



**H.B. 177**

123rd General Assembly  
(As Introduced)

**Reps. Goodman, Mead, Tiberi, Olman, Roman, Taylor, Schuler, Metzger, Britton, Krupinski, Sullivan, Damschroder, Van Vyven, Jones, Allen, Boyd, Padgett, Opfer, Core, Jolivette, Terwilleger, Netzley, Gardner, Buchy, Thomas, O'Brien, Callender, Flannery, Grendell, Trakas, DePiero, Harris, Cates, Barrett, Bender, Pringle, Patton, Corbin, Jerse, Evans, Winkler, Austria**

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**BILL SUMMARY**

- Prohibits a person, in connection with a consumer transaction, from purposely changing the consumer's provider of natural gas or public telecommunications service, without first obtaining the consumer's consent.
- Requires the Public Utilities Commission to adopt rules specifying acceptable procedures for verifying consumer consent.
- Vests the Commission with authority to enforce the bill against any person that is a public utility, and vests the Attorney General with authority to enforce the bill under the Consumer Sales Practices Law against any other violator.
- Provides additional remedies and penalties beyond those currently available under law, including a criminal penalty.

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**CONTENT AND OPERATION**

*Overview*

In brief, the bill's focus is natural gas service and public telecommunications service. It addresses what is commonly known as "slamming," that is, switching a customer's service provider without prior authorization of the customer.

The bill vests the Public Utilities Commission (PUCO) and the Attorney General (AG) with express authority regarding unauthorized switching of natural gas and public telecommunications service providers. The authority is complementary in the sense that the PUCO is empowered to enforce the bill against any violator that is a public utility, and the AG is empowered to enforce the bill against any other violator.

Relative to current law, the bill retains the general division of authority that currently exists between the PUCO and the AG, but requires the PUCO to define appropriate verification for purposes of both PUCO and AG enforcement authority; and provides the PUCO and AG with a broader array of enforcement mechanisms. Below is an explanation of the bill's provisions and provisions of current law.

### **The bill**

#### **General prohibitions**

The bill establishes a prohibition that applies generally to persons in connection with natural gas or public telecommunications consumer transactions. A person is prohibited, in connection with a consumer transaction, from purposely requesting or submitting, or purposely causing to be requested or submitted, a change in a consumer's provider of natural gas service or public telecommunications service within Ohio, without first obtaining, or causing to be obtained, the consumer's verified consent in accordance with rules adopted by the PUCO under the bill (sec. 4933.42(A)(1)).

Further, the bill prohibits a person from purposely violating or failing to comply with any provision of the PUCO rules (sec. 4933.42(A)(2)). It also prohibits a person that is a public utility under Ohio public utility law from purposely violating or failing to comply with any provision of a PUCO enforcement order under the bill (sec. 4933.42(A)(3)). (Under the bill, such an enforcement order may be issued only with respect to a public utility under Ohio public utility law (sec. 4933.44(B) and (C).)

For the purposes of all those prohibitions, the act, omission, or failure of an officer, agent, or other individual, acting for or employed by another person, while acting within the scope of that authority or employment, is the act or failure of that other person (sec. 4933.42(B)).

"Consumer" is defined under the bill as a person that engages in a consumer transaction for natural gas or public telecommunications service within Ohio and includes a residential or business consumer (sec. 4933.41(A)). "Consumer

transaction" is defined for purposes of the bill as the sale, lease, assignment, award by chance, or other transfer of natural gas or public telecommunications service to a consumer (sec. 4933.41(B)). These two definitions are drawn from definitions in the Consumer Sales Practices Law (secs. 1345.01 to 1345.13, not in the bill), but particularly differ insofar as that law is limited to consumer transactions involving "an individual for purposes that are primarily personal, family, or household" in nature (sec. 1345.01(A), not in the bill).

"Person" draws its definition from the Consumer Sales Practices Law and expressly includes an individual, corporation, government, governmental subdivision or agency, business trust, estate, trust, partnership, association, cooperative, or other legal entity (sec. 4933.41(C)).

"Public telecommunications service" is defined for purposes of the bill as the electromagnetic or other transmission by a PUCO-regulated telephone company of signs, signals, writings, images, sounds, messages, or data originating and terminating in Ohio regardless of actual call routing. The term excludes a system for the provision of telecommunications service by an entity for the sole and exclusive use of that entity, its parent, a subsidiary, or an affiliated entity, and not for resale; the provision of terminal equipment to originate or terminate telecommunications service; broadcast transmission by radio, television, or satellite broadcast stations regulated by the federal government; or cable television service. (Sec. 4933.42(D); see sec. 4927.01(D), not in the bill.)

"Purposely" under the bill has the same meaning as in the existing Criminal Code: that is, acting with "specific intention to cause a certain result, or, when the gist of the offense is a prohibition against conduct of a certain nature, regardless of what the offender intends to accomplish thereby, [acting with] specific intention to engage in conduct of that nature" (sec. 4933.41(E); see sec. 2901.22(A), not in the bill).

