

SENATE BILL 780

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By: **Senator Pugh**

Introduced and read first time: February 3, 2012

Assigned to: Finance

A BILL ENTITLED

1 AN ACT concerning

2 **Electricity and Gas Suppliers – Residential Electricity Supply Contracts –**
3 **Information and Customer Relations**

4 FOR the purpose of requiring electricity suppliers to include on certain marketing
5 materials and a certain Web site a certain disclaimer under certain
6 circumstances; requiring an electricity supplier to notify a certain customer in a
7 certain manner of the amount of a certain rate in certain residential electricity
8 supply contracts under certain circumstances; prohibiting automatic renewal
9 clauses in certain residential electricity supply contracts except under certain
10 circumstances; requiring a customer to evidence acceptance or rejection of the
11 terms of an automatic renewal provision in a certain manner; authorizing a
12 customer to refuse the renewal of a certain contract within a certain time
13 period; prohibiting a residential supply contract from containing an early
14 termination fee or penalty on cancellation of the contract unless the customer is
15 given certain notice at a certain time; requiring a customer to acknowledge
16 notice of the early termination fee or penalty on cancellation of the contract in a
17 certain manner; providing that an early termination fee or penalty imposed
18 under a residential supply contract must decrease in a certain manner over the
19 contract term; requiring the Commission to include on its staff a certain
20 position; providing for the application of a certain provision of this Act; defining
21 certain terms; altering certain definitions; and generally relating to electricity
22 and gas suppliers, residential electricity supply contracts, and residential
23 customer account information.

24 BY repealing and reenacting, with amendments,
25 Article – Public Utilities
26 Section 1–101(c), (j), and (n), 2–108(d), and 7–507
27 Annotated Code of Maryland
28 (2010 Replacement Volume and 2011 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
2 MARYLAND, That the Laws of Maryland read as follows:

3 **Article – Public Utilities**

4 1–101.

5 (c) (1) “Broker” means an entity or individual that acts as an agent or
6 intermediary in the sale and purchase of electricity or gas but does not take title to
7 electricity or gas.

8 (2) **“BROKER” INCLUDES AN ENTITY OR INDIVIDUAL THAT:**

9 (I) **HAS THE ABILITY TO DIRECTLY ENROLL CUSTOMERS IN**
10 **A CONTRACT FOR PURCHASE OF ELECTRICITY OR GAS WITH AN ELECTRICITY**
11 **SUPPLIER OR A GAS SUPPLIER; AND**

12 (II) **IS NOT AN EMPLOYEE OF THE ELECTRICITY SUPPLIER**
13 **OR THE GAS SUPPLIER.**

14 (j) (1) “Electricity supplier” means a person:

15 (i) who sells:

- 16 1. electricity;
- 17 2. electricity supply services;
- 18 3. competitive billing services; or
- 19 4. competitive metering services; or

20 (ii) who purchases, brokers, arranges, or markets electricity or
21 electricity supply services for sale to a retail electric customer.

22 (2) “Electricity supplier” includes an electric company, an aggregator,
23 a broker, and a marketer of electricity.

24 (3) “Electricity supplier” does not include:

25 (i) the following persons who supply electricity and electricity
26 supply services solely to occupants of a building for use by the occupants:

- 27 1. an owner/operator who holds ownership in and
28 manages the internal distribution system serving the building; or

1 2. a lessee/operator who holds a leasehold interest in
2 and manages the internal distribution system serving the building; [or]

3 (ii) a person who generates on-site generated electricity; OR

4 **(III) A PERSON WHO PROMOTES AN ELECTRICITY SUPPLIER**
5 **OR WHO REFERS CUSTOMERS TO AN ELECTRICITY SUPPLIER IF THE PERSON:**

6 1. **DOES NOT HAVE THE ABILITY TO DIRECTLY**
7 **ENROLL CUSTOMERS IN A CONTRACT FOR ELECTRICITY OR ELECTRICITY**
8 **SUPPLY SERVICES WITH THE ELECTRICITY SUPPLIER; AND**

9 2. **DOES NOT RECEIVE COMPENSATION FOR THE**
10 **PROMOTION OF THE ELECTRICITY SUPPLIER OR THE REFERRAL TO THE**
11 **ELECTRICITY SUPPLIER.**

12 (n) (1) “Gas supplier” means a person who:

13 (i) sells:

14 1. gas;

15 2. gas supply services; or

16 3. competitive billing services for gas supply services; or

17 (ii) purchases, brokers, arranges, or markets gas or gas supply
18 services for sale to a retail gas customer.

