

REPRINT

SUBSTITUTE FOR

HOUSE BILL NO. 6128

(As passed the House, December 4, 2002)
(As passed the Senate, December 11, 2002)

A bill to amend 1939 PA 3, entitled

"An act to provide for the regulation and control of public utilities and other services affected with a public interest within this state; to provide for alternative energy suppliers; to provide for licensing; to include municipally owned utilities and other providers of energy under certain provisions of this act; to create a public service commission and to prescribe and define its powers and duties; to abolish the Michigan public utilities commission and to confer the powers and duties vested by law on the public service commission; to provide for the continuance, transfer, and completion of certain matters and proceedings; to abolish automatic adjustment clauses; to prohibit certain rate increases without notice and hearing; to qualify residential energy conservation programs permitted under state law for certain federal exemption; to create a fund; to provide for a restructuring of the manner in which energy is provided in this state; to encourage the utilization of resource recovery facilities; to prohibit certain acts and practices of providers of energy; to allow for the securitization of stranded costs; to reduce rates; to provide for appeals; to provide appropriations; to declare the effect and purpose of this act; to prescribe remedies and penalties; and to repeal acts and parts of acts,"

(MCL 460.1 to 460.10cc) by adding sections 9 and 9b.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

SEC. 9. (1) AS USED IN THIS SECTION:

(A) "ALTERNATIVE GAS SUPPLIER" OR "SUPPLIER" MEANS A PERSON WHO SELLS NATURAL GAS AT UNREGULATED RETAIL RATES TO CUSTOMERS LOCATED IN THIS 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 DO NOT CONSTITUTE PUBLIC UTILITY SERVICE.

(B) "COMMISSION" MEANS THE MICHIGAN PUBLIC SERVICE COMMISSION IN THE DEPARTMENT OF CONSUMER AND INDUSTRY SERVICES.

(C) "CUSTOMER" MEANS AN END-USER OF NATURAL GAS.

(D) "CUSTOMER CHOICE PROGRAM" MEANS A PROGRAM APPROVED BY THE COMMISSION ON APPLICATION BY A NATURAL GAS UTILITY THAT ALLOWS RETAIL CUSTOMERS TO CHOOSE AN ALTERNATIVE GAS SUPPLIER.

(E) "NATURAL GAS UTILITY" MEANS AN INVESTOR-OWNED BUSINESS ENGAGED IN THE SALE AND DISTRIBUTION OF NATURAL GAS WITHIN THIS STATE WHOSE RATES ARE REGULATED BY THE COMMISSION.

(2) AN ALTERNATIVE GAS SUPPLIER OR NATURAL GAS UTILITY SHALL NOT SWITCH A CUSTOMER TO ITS GAS SUPPLY WITHOUT AUTHORIZATION OF THE CUSTOMER. A NATURAL GAS UTILITY SHALL NOT BE FOUND IN VIOLATION OF THIS SUBSECTION OR A COMMISSION ORDER ISSUED UNDER SUBSECTION (3), IF THE CUSTOMER'S SERVICE WAS SWITCHED BY THE NATURAL GAS UTILITY UNDER THE APPLICABLE TERMS AND CONDITIONS OF A COMMISSION APPROVED GAS CUSTOMER CHOICE PROGRAM OR AS THE RESULT OF THE DEFAULT OF AN ALTERNATIVE GAS SUPPLIER.

(3) THE COMMISSION MAY ISSUE ORDERS TO ENSURE THAT AN ALTERNATIVE GAS SUPPLIER OR NATURAL GAS UTILITY DOES NOT SWITCH A

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1 CUSTOMER TO ANOTHER SUPPLIER WITHOUT THE CUSTOMER'S WRITTEN
2 CONFIRMATION, CONFIRMATION THROUGH AN INDEPENDENT THIRD PARTY, OR
3 OTHER VERIFICATION PROCEDURES SUBJECT TO COMMISSION APPROVAL,
4 CONFIRMING THE CUSTOMER'S INTENT TO MAKE A SWITCH AND THAT THE
5 CUSTOMER HAS APPROVED THE SPECIFIC DETAILS OF THE SWITCH.

6 (4) AN ALTERNATIVE GAS SUPPLIER OR NATURAL GAS UTILITY SHALL
7 NOT INCLUDE OR ADD OPTIONAL SERVICES IN A CUSTOMER'S SERVICE
8 PACKAGE WITHOUT THE AUTHORIZATION OF THE CUSTOMER.

