

**As Introduced**

**133rd General Assembly  
Regular Session  
2019-2020**

**S. B. No. 86**

**Senator Maharath**

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**A BILL**

To enact sections 4934.01, 4934.02, 4934.03, 1  
4934.031, 4934.05, 4934.07, 4934.09, 4934.11, 2  
4934.30, and 4934.32 of the Revised Code to 3  
regulate certain resellers of utility service. 4

**BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:**

**Section 1.** That sections 4934.01, 4934.02, 4934.03, 5  
4934.031, 4934.05, 4934.07, 4934.09, 4934.11, 4934.30, and 6  
4934.32 of the Revised Code be enacted to read as follows: 7

**Sec. 4934.01.** As used in this chapter: 8

(A) "Allowable residential rate" means the following, as 9  
applicable: 10

(1) The total charge for all components of electric 11  
utility service for customers who receive the residential 12  
standard service offer on a per unit basis from a utility 13  
provider that is regulated by the public utilities commission; 14

(2) The total charge for all components of natural gas 15  
utility service for customers who receive the residential 16  
standard choice offer on a per unit basis from a utility 17  
provider that is regulated by the commission; 18

(3) The total charge for all components of water-works or sewage disposal system service for customers who receive the residential standard rate or offer on a per unit basis from a utility provider that is regulated by the commission. 19  
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(B) "Person" means any of the following that is capable of suing or being sued in a court of record in this state: 23  
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(1) An individual; 25

(2) A firm; 26

(3) A partnership; 27

(4) A limited liability partnership; 28

(5) A limited liability company; 29

(6) A corporation; 30

(7) An association; 31

(8) A union; 32

(9) An entity. 33

"Person" includes the agent of a person. 34

(C) "Reseller" means any person to which all of the following apply: 35  
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(1) The person is not an entity subject to the jurisdiction of the public utilities commission under another chapter of the Revised Code. 37  
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(2) The person is not specifically exempt from the commission's jurisdiction under Title XLIX of the Revised Code. 40  
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(3) The person charges an amount to a residential consumer for utility service as measured through one or more submeters 42  
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and either of the following applies: 44

(a) The amount charged for the total of all components of 45  
a utility service is greater, on a monthly basis, than six 46  
dollars above the total amount at which the utility service was 47  
purchased from the utility provider. 48

(b) The person has common ownership in or is affiliated 49  
with an entity from which the utility service was purchased or 50  
the person shares in the revenue or profits of that entity 51  
through a contractual relationship or otherwise. 52

(D) "Resident" has the same meaning as in section 4781.01 53  
of the Revised Code. 54

(E) "Residential consumer" means a resident, tenant, or 55  
unit owner. 56

(F) "Submetering infrastructure" includes submeters and 57  
the wires or pipes that connect submeters to master meters. 58

(G) "Tenant" has the same meaning as in section 5321.01 of 59  
the Revised Code. 60

(H) "Unit owner" has the same meaning as in section 61  
5311.01 of the Revised Code. 62

(I) "Utility provider" means the entity that charges the 63  
proprietor or reseller, as applicable, for utility service, 64  
including a competitive supplier of utility service. 65

(J) "Utility service" means electric, natural gas, water- 66  
works, or sewage disposal system service. 67

**Sec. 4934.02.** The public utilities commission is hereby 68  
vested with the power and jurisdiction to supervise and regulate 69  
resellers, only to the extent permitted by this chapter. 70

Sec. 4934.03. (A) The public utilities commission shall, 71  
not later than one hundred eighty days after the effective date 72  
of this section, adopt rules in accordance with Chapter 119. of 73  
the Revised Code for the exclusive purpose of implementing the 74  
provisions of this chapter and governing resellers operating in 75  
this state. 76

(B) The rules adopted under division (A) of this section 77  
shall include provisions governing all of the following: 78

(1) The enforcement of sections 4934.05, 4934.07, 4934.09, 79  
and 4934.11 of the Revised Code; 80

(2) A streamlined process for a reseller to obtain a 81  
certificate to operate in this state. As used in this division, 82  
"streamlined" means that the process includes an expedited 83  
application review by the commission to enable issuance of a 84  
certificate within thirty days of a completed application's 85  
filing date. 86

(3) The items that must be included in residential 87  
consumers' bills, which shall include the amount of the 88  
consumer's usage, the per unit rate for the consumer's usage, 89  
the due date of the consumer's bill, contact information for the 90  
reseller and the commission, and any other items that the 91  
commission determines appropriate; 92

(4) A process for dispute resolution under which a 93  
residential consumer may file a complaint with the commission 94  
for any act or omission of a reseller in contradiction to any 95  
requirement or prohibition of this chapter or rules adopted 96  
under this section; 97

(5) Consumer protections including protections against 98  
unjust, unreasonable, or deceptive policies or practices 99

regarding connecting to, maintaining, or terminating utility 100  
service, provided that the rule adopted under this division is 101  
limited to governing these consumer protections; 102

(6) Subject to division (C) of this section, any other 103  
processes, requirements, restrictions, or other items that the 104  
commission determines to be necessary to protect residential 105  
consumers, provided that the rule adopted under this division is 106  
limited to governing residential consumer protections. 107

(C) The rules adopted under division (A) of this section 108  
shall not do any of the following: 109

(1) Except as provided in division (B)(1) of this section, 110  
regulate the rates or charges of resellers; 111

(2) Require resellers to file rates, charges, or tariffs 112  
at the commission; 113

(3) Require resellers to file at the commission an annual 114  
report or other report of the resellers' activities that are 115  
governed under this chapter. 116