19 (2) “Gas supplier” includes an aggregator, a broker, and a marketer of
20 gas.

21 (3) “Gas supplier” does not include:

22 (i) a gas company to the extent that the gas company provides
23 gas sales or delivery service at rates regulated by the Commission;

24 (ii) the following persons who supply gas solely to occupants of a
25 building for use by the occupants:

26 1. an owner/operator who holds ownership in and
27 manages the internal distribution system serving the building; and

28 2. a lessee/operator who holds a leasehold interest in
29 and manages the internal distribution system serving the building; [or]

1 (iii) a person who transmits or distributes gas within a site
2 owned by the person or the person's affiliate that is incidental to a primarily
3 landlord-tenant relationship; OR

4 (IV) A PERSON WHO PROMOTES A GAS SUPPLIER OR WHO
5 REFERS CUSTOMERS TO A GAS SUPPLIER IF THE PERSON:

6 1. DOES NOT HAVE THE ABILITY TO DIRECTLY
7 ENROLL CUSTOMERS IN A CONTRACT FOR GAS OR GAS SUPPLY SERVICES WITH
8 THE GAS SUPPLIER; AND

9 2. DOES NOT RECEIVE COMPENSATION FOR THE
10 PROMOTION OF THE GAS SUPPLIER OR FOR THE REFERRAL TO THE GAS
11 SUPPLIER.

12 2-108.

13 (d) (1) The State budget shall provide sufficient money for the
14 Commission to hire, develop, and organize a staff to perform the functions of the
15 Commission, including analyzing data submitted to the Commission and participating
16 in proceedings as provided in § 3-104 of this article.

17 (2) (i) As the Commission considers necessary, the Commission
18 shall hire experts including economists, cost of capital experts, rate design experts,
19 accountants, engineers, transportation specialists, and lawyers.

20 (ii) To assist in the regulation of intrastate hazardous liquid
21 pipelines under Title 11, Subtitle 2 of this article, the Commission shall include on its
22 staff at least one engineer who specializes in the storage of and the transportation of
23 hazardous liquid materials by pipeline.

24 (3) The Commission may retain on a case by case basis additional
25 experts as required for a particular matter.

26 (4) The lawyers who represent the Commission staff in proceedings
27 before the Commission shall be appointed by the Commission and shall be organized
28 and operate independently of the office of General Counsel.

29 (5) (i) As required, the Commission shall hire hearing examiners.

30 (ii) Hearing examiners are a separate organizational unit and
31 shall report directly to the Commission.

32 (6) The Commission shall hire personal staff members for each
33 commissioner as required to provide advice, draft proposed orders and rulings, and
34 perform other personal staff functions.

1 (7) Subject to § 3–104 of this article, the Commission may delegate to
2 a commissioner or personnel the authority to perform an administrative function
3 necessary to carry out a duty of the Commission.

4 **(8) TO ASSIST PERSONS IN COMPLYING WITH THE REGULATION**
5 **OF ELECTRICITY AND ELECTRICITY SUPPLY SERVICES UNDER TITLE 7,**
6 **SUBTITLE 5 OF THIS ARTICLE AND GAS AND GAS SUPPLY SERVICES UNDER**
7 **TITLE 6, SUBTITLE 5 OF THIS ARTICLE, THE COMMISSION SHALL INCLUDE IN**
8 **ITS STAFF AN ELECTRICITY AND GAS SUPPLIER RELATIONS POSITION.**

9 **[(8)] (9)** (i) Except as provided in subparagraph (ii) of this
10 paragraph or otherwise by law, all personnel of the Commission are subject to the
11 provisions of the State Personnel and Pensions Article.

12 (ii) The following are in the executive service, management
13 service, or are special appointments in the State Personnel Management System:

- 14 1. each commissioner of the Commission;
- 15 2. the Executive Director;
- 16 3. the General Counsel and each assistant general
17 counsel;
- 18 4. the Executive Secretary;
- 19 5. the commissioners' personal staff members;
- 20 6. the chief hearing examiner; and
- 21 7. each license hearing officer.