9 (5) THE COMMISSION MAY ISSUE ORDERS TO ENSURE THAT AN ALTER-
10 NATIVE GAS SUPPLIER OR NATURAL GAS UTILITY DOES NOT INCLUDE OR
11 ADD OPTIONAL SERVICES IN A CUSTOMER'S SERVICE PACKAGE WITHOUT THE
12 CUSTOMER'S WRITTEN CONFIRMATION, CONFIRMATION THROUGH AN INDEPEN-
13 DENT THIRD PARTY, OR OTHER VERIFICATION PROCEDURES APPROVED BY
14 THE COMMISSION CONFIRMING THE CUSTOMER'S INTENT TO RECEIVE THE
15 OPTIONAL SERVICES.

16 (6) AN ALTERNATIVE GAS SUPPLIER OR NATURAL GAS UTILITY SHALL
17 NOT SOLICIT OR ENTER INTO CONTRACTS SUBJECT TO THIS SECTION WITH
18 CUSTOMERS IN THIS STATE IN A MISLEADING, FRAUDULENT, OR DECEPTIVE
19 MANNER.

20 (7) THE COMMISSION MAY BY ORDER ESTABLISH MINIMUM STANDARDS
21 FOR THE FORM AND CONTENT OF ALL DISCLOSURES, EXPLANATIONS, OR
22 SALES INFORMATION RELATING TO THE SALE OF A NATURAL GAS COMMODITY
23 IN A CUSTOMER CHOICE PROGRAM AND DISSEMINATED BY AN ALTERNATIVE
24 GAS SUPPLIER OR NATURAL GAS UTILITY TO ENSURE THAT THE DISCLO-
25 SURES, EXPLANATIONS, AND SALES INFORMATION CONTAIN ACCURATE AND
26 UNDERSTANDABLE INFORMATION AND ENABLE A CUSTOMER TO MAKE AN
27 INFORMED DECISION RELATING TO THE PURCHASE OF A NATURAL GAS

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1 COMMODITY. ANY STANDARDS ESTABLISHED UNDER THIS SUBSECTION SHALL
2 BE DEVELOPED TO DO ALL OF THE FOLLOWING:

3 (A) NOT BE UNDULY BURDENSOME.

4 (B) NOT UNNECESSARILY DELAY OR INHIBIT THE INITIATION AND
5 DEVELOPMENT OF COMPETITION AMONG ALTERNATIVE GAS SUPPLIERS OR
6 NATURAL GAS UTILITIES IN ANY MARKET.

7 (C) ESTABLISH DIFFERENT REQUIREMENTS FOR DISCLOSURES, EXPLA-
8 NATIONS, OR SALES INFORMATION RELATING TO DIFFERENT SERVICES OR
9 SIMILAR SERVICES TO DIFFERENT NATURAL GAS SUPPLY CLASSES OF CUS-
10 TOMERS, WHENEVER SUCH DIFFERENT REQUIREMENTS ARE APPROPRIATE TO
11 CARRY OUT THE PROVISIONS OF THIS SECTION.

12 (8) THE COMMISSION MAY ADOPT RULES UNDER THE ADMINISTRATIVE
13 PROCEDURES ACT OF 1969, 1969 PA 306, MCL 24.201 TO 24.328, TO
14 IMPLEMENT THIS SECTION.

15 (9) IF AFTER NOTICE AND HEARING THE COMMISSION FINDS A
16 PERSON HAS VIOLATED THIS SECTION, THE COMMISSION MAY ORDER REME-
17 DIES AND PENALTIES TO PROTECT AND MAKE WHOLE ANOTHER PERSON WHO
18 HAS SUFFERED AN ECONOMIC LOSS AS A RESULT OF THE VIOLATION,
19 INCLUDING, BUT NOT LIMITED TO, 1 OR MORE OF THE FOLLOWING:

20 (A) ORDER THE PERSON TO PAY A FINE FOR THE FIRST OFFENSE OF
21 NOT LESS THAN \$20,000.00 OR MORE THAN \$30,000.00. FOR A SECOND
22 AND ANY SUBSEQUENT OFFENSE, THE COMMISSION SHALL ORDER THE PERSON
23 TO PAY A FINE OF NOT LESS THAN \$30,000.00 OR MORE THAN
24 \$50,000.00. IF THE COMMISSION FINDS THAT THE SECOND OR ANY OF
25 THE SUBSEQUENT OFFENSES WERE KNOWINGLY MADE IN VIOLATION OF SUB-
26 SECTION (2) OR (4), THE COMMISSION SHALL ORDER THE PERSON TO PAY
27 A FINE OF NOT MORE THAN \$70,000.00. EACH SWITCH MADE IN

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1 VIOLATION OF SUBSECTION (2) OR SERVICE ADDED IN VIOLATION OF
2 SUBSECTION (4) SHALL BE A SEPARATE OFFENSE UNDER THIS
3 SUBDIVISION.