### **PUCO rule-making authority**

The bill requires the PUCO to adopt competitively neutral rules prescribing procedures necessary for verifying the consent of a consumer for purposes of the bill, as well as any procedures necessary for the filing of a security under the bill. Further, it authorizes the PUCO to adopt such other competitively neutral rules as it considers necessary to carry out the PUCO-related provisions of the bill. Under the bill, with respect to public telecommunications services only, the rules prescribing procedures for verifying consumer consent must be consistent with specifically referenced rules of the Federal Communications Commission defining verified consent. (Sec. 4933.43.)

### *PUCO enforcement authority*

The bill authorizes the PUCO to exercise its jurisdiction, under an existing complaint statute of Ohio public utility law, regarding any violation of the bill's prohibitions by a person that is a public utility under Ohio public utility law. This authority exists upon complaint by any person or complaint or initiative of the PUCO. (Sec. 4933.44(A).) Further, the bill provides that the powers, remedies, forfeitures, and penalties enumerated below are in addition to any other power, remedy, forfeiture, or penalty provided by law (sec. 4933.44(G)).

The bill requires the PUCO to take all the following actions by order if it finds, after notice and hearing pursuant to existing law, a violation or failure to comply on the part of a public utility:

(1) Rescind the aggrieved consumer's change in service provider or subscription to new service, as applicable;

(2) Require the utility to absolve the consumer of any liability for charges assessed the consumer, or refund to the aggrieved consumer any charges collected from the consumer, by the utility during such period, after the violation or failure to comply occurred, that is determined reasonable by the PUCO;

(3) Require the utility to refund or pay to the aggrieved consumer any fees paid or costs incurred by the consumer resulting from the change of the consumer's service or service provider or providers, or from the resumption of the consumer's service with the service provider or providers from which the consumer was switched;

(4) Require the service provider or providers from which a consumer was switched to make the consumer whole regarding any bonuses or benefits, such as airline mileage or product discounts, to which the consumer is entitled, by restoring bonuses or benefits the consumer lost as a result of the violation or failure to comply and providing bonuses or benefits the consumer would have earned if not for the violation or failure to comply, or by providing something of equal value (sec. 4933.44(B)).

Additionally, the bill authorizes the PUCO to impose any of the following remedies or forfeitures with respect to a public utility, after notice and hearing pursuant to existing law:

(1) Require the utility to comply or undertake any necessary corrective action;

(2) Require the utility to compensate the service provider or providers from which the aggrieved consumer was switched, in the amount of all charges the consumer would have paid that particular service provider for the same or comparable service had the violation or failure to comply not occurred;

(3) Require the utility to compensate the service provider or providers from which the aggrieved consumer was switched for any costs that the particular service provider incurs as a result of making the consumer whole as described in (4) above or of effecting the resumption of the consumer's service;

(4) Assess upon the utility forfeitures of not more than \$1,000 for each day of each violation or failure to comply; or, if the PUCO finds a pattern or practice of committing any such violations or failures to comply, forfeitures of not more than \$5,000 for each such day. Forfeitures collected must be deposited into the state treasury to the credit of the General Revenue Fund.

(5) Require the utility to file with the PUCO a security payable to the state in such amount and upon such terms as the PUCO determines necessary to ensure compliance and payment of forfeitures;

(6) Rescind the utility's authority to provide natural gas service or public telecommunications service within Ohio (sec. 4933.44(C)).

The bill provides that PUCO enforcement proceedings are governed by existing Ohio public utility law (Chapter 4903.) which, among other things, establishes discovery and appellate rights and PUCO authority with respect to examination of witnesses and records (sec. 4933.44(D)).

Under the bill, the PUCO may direct the AG to commence legal action to enforce a PUCO order issued under the bill, including orders assessing forfeitures. The bill provides that such an action may be brought in the Court of Common Pleas of Franklin County or the court of common pleas of any county in which venue is proper under the Rules of Civil Procedure. Further, under the bill, the action in a court of common pleas has precedence over all other civil actions in the court. (Sec. 4933.44(E).)

### **AG enforcement authority**

The bill provides that a violation of the bill's prohibitions is an unfair or deceptive act or practice in violation of the Consumer Sales Practices Law. Through definitional language, the bill extends the AG's enforcement authority under that law so that the AG may act on behalf of business, as well as residential, consumers, but only with respect to enforcement action regarding persons the AG

currently may take action against under the Consumer Sales Practices Law. (Sec. 4933.45(A).) Such persons exclude natural gas companies, telephone companies, and other persons as so defined in Ohio public utility law (sec. 1345.01(A), not in the bill).

