

**As Introduced**

**134th General Assembly  
Regular Session  
2021-2022**

**S. B. No. 95**

**Senator Maharath  
Cosponsors: Senators Thomas, Yuko, Craig**

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**A BILL**

To enact sections 4903.191, 4934.01, 4934.02, 1  
4934.03, 4934.031, 4934.04, 4934.05, 4934.07, 2  
4934.10, 4934.11, 4934.30, 4934.31, 4934.32, and 3  
4934.35 of the Revised Code to require refunds 4  
to utility customers who have been improperly 5  
charged and to regulate certain resellers of 6  
utility service. 7

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

**Section 1.** That sections 4903.191, 4934.01, 4934.02, 8  
4934.03, 4934.031, 4934.04, 4934.05, 4934.07, 4934.10, 4934.11, 9  
4934.30, 4934.31, 4934.32, and 4934.35 of the Revised Code be 10  
enacted to read as follows: 11

**Sec. 4903.191.** Notwithstanding any provision of the 12  
Revised Code to the contrary, all charges paid by customers to a 13  
public utility that are later found to be unreasonable, 14  
unlawful, imprudent, or otherwise improper by the public 15  
utilities commission, the supreme court, or other authority 16  
shall be promptly refunded to the customers who paid such 17  
charges. The commission shall order such refunds in a manner 18

designed to allocate the refunds to customer classes in the same 19  
proportion as the charges were originally collected. 20

**Sec. 4934.01.** As used in this chapter: 21

(A) "Allowable residential rate" means all charges, 22  
including fixed charges and per unit charges, for the following: 23

(1) All components of electric utility service for 24  
customers who receive the residential standard service offer 25  
from the electric distribution utility in the customer's 26  
immediate service area for electric service of the same type and 27  
quantity delivered to the residential consumer; 28

(2) All components of natural gas utility service for 29  
customers who receive the residential standard choice offer from 30  
the natural gas company in the customer's immediate service area 31  
for natural gas service of the same type and quantity delivered 32  
to the residential consumer; 33

(3) All components of water-works or sewage disposal 34  
system service for customers who receive water-works or sewage 35  
disposal system service from the water-works or sewage disposal 36  
system company in the customer's immediate service area for 37  
water-works or sewage disposal system service of the same type 38  
and quantity delivered to the residential consumer. 39

(B) "Landlord" and "tenant" have the same meanings as in 40  
section 5321.01 of the Revised Code. 41

(C) "Person" means any of the following that is capable of 42  
suing or being sued in a court of record in this state: 43

(1) An individual; 44

(2) A firm; 45

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| <u>(3) A partnership;</u>   | 46                   |
| <u>(4) A limited liability partnership;</u>   | 47                   |
| <u>(5) A limited liability company;</u>   | 48                   |
| <u>(6) A corporation;</u>   | 49                   |
| <u>(7) An association;</u>  | 50                   |
| <u>(8) A union;</u>   | 51                   |
| <u>(9) An entity.</u>   | 52                   |
| <u>"Person" includes the agent of a person.</u>   | 53                   |
| <u>(D) "Reseller" means any person to which all of the following apply:</u>   | 54<br>55             |
| <u>(1) The person is not an entity specifically subject to the jurisdiction of the public utilities commission under another chapter of the Revised Code.</u>   | 56<br>57<br>58       |
| <u>(2) The person is not specifically exempt from the commission's jurisdiction under Title XLIX of the Revised Code.</u>   | 59<br>60             |
| <u>(3) The person, whether or not the person supplies the utility service, charges an amount to a residential consumer for utility service as measured through one or more submeters and either of the following applies:</u> | 61<br>62<br>63<br>64 |
| <u>(a) The monthly charge for the total of all components of a utility service exceeds the actual cost of the utility service:</u>  | 65<br>66<br>67       |
| <u>(i) Delivered to the landlord's or reseller's meter; and</u>   | 68                   |
| <u>(ii) Purchased from an entity that charges the proprietor or reseller, as applicable, for the utility service, including any of the following entities:</u>  | 69<br>70<br>71       |