**Sec. 4934.031.** If the public utilities commission fails to 117  
reject or approve an application for a reseller's certificate to 118  
operate within thirty days after the completed application for 119  
the certificate is filed, then, beginning on the thirty-first 120  
day after the filing date, the application shall be deemed 121  
approved and the reseller shall be deemed to have a valid 122  
certificate to operate from the commission. 123

**Sec. 4934.05.** Beginning thirty-one days after the rules 124  
adopted under division (A) of section 4934.03 of the Revised 125  
Code become effective, no reseller may operate in this state 126  
without having a current and valid certificate to operate from 127  
the public utilities commission. 128

Sec. 4934.07. (A) As used in this section, "property agreement" means a rental agreement, condominium association agreement, or similar or related agreement under which a residential consumer is charged for the provision of utility service by a reseller. 129  
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(B) A reseller shall charge not more than the amount chosen by the residential consumer under division (C) of this section. 134  
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(C) A residential consumer shall, at the time that the consumer executes a property agreement, choose either of the following options: 137  
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(1) To be charged, for the monthly utility usage at the consumer's residential unit, an amount, as designated in a property agreement, that is not more than the amount the consumer would have been charged during the same month for the same usage under the utility provider's allowable residential rate; 140  
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(2) To be charged, for the consumer's monthly utility usage at the consumer's residential unit, for a period of not more than twelve months, an amount, as designated in a property agreement, that is not more than the amount the consumer would have been charged for the same usage under the utility provider's allowable residential rate in effect at the time that the consumer executes the property agreement. 146  
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(D) If a property agreement is renewed after twelve months or continues past twelve months, the consumer shall, at the end of the initial twelve-month period and every twelve months thereafter, choose either option under division (C) (1) or (2) of this section, except that for the option under division (C) (2) 153  
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of this section, the rate cap shall be the allowable residential 158  
rate in effect at the time that the consumer chooses the option 159  
under division (D) of this section. 160

**Sec. 4934.09.** (A) If a reseller charges a residential 161  
consumer for the provision of utility service to a common area, 162  
the common-area charge billed to one residential unit shall not 163  
be more than the lesser of the following, equally divided by the 164  
number of residential units that have access to that common 165  
area: 166

(1) The total actual cost of providing the utility service 167  
to that common area; 168

(2) The amount equal to the utility provider's allowable 169  
residential rate multiplied by the amount of utility service 170  
provided to that common area. 171

(B) If residential consumers and commercial consumers 172  
share a common area, the charge for the residential consumer 173  
share of the common area shall be based on the square footage of 174  
the common area used by residential consumers. Residential 175  
consumers shall be charged for the residential share of the 176  
common area according to the allocation of costs under division 177  
(A) of this section. 178

(C) The common-area charge shall be listed as a separate 179  
line item on a residential consumer's bill. 180

**Sec. 4934.11.** (A) No reseller, including every officer, 181  
agent, or employee of a reseller acting in an official capacity, 182  
shall knowingly violate or willfully fail to comply with any 183  
section of this chapter or any order, direction, or requirement 184  
of the public utilities commission made under authority of this 185  
chapter. 186

(B) (1) (a) Except as provided in divisions (B) (2) and (3) 187  
of this section, the commission shall assess a forfeiture of not 188  
more than one thousand dollars against a reseller for each 189  
violation or failure described in division (A) of this section. 190  
The amount of a forfeiture assessed under division (B) (1) of 191  
this section shall be commensurate with the severity of the 192  
violation or failure. 193

(b) The reseller shall be liable if a person is injured 194  
because of a violation or failure described in division (A) of 195  
this section or because of an omission of a reseller in 196  
contradiction to any requirement or prohibition of this chapter. 197  
Any monetary damages shall be equal to the amount of damages 198  
sustained in consequence of the violation, failure, or omission. 199  
Any recovery under this division does not affect a recovery by 200  
the state for any forfeiture provided for in this section. 201

(2) The commission shall assess a forfeiture of not more 202  
than ten thousand dollars against a reseller for each violation 203  
or failure described in division (A) of this section, if the 204  
commission concludes that the failure or violation was the 205  
result of the reseller engaging in deception or fraud or 206  
endangering public health or safety. 207

(3) The commission shall assess a forfeiture of ten 208  
thousand dollars against a reseller for each violation of 209  
section 4934.05 of the Revised Code. 210

(4) Each day's continuance of a violation or failure 211  
subject to a forfeiture under division (B) (1), (2), or (3) of 212  
this section is a separate offense. 213

(5) All forfeitures collected under this section shall be 214  
deposited in the state treasury to the credit of the general 215

revenue fund. 216

(C) Actions to recover forfeitures provided for in this 217  
section shall be prosecuted in the name of the state and may be 218  
brought in the court of common pleas of any county in which the 219  
reseller is located. Those actions shall be commenced and 220  
prosecuted by the attorney general if the attorney general is 221  
directed to do so by the commission. 222

(D) In addition to any forfeitures assessed under this 223  
section, the commission may, if a reseller demonstrates a 224  
pattern of violations or failures described in division (A) of 225  
this section, suspend, conditionally suspend, revoke, or refuse 226  
to renew the reseller's certificate to operate. 227

**Sec. 4934.30.** The public utilities commission shall not 228  
require a public utility to permit the resale of utility service 229  
in its certified territory, unless provided for in the terms of 230  
the public utility's resale tariff. 231

**Sec. 4934.32.** Nothing in this chapter prohibits the public 232  
utilities commission from determining whether an entity that 233  
charges an amount to a residential consumer for utility service, 234  
as measured through one or more submeters, is a public utility. 235