22 7–507.

23 (a) A person, other than an electric company providing standard offer service
24 under § 7–510(c) of this subtitle or a municipal electric utility serving customers solely
25 in its distribution territory, may not engage in the business of an electricity supplier in
26 the State unless the person holds a license issued by the Commission.

27 (b) An application for an electricity supplier license shall:

- 28 (1) be made to the Commission in writing on a form adopted by the
29 Commission;
- 30 (2) be verified by oath or affirmation; and

1 (3) contain information that the Commission requires, including:

2 (i) proof of technical and managerial competence;

3 (ii) proof of compliance with all applicable requirements of the
4 Federal Energy Regulatory Commission, and any independent system operator or
5 regional or system transmission operator to be used by the licensee;

6 (iii) a certification of compliance with applicable federal and
7 State environmental laws and regulations that relate to the generation of electricity;
8 and

9 (iv) payment of the applicable licensing fee.

10 (c) The Commission shall, by regulation or order:

11 (1) require proof of financial integrity;

12 (2) require a licensee to post a bond or other similar instrument, if, in
13 the Commission's judgment, the bond or similar instrument is necessary to insure an
14 electricity supplier's financial integrity;

15 (3) require a licensee to:

16 (i) provide proof that it is qualified to do business in the State
17 with the Department of Assessments and Taxation; and

18 (ii) agree to be subject to all applicable taxes; and

19 (4) adopt any other requirements it finds to be in the public interest,
20 which may include different requirements for:

21 (i) electricity suppliers that serve only large customers; and

22 (ii) the different categories of electricity suppliers.

23 (d) A license issued under this section may not be transferred without prior
24 Commission approval.

25 (e) The Commission shall adopt regulations or issue orders to:

26 (1) protect consumers, electric companies, and electricity suppliers
27 from anticompetitive and abusive practices;

28 (2) require each electricity supplier to provide, in addition to the
29 requirements under § 7-505(b)(5) of this subtitle, adequate and accurate customer

1 information to enable customers to make informed choices regarding the purchase of
2 any electricity services offered by the electricity supplier;

3 (3) establish reasonable restrictions on telemarketing;

4 (4) establish procedures for contracting with customers;

5 (5) establish requirements and limitations relating to deposits, billing,
6 collections, and contract cancellations;

7 (6) establish provisions providing for the referral of a delinquent
8 account by an electricity supplier to the standard offer service under § 7-510(c) of this
9 subtitle; and

10 (7) establish procedures for dispute resolution.

11 **(F) (1) IN THIS SUBSECTION, "RESIDENTIAL SUPPLY CONTRACT"**
12 **MEANS AN AGREEMENT BETWEEN AN ELECTRICITY SUPPLIER AND A**
13 **RESIDENTIAL CUSTOMER TO PROVIDE ELECTRICITY OR ELECTRICITY SUPPLY**
14 **SERVICES.**

15 **(2) IF AN ELECTRICITY SUPPLIER CLAIMS ON ANY OF ITS**
16 **MARKETING MATERIALS OR ITS WEB SITE THAT A RESIDENTIAL SUPPLY**
17 **CONTRACT MAY OR WILL RESULT IN SAVINGS BASED ON HISTORICAL**
18 **PERFORMANCE, THE ELECTRICITY SUPPLIER SHALL INCLUDE ON THE**
19 **MARKETING MATERIALS AND THE WEB SITE A CLEAR DISCLAIMER THAT STATES**
20 **THAT HISTORICAL SAVINGS DO NOT GUARANTEE FUTURE SAVINGS.**

21 **(3) IF THE TERMS OF A RESIDENTIAL SUPPLY CONTRACT**
22 **PROVIDE THAT A RATE IS SUBJECT TO CHANGE OR IS A VARIABLE RATE, THE**
23 **ELECTRICITY SUPPLIER SHALL NOTIFY THE CUSTOMER THE AMOUNT OF A NEW**
24 **RATE ELECTRONICALLY OR IN WRITING AT LEAST 30 DAYS BEFORE A NEW RATE**
25 **TAKES EFFECT.**

26 **(4) (I) A RESIDENTIAL SUPPLY CONTRACT MAY NOT CONTAIN**
27 **AN AUTOMATIC RENEWAL PROVISION UNLESS THE CUSTOMER IS GIVEN:**