In expressly extending the Consumer Sales Practices Law to violations of the bill's general prohibitions, the bill authorizes the AG to utilize existing investigative authority under that law, to issue cease and desist orders, and to accept a written assurance of voluntary compliance. The AG also may act to obtain a declaratory judgment, a temporary restraining order, preliminary injunction, or permanent injunction and may seek the imposition by a court of civil penalties of not more than \$5,000 for each day of a violation of such an order or injunction; and may initiate a process whereby any state license or permit of a violator is rescinded. The AG also may bring class actions and may seek other remedies to make restitution to persons harmed or to obtain appropriate relief. The bill states that the AG's enforcement authority under the bill is in addition to any other applicable powers of the AG, including authority to initiate criminal proceedings, as described below (sec. 4933.45(B)).

Under the bill, the AG may initiate criminal proceedings for a prosecution by presenting evidence of criminal violations to the prosecuting attorney of any county in which the offense may be prosecuted. If the prosecuting attorney does not prosecute the violations, or at the request of the prosecuting attorney, the AG may proceed in the prosecution with all the rights, privileges, and powers conferred by law on prosecuting attorneys, including the power to appear before grand juries and to interrogate witnesses before grand juries. (Sec. 4933.45(C).)

### **Criminal penalties**

The bill establishes a criminal penalty that may be applied pursuant to PUCO or AG action against any person that purposely violates the bill's prohibitions. The penalty is a felony of the fifth degree on a first offense (for an organization, punishable by a fine of not more than \$7,500) and a felony of the fourth degree on each subsequent offense (for an organization, punishable by a fine of not more than \$10,000). (Secs. 1345.99(B) and 4933.99(E); also see sec. 2929.31(A)(7) and (6), not in the bill.)

### **Rights of private action**

The bill extends a right of private action under existing Ohio public utility law to any violation of the bill's prohibitions: a violating utility is liable to the aggrieved person in treble the amount of damages sustained in consequence of a violation or failure to comply (sec. 4933.44(F); see sec. 4905.61, not in the bill).

Under the bill, this remedy is in addition to any other power, remedy, forfeiture, or penalty provided by law (sec. 4933.44(G)).

Further, in the case of a violation or failure to comply under the bill that constitutes an unfair or deceptive act or practice under the Consumer Sales Practices Law, the private remedies available under that law are available to an aggrieved consumer. Those remedies include a rescission of the transaction or the recovery of damages, a declaratory judgment, injunction, or other appropriate relief, and payment of reasonable attorney's fees under specified circumstances. (Sec. 4933.45(A); see sec. 1345.09, not in the bill.)

### **Current law**

Under authority of existing Ohio public utility law, the PUCO has incorporated into its minimum telephone service standards a rule that addresses slamming (Rule No. 4901:5-06(A), Ohio Administrative Code; see *In the Matter of the Amendment of the Minimum Telephone Service Standards as Set Forth in Chapter 4901:1-5 of the Ohio Administrative Code*, Case No. 96-1175-TP-ORD (June 26, 1997)).

The current PUCO rule prohibits changing a subscriber's local exchange company or interchange carrier unless the change has first been confirmed in accordance with one of three procedures, which generally include (1) written subscriber authorization on a "letter of agency," (2) electronic authorization by a subscriber, and (3) appropriately qualified and independent third-party verification. Procedures (2) and (3) require follow-up with a letter of agency.

The PUCO rule further provides that any local exchange company or interexchange carrier that violates the rule's verification procedures and collects local service charges from a subscriber must reate the subscriber's calls and is liable to the local exchange company or interexchange carrier previously selected by the subscriber in an amount equal to all charges paid by the subscriber after the violation.

The PUCO rule also states that the subscriber may file a complaint under existing Ohio public utility law (sec. 4905.26), and the PUCO may seek additional penalties and remedies against the offending company or carrier under sections 4905.54 and 4905.57 of the Revised Code and any other applicable statute. Sections 4905.54 and 4905.57 authorize the imposition of forfeitures not exceeding \$1,000 for each day of a violation.

According to the PUCO and AG, the PUCO currently applies its slamming rule to facilities-based providers of telecommunications services and providers that

lease facilities. Resellers of telecommunications services, who merely buy generic time but do not own or lease facilities to provide telecommunications service, currently are not subject to the PUCO rule, and the AG asserts jurisdiction over such resellers under the Consumer Sales Practices Law.

On the federal level, the Federal Communications Commission (FCC) has adopted rules requiring customer verification of orders for long-distance service generated by telemarketing (see 47 C.F.R. 64.1100 and 64.1150). The verification procedures specified are generally similar to those authorized by the PUCO rule, and various remedies and penalties are available.

Regarding the issue of slamming with respect to natural gas service, there are no current PUCO rules or guidelines, but the supplier participants in the PUCO-authorized "Gas Choice" program have reached an agreement among themselves that a customer will not begin natural gas service with a new supplier until the customer is released by its prior supplier.

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## **HISTORY**

<b>ACTION</b>	<b>DATE</b>	<b>JOURNAL ENTRY</b>
Introduced	02-16-99	p. 198

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