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| <u>(I) A competitive supplier of utility service;</u>  | 72                   |
| <u>(II) An entity described in section 4905.03 of the Revised Code that is a public utility under section 4905.02 of the Revised Code;</u>   | 73<br>74<br>75       |
| <u>(III) A municipal utility;</u>  | 76                   |
| <u>(IV) A not-for-profit utility.</u>  | 77                   |
| <u>(b) The person has common ownership in or is affiliated with an entity from which any component of the utility service was purchased or the person shares in the revenue or profits of that entity through a contractual relationship or otherwise.</u> | 78<br>79<br>80<br>81 |
| <u>(E) "Resident" has the same meaning as in section 4781.01 of the Revised Code.</u>  | 82<br>83             |
| <u>(F) "Residential consumer" means a resident, tenant, or unit owner.</u>   | 84<br>85             |
| <u>(G) "Submetering infrastructure" includes submeters and the wires or pipes that connect submeters to master meters.</u>   | 86<br>87             |
| <u>(H) "Unit owner" has the same meaning as in section 5311.01 of the Revised Code.</u>  | 88<br>89             |
| <u>(I) "Utility service" means electric, natural gas, water-works, or sewage disposal system service.</u>  | 90<br>91             |
| <u>(J) Water-works company and sewage disposal system company have the same meanings as in section 4905.03 of the Revised Code.</u>  | 92<br>93<br>94       |
| <u>Sec. 4934.02. The public utilities commission is hereby vested with the power and jurisdiction to supervise and regulate resellers, only to the extent permitted by this chapter.</u>   | 95<br>96<br>97       |
| <u>Sec. 4934.03. (A) The public utilities commission shall,</u>  | 98                   |

not later than one hundred eighty days after the effective date 99  
of this section, adopt rules in accordance with Chapter 119. of 100  
the Revised Code for the purpose of effectuating the provisions 101  
of this chapter and governing resellers operating in this state. 102

(B) The rules adopted under division (A) of this section 103  
shall include provisions governing all of the following: 104

(1) The enforcement of sections 4934.05, 4934.07, and 105  
4934.11 of the Revised Code; 106

(2) A streamlined process for a reseller to obtain a 107  
certificate to operate in this state that grants the office of 108  
the consumers' counsel the right to intervene in the process. As 109  
used in this division, "streamlined" means that the process 110  
includes an expedited application review by the commission to 111  
enable issuance of a certificate within ninety days of a 112  
completed application's filing date unless the application is 113  
suspended by the commission. 114

(3) The requirements a reseller must meet to qualify for 115  
certification, including the following: 116

(a) The technical, managerial, and financial capabilities 117  
to provide utility service to residential consumers and to 118  
assume all duties, responsibilities, and obligations of a 119  
reseller; 120

(b) The ability to comply with commission rules or orders. 121

(4) The items that must be included in each residential 122  
consumer's bill, which shall include the amount and time period 123  
of the consumer's usage, the per unit rate for the consumer's 124  
usage, the due date of the consumer's bill, contact information 125  
for the reseller, the commission, and the office of the 126  
consumers' counsel, and any other items that the commission 127

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| <u>determines appropriate;</u>  | 128 |
| <u>(5) A process for dispute resolution under which a</u>               | 129 |
| <u>residential consumer or the office of the consumers' counsel may</u> | 130 |
| <u>file a complaint with the commission under section 4905.26 of</u>    | 131 |
| <u>the Revised Code for any act or omission of a reseller in</u>        | 132 |
| <u>contradiction to any requirement or prohibition of this chapter</u>  | 133 |
| <u>or rules adopted under this section;</u>                             | 134 |
| <u>(6) A public process, including a hearing and the</u>                | 135 |
| <u>opportunity for public comment, for the adoption of the utility</u>  | 136 |
| <u>service standards required under section 4934.04 of the Revised</u>  | 137 |
| <u>Code;</u>  | 138 |
| <u>(7) Residential consumer protections including protections</u>       | 139 |
| <u>against unjust, unreasonable, or deceptive policies or practices</u> | 140 |
| <u>regarding connecting to, maintaining, or terminating utility</u>     | 141 |
| <u>service;</u>   | 142 |
| <u>(8) Subject to division (C) of this section, any other</u>           | 143 |
| <u>processes, requirements, restrictions, or other items that the</u>   | 144 |
| <u>commission determines to be necessary to protect residential</u>     | 145 |
| <u>consumers.</u>   | 146 |
| <u>(C) The rules adopted under division (A) of this section</u>         | 147 |
| <u>shall not do any of the following:</u>                               | 148 |
| <u>(1) Except as provided in division (B) (1) of this section,</u>      | 149 |
| <u>regulate the rates or charges of resellers;</u>                      | 150 |
| <u>(2) Require resellers to file rates, charges, or tariffs</u>         | 151 |
| <u>at the commission;</u>   | 152 |
| <u>(3) Require resellers to file at the commission an annual</u>        | 153 |
| <u>report of the resellers' activities that are governed under this</u> | 154 |
| <u>chapter.</u>   | 155 |

