a)** A company performing independent, third-party
5 verification shall: (i) be independent from the entity that seeks to
6 provide the new service; (ii) not be directly or indirectly managed,
7 controlled, directed or owned, wholly or in part, by the entity that
8 seeks to provide the new service, or by any affiliate of that entity;
9 (iii) operate from facilities physically separate from those of the
10 entity that seeks to provide the new service; and (iv) not derive any
11 commission or compensation based upon the number of sales
12 confirmed;

13 (b) A company performing independent, third-party verification
14 shall obtain a customer's oral confirmation regarding the change and
15 shall record that confirmation by obtaining appropriate verification
16 data. The record shall be available to the customer upon request.
17 Information obtained from a customer through confirmation shall
18 not be used for marketing purposes; **]** ¹**[(Deleted by amendment,**
19 **P.L. , c.) (pending before the Legislature as this bill)]** (a) A
20 company performing independent, third-party verification shall: (i)
21 be independent from the entity that seeks to provide the new
22 service; (ii) not be directly or indirectly managed, controlled,
23 directed or owned, wholly or in part, by the entity that seeks to
24 provide the new service, or by any affiliate of that entity; (iii)
25 operate from facilities physically separate from those of the entity
26 that seeks to provide the new service; and (iv) not derive any
27 commission or compensation based upon the number of sales
28 confirmed;

29 (b) A company performing independent, third-party verification
30 shall obtain a customer's oral confirmation regarding the change and
31 shall record that confirmation by obtaining appropriate verification
32 data. The record shall be available to the customer upon request.
33 Information obtained from a customer through confirmation shall
34 not be used for marketing purposes;¹

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

42 (4) The acts of an agent of an electric power supplier, an electric
43 public utility, a gas supplier or a gas public utility shall be
44 considered the acts of the electric power supplier, electric public
45 utility, gas supplier or gas public utility.

46 c. A customer's new electric power supplier, electric public
47 utility, gas supplier or gas public utility shall notify the customer of

1 the change in the customer's electric or gas supplier within 30 days
2 in a manner to be determined by the board.

3 d. Bills to customers from an electric power supplier, electric
4 public utility, gas supplier or gas public utility shall contain the
5 name and telephone number of each supplier for whom billing is
6 provided, ¹the phone number and website for filing complaints with
7 the Board of Public Utilities, Division of Customer Assistance,¹ and
8 any other information deemed applicable by the board.

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

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

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

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

36 b. Any residential customer that elects to purchase electric
37 generation service or gas supply service, after the implementation
38 of gas unbundling pursuant to section 10 of P.L.1999, c.23 (C.48:3-
39 58), through a private aggregator must do so affirmatively and
40 voluntarily, **【either】** ¹either¹ through **【a】** the customer's written
41 signature **【**; the customer's electronic signature; an audio recording
42 of a telephone call initiated by the customer; independent, third-
43 party verification, in accordance with section 37 of P.L.1999, c.23
44 (C.48:3-86), of a telephone call initiated by a private aggregator; or
45 such alternative forms of verification as the board, in consultation
46 with the Division of Consumer Affairs in the Department of Law
47 and Public Safety, may permit**】** or electronic signature ¹; an audio

1 recording of a telephone call initiated by the customer; independent,
2 third-party verification, in accordance with section 37 of
3 P.L.1999, c.23 (C.48:3-86), of a telephone call initiated by an
4 electric power supplier, gas supplier, or private aggregator; or any
5 alternative forms of verification as the board, in consultation with
6 the Division of Consumer Affairs in the Department of Law and
7 Public Safety, may permit¹ prior to switching electric power
8 suppliers or gas suppliers and for contract renewal.
9 (cf: P.L.2001, c.242, s.4)

10

11 4. This act shall take effect **¹【immediately】** on the 30th day
12 following enactment¹.