4 (B) ORDER AN UNAUTHORIZED SUPPLIER TO REFUND TO THE CUSTOMER
5 ANY AMOUNT GREATER THAN THE CUSTOMER WOULD HAVE PAID TO AN AUTHO-
6 RIZED SUPPLIER.

7 (C) ORDER A PORTION BETWEEN 10% TO 50% OF THE FINE ASSESSED
8 UNDER SUBDIVISION (A) BE PAID DIRECTLY TO THE CUSTOMER WHO SUF-
9 FERED THE VIOLATION OF SUBSECTION (2) OR (4).

10 (D) ORDER THE PERSON TO REIMBURSE AN AUTHORIZED SUPPLIER AN
11 AMOUNT EQUAL TO THE AMOUNT PAID BY THE CUSTOMER THAT SHOULD HAVE
12 BEEN PAID TO THE AUTHORIZED SUPPLIER.

13 (E) IF THE PERSON IS LICENSED UNDER THIS ACT, REVOKE THE
14 LICENSE IF THE COMMISSION FINDS A PATTERN OF VIOLATIONS OF SUB-
15 SECTION (2) OR (4).

16 (F) ISSUE CEASE AND DESIST ORDERS.

17 (10) NOTWITHSTANDING SUBSECTION (9), A FINE SHALL NOT BE
18 IMPOSED FOR A VIOLATION IF THE PERSON SHOWS THAT THE VIOLATION
19 WAS AN UNINTENTIONAL AND BONA FIDE ERROR WHICH OCCURRED NOTWITH-
20 STANDING THE MAINTENANCE OF PROCEDURES REASONABLY ADOPTED TO
21 AVOID THE ERROR.

22 (11) A NATURAL GAS UTILITY SHALL NOT BE FOUND IN VIOLATION
23 OF THIS SECTION FOR SWITCHING A CUSTOMER'S SUPPLIER OR ADDING
24 OPTIONAL SERVICES TO A CUSTOMER'S ACCOUNT IF THE SWITCH OR ADDI-
25 TION WAS MADE PURSUANT TO THE REQUEST OR NOTICE OF AN ALTERNATIVE
26 GAS SUPPLIER THAT IS RESPONSIBLE UNDER A CUSTOMER CHOICE PROGRAM
27 FOR OBTAINING THE CUSTOMER'S APPROVAL.

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1 SEC. 9B. (1) THE COMMISSION SHALL ISSUE ORDERS ESTABLISHING
2 A LICENSING PROCEDURE FOR ALL ALTERNATIVE GAS SUPPLIERS PARTICI-
3 PATING IN ANY NATURAL GAS CUSTOMER CHOICE PROGRAM APPROVED BY THE
4 COMMISSION. AN ALTERNATIVE GAS SUPPLIER SHALL NOT DO BUSINESS IN
5 THIS STATE WITHOUT FIRST RECEIVING A LICENSE UNDER THIS ACT.

6 (2) AN ALTERNATIVE GAS SUPPLIER SHALL MAINTAIN AN OFFICE
7 WITHIN THIS STATE.

8 (3) THE COMMISSION SHALL ASSURE THAT AN ALTERNATIVE GAS SUP-
9 PLIER DOING BUSINESS IN THIS STATE HAS THE NECESSARY FINANCIAL,
10 MANAGERIAL, AND TECHNICAL CAPABILITIES AND REQUIRE THE SUPPLIER
11 TO MAINTAIN RECORDS THAT THE COMMISSION CONSIDERS NECESSARY.

12 (4) THE COMMISSION SHALL REQUIRE AN ALTERNATIVE GAS SUPPLIER
13 TO COLLECT AND REMIT TO STATE AND LOCAL UNITS OF GOVERNMENT ALL
14 APPLICABLE USERS, SALES, AND USE TAXES IF THE NATURAL GAS UTILITY
15 IS NOT DOING SO ON BEHALF OF THE SUPPLIER.