28 **1. CLEAR AND CONSPICUOUS NOTICE OF THE TERMS**
29 **OF THE AUTOMATIC RENEWAL PROVISION; AND**

30 **2. THE OPPORTUNITY TO ACCEPT OR REJECT THE**
31 **AUTOMATIC RENEWAL PROVISION BEFORE THE RESIDENTIAL SUPPLY**
32 **CONTRACT IS EXECUTED.**

1 **(II) A CUSTOMER SHALL INDICATE ACCEPTANCE OR**
2 **REJECTION OF THE TERMS OF AN AUTOMATIC RENEWAL PROVISION BY WRITING**
3 **THE CUSTOMER'S INITIALS NEXT TO THE PROVISION IN THE RESIDENTIAL**
4 **SUPPLY CONTRACT OR VIA A SEPARATE ELECTRONIC CHECK BOX ACCESSED ON**
5 **THE INTERNET.**

6 **(III) A CUSTOMER MAY REFUSE TO RENEW A RESIDENTIAL**
7 **SUPPLY CONTRACT AT ANY TIME UP TO 30 DAYS BEFORE THE DAY WHEN THE**
8 **AUTOMATIC RENEWAL IS SCHEDULED TO TAKE EFFECT.**

9 **(IV) AN ELECTRICITY SUPPLIER SHALL PROVIDE TO A**
10 **CUSTOMER A STANDARD CUSTOMER SERVICE ELECTRONIC MAIL ADDRESS THAT**
11 **THE CUSTOMER MAY USE TO CONTACT THE ELECTRICITY SUPPLIER TO INITIATE**
12 **A REQUEST, INCLUDING CANCELLING OR REFUSING THE RENEWAL OF A**
13 **RESIDENTIAL SUPPLY CONTRACT.**

14 **(5) (I) 1. A RESIDENTIAL SUPPLY CONTRACT MAY NOT**
15 **CONTAIN AN EARLY TERMINATION FEE OR A PENALTY ON CANCELLATION OF**
16 **THE RESIDENTIAL SUPPLY CONTRACT UNLESS THE CUSTOMER IS GIVEN CLEAR**
17 **AND CONSPICUOUS NOTICE OF THE TERMS OF THE EARLY TERMINATION FEE OR**
18 **PENALTY BEFORE THE RESIDENTIAL SUPPLY CONTRACT IS EXECUTED.**

19 **2. A CUSTOMER SHALL ACKNOWLEDGE NOTICE OF**
20 **AN EARLY TERMINATION FEE OR A PENALTY ON CANCELLATION OF A**
21 **RESIDENTIAL SUPPLY CONTRACT BY WRITING THE CUSTOMER'S INITIALS NEXT**
22 **TO THE NOTICE IN THE RESIDENTIAL SUPPLY CONTRACT OR VIA A SEPARATE**
23 **ELECTRONIC CHECK BOX ACCESSED ON THE INTERNET.**

24 **(II) IF A RESIDENTIAL SUPPLY CONTRACT REQUIRES THE**
25 **CUSTOMER TO PAY AN EARLY TERMINATION FEE OR A PENALTY ON**
26 **CANCELLATION OF A RESIDENTIAL SUPPLY CONTRACT, THE EARLY**
27 **TERMINATION FEE OR PENALTY SHALL DECREASE BY AN EQUAL AMOUNT EACH**
28 **MONTH SO THAT THE CUSTOMER OWES NO EARLY TERMINATION FEE OR**
29 **PENALTY AT THE END OF THE RESIDENTIAL SUPPLY CONTRACT.**

30 **[(f)] (G)** In accordance with regulations or orders of the Commission,
31 electricity bills, for competitive and regulated electric services, provided to consumers
32 may provide, in addition to the requirements of § 7-505(b)(5) of this subtitle and
33 subsection (e)(2) of this section, the following information:

34 (1) the identity and phone number of the electricity supplier of the
35 service;

36 (2) sufficient information to evaluate prices and services; and

1 (3) information identifying whether the price is regulated or
2 competitive.

3 **[(g)] (H)** (1) An electricity supplier or any person or governmental unit
4 may not, without first obtaining the customer's permission:

5 (i) make any change in the electricity supplier for a customer;
6 or

7 (ii) add a new charge for a new or existing service or option.

