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LICENSE/REGULATE ALTERNATIVE GAS SUPPLIERS

House Bill 6128 (Substitute H-2)
Sponsor: Rep. Mike Kowall
Committee: Energy and Technology

Complete to 12-3-02

A SUMMARY OF HOUSE BILL 6128 (SUBSTITUTE H-2) AS REPORTED BY THE HOUSE ENERGY AND TECHNOLOGY COMMITTEE 12-3-02

House Bill 6128 would amend Public Act 3 of 1939, which gives the Michigan Public Service Commission (PSC) jurisdiction over the regulation of the state's public utilities, including gas, to require alternative gas suppliers to be licensed and to prohibit alternative gas suppliers and natural gas utilities from "slamming", "cramming", and soliciting or entering into contracts in a misleading, fraudulent, or deceptive manner. The bill is summarized in detail below.

Definitions. The bill would define "customer choice program" as a program approved by the PSC on application by a natural gas utility that allows retail customers to choose an alternative gas supplier. "Alternative gas supplier" would mean a person who sells natural gas at unregulated retail rates to customers located in the state, where the gas is delivered to customers by a natural gas utility that has a customer choice program. (Retail sales in a customer choice program by an alternative gas supplier would not constitute public utility service.) "Natural gas utility" would be defined as an investor-owned business engaged in the sale and distribution of natural gas in Michigan, whose rates are regulated by the PSC.

Licensure for alternative gas suppliers. Under the bill, the PSC would have to issue orders establishing a licensing procedure for all alternative gas suppliers participating in any PSC-approved natural gas customer choice program. An alternative gas supplier could not do business in the state without first receiving a license.

Alternative gas suppliers would be required to maintain an office within Michigan. The PSC would be required to assure that an alternative gas supplier doing business in Michigan had the necessary financial, managerial, and technical capabilities and to require suppliers to maintain any records that the PSC considered necessary. The PSC would also have to require alternative gas suppliers to collect and remit to state and local governments all applicable users, sales, and use taxes, if the natural gas utility was not doing so on the supplier's behalf.

"Slamming" prohibited. An alternative gas supplier or natural gas utility would be prohibited from switching customers to its gas supply without the customer's authorization—a practice also known as "slamming". The PSC could issue orders to ensure that an alternative gas supplier or natural gas utility does not switch a customer to another supplier without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to PSC approval confirming the customer's intent to switch as well as the customer's approval of the specific details of the switch. A natural gas utility could not be found in violation of either the slamming prohibition or the PSC's orders concerning confirmation of a customer's authorization to switch suppliers if the customer's service was switched by the utility either under the applicable terms and conditions of a PSC-approved gas customer choice program or as the result of the default of an alternative gas supplier.

"Cramming" prohibited. An alternative gas supplier or natural gas utility could not include or add optional services in a customer's service package without the customer's authorization. (This practice is commonly referred to as "cramming".) The PSC could issue orders to ensure that an alternative supplier or utility does not include or add optional services in a customer's service package without the customer's written confirmation, confirmation through an independent third party, or other verification procedures subject to PSC approval confirming the customer's intent to receive the optional services.

Misleading, fraudulent, or deceptive contracts prohibited. An alternative gas supplier or natural gas utility could not solicit or enter into contracts with customers in the state in a misleading, fraudulent, or deceptive manner.

The PSC could by order establish minimum standards for the form and content of all disclosures, explanations, or sales information relating to the sale of a natural gas commodity in a customer choice program and disseminated by an alternative supplier or utility to ensure that they contain accurate and understandable information and that they enable a customer to make an informed decision relating to the purchase of a natural gas commodity. The standards could not be "unduly burdensome" and could not "unnecessarily delay or inhibit" the initiation and development of competition among alternative suppliers or utilities in any market. Further, the standards would have to establish different requirements for disclosures, explanations, and sales information relating to different services or to similar services to different natural gas supply classes of customers, whenever such different requirements were appropriate to carry out the provisions of this section of the bill.

Rules. The PSC could adopt rules to implement the section of the bill prohibiting slamming, cramming, and misleading, fraudulent or deceptive contracts under the Administrative Procedures Act of 1969.

Violations, remedies, and penalties. If, after notice and hearing, the PSC found that a person had violated this section of the bill, the PSC could order remedies and penalties to protect and make whole another person who had suffered an economic loss as a result of the violation. Remedies and penalties for the first offense could include ordering the person to pay a fine of not less than $20,000 or more than $30,000. For a second and any subsequent offense, the PSC would have to order the person to pay a fine of not less than $30,000 or more than $50,000. If the PSC found that the second or any of the subsequent offenses were knowingly made in violation of the slamming and cramming prohibitions, the PSC would have to order the person to pay a fine of not more than $70,000. Each switch made in violation of the slamming prohibition or each service added in violation of the cramming prohibition would constitute a separate offense. The PSC could also order a portion between 10 and 50 percent of any such fines assessed be paid directly to the customer who suffered a violation of the slamming and cramming prohibitions.

The PSC's remedies and penalties could also include the following:

• ordering an unauthorized supplier to refund to the customer any amount greater than the customer would have paid to an authorized supplier;

• ordering the person to reimburse an authorized supplier an amount equal to the amount paid by the customer that should have been paid to the authorized supplier;

• if the person is licensed under the act, revoking the license if the commission found a pattern of violations of the slamming or cramming prohibitions; and

• issuing cease and desist orders.

In no case could the PSC impose a fine for a violation if the person showed that the violation was an unintentional and bona fide error that occurred in spite of the person's maintenance of procedures reasonably adopted to avoid the error. Further, a natural gas utility could not be found in violation of the slamming and cramming prohibitions if the unauthorized switch or addition of services was made under the request or notice of an alternative gas supplier that was responsible under a customer choice program for obtaining the customer's approval.

MCL 460.9 and 460.9b

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