8 (2) The Commission shall adopt regulations or issue orders
9 establishing procedures to prevent the practices prohibited under paragraph (1) of this
10 subsection.

11 **[(h)] (I)** (1) An electricity supplier may not discriminate against any
12 customer based wholly or partly on race, color, creed, national origin, or sex of an
13 applicant for service or for any arbitrary, capricious, or unfairly discriminatory reason.

14 (2) An electricity supplier may not refuse to provide service to a
15 customer except by the application of standards that are reasonably related to the
16 electricity supplier's economic and business purposes.

17 **[(i)] (J)** An electricity supplier shall be subject to all applicable federal and
18 State environmental laws and regulations.

19 **[(j)] (K)** An electricity supplier shall post on the Internet information that
20 is readily understandable about its services and rates for small commercial and
21 residential electric customers.

22 **[(k)] (L)** (1) The Commission may revoke or suspend the license of an
23 electricity supplier, impose a civil penalty or other remedy, order a refund or credit to
24 a customer, or impose a moratorium on adding or soliciting additional customers by
25 the electricity supplier, for just cause on the Commission's own investigation or on
26 complaint of the Office of People's Counsel, the Attorney General, or an affected party.

27 (2) A civil penalty may be imposed in addition to the Commission's
28 decision to revoke, suspend, or impose a moratorium.

29 (3) Just cause includes:

30 (i) intentionally providing false information to the Commission;

31 (ii) switching, or causing to be switched, the electricity supply
32 for a customer without first obtaining the customer's permission;

- 1 (iii) failing to provide electricity for its customers;
- 2 (iv) committing fraud or engaging in deceptive practices;
- 3 (v) failing to maintain financial integrity;
- 4 (vi) violating a Commission regulation or order;
- 5 (vii) failing to pay, collect, remit, or calculate accurately
6 applicable State or local taxes;
- 7 (viii) violating a provision of this article or any other applicable
8 consumer protection law of the State;
- 9 (ix) conviction of a felony by the licensee or principal of the
10 licensee or any crime involving fraud, theft, or deceit; and
- 11 (x) suspension or revocation of a license by any State or federal
12 authority.

13 **[(l)] (M)** (1) An electricity supplier or person selling or offering to sell
14 electricity in the State in violation of this section, after notice and an opportunity for a
15 hearing, is subject to:

- 16 (i) a civil penalty of not more than \$10,000 for the violation; or
- 17 (ii) license revocation or suspension.
- 18 (2) Each day a violation continues is a separate violation.
- 19 (3) The Commission shall determine the amount of any civil penalty
20 after considering:
- 21 (i) the number of previous violations of any provision of this
22 division;
- 23 (ii) the gravity of the current violation; and
- 24 (iii) the good faith of the electricity supplier or person charged in
25 attempting to achieve compliance after notification of the violation.

26 **[(m)] (N)** In connection with a consumer complaint or Commission
27 investigation under this section, an electricity supplier shall provide to the
28 Commission access to any accounts, books, papers, and documents which the
29 Commission considers necessary to resolve the matter at issue.

1 **[(n)] (O)** The Commission may order the electricity supplier to cease adding
2 or soliciting additional customers or to cease serving customers in the State.

3 **[(o)] (P)** The Commission shall consult with the Consumer Protection
4 Division of the Office of the Attorney General before issuing regulations designed to
5 protect consumers.

6 **[(p)] (Q)** The People's Counsel shall have the same authority in licensing,
7 complaint, and dispute resolution proceedings as it has in Title 2 of this article.

8 **[(q)] (R)** Nothing in this subtitle may be construed to affect the authority of
9 the Division of Consumer Protection in the Office of the Attorney General to enforce
10 violations of Titles 13 and 14 of the Commercial Law Article or any other applicable
11 State law or regulation in connection with the activities of electricity suppliers.

12 SECTION 2. AND BE IT FURTHER ENACTED, That § 7-507(f) of the Public
13 Utilities Article, as enacted by Section 1 of this Act, shall be construed to apply only
14 prospectively and may not be applied or interpreted to have any effect on or
15 application to any contract entered into before the effective date of this Act.

16 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
17 October 1, 2012.