Sec. 4934.031. If the public utilities commission fails to 156  
reject or approve an application for a reseller's certificate to 157  
operate within ninety days after the completed application for 158  
the certificate is filed, then, beginning on the ninety-first 159  
day after the filing date, the application shall be deemed 160  
approved and the reseller shall be deemed to have a valid 161  
certificate to operate from the commission. 162

Sec. 4934.04. A reseller that charges residential 163  
consumers for utility service shall, at a minimum, adopt and 164  
adhere to utility service standards for the provision of that 165  
utility service. The standards shall be at least as stringent as 166  
the service standards for the provision of public utility 167  
service adopted under Chapter 4901:1 of the Administrative Code 168  
and any winter reconnection order issued by the public utilities 169  
commission. 170

Sec. 4934.05. Beginning ninety-one days after the rules 171  
adopted under division (A) of section 4934.03 of the Revised 172  
Code become effective, no reseller may operate in this state 173  
without having a current and valid certificate to operate from 174  
the public utilities commission. 175

Sec. 4934.07. (A) As used in this section, "property 176  
agreement" means a rental agreement, unit owners association 177  
agreement, or similar or related agreement under which a 178  
residential consumer is charged for the provision of utility 179  
service by a reseller. 180

(B) A reseller shall charge not more than the amount 181  
chosen by the residential consumer under division (C) of this 182  
section. 183

(C) A residential consumer shall, at the time that the 184

consumer executes a property agreement, choose either of the 185  
following options: 186

(1) To be charged, for the consumer's monthly utility 187  
usage at the consumer's residential unit, an amount, as 188  
designated in a property agreement, that is not more than the 189  
amount the consumer would have been charged during the same 190  
month for the same usage under the allowable residential rate; 191

(2) To be charged, for the consumer's monthly utility 192  
usage at the consumer's residential unit, for a period of not 193  
more than twelve months, an amount, as designated in a property 194  
agreement, that is not more than the amount the consumer would 195  
have been charged for the same usage under the allowable 196  
residential rate in effect at the time that the consumer 197  
executes the property agreement. 198

(D) If a property agreement is renewed after twelve months 199  
or continues past twelve months, the residential consumer shall, 200  
at the end of the initial twelve-month period and every twelve 201  
months thereafter, choose either option under division (C) (1) or 202  
(2) of this section, except that for the option under division 203  
(C) (2) of this section, the rate cap shall be the allowable 204  
residential rate in effect at the time that the consumer chooses 205  
the option under division (D) of this section. 206

(E) A residential consumer shall be charged for the 207  
utility service as described under division (C) (1) of this 208  
section for the following twelve-month period, if the consumer 209  
fails to do the one of the following: 210

(1) Make an election under division (C) of this section 211  
prior to the first month's charge for utility service; 212

(2) Make an election under division (D) of this section 213



prior to the following month's charge for utility service. 214

Sec. 4934.10. (A) The office of the consumers' counsel may 215  
represent a residential consumer receiving utility service from 216  
a reseller under this chapter. 217

(B) At the discretion of the consumers' counsel, the 218  
office of the consumers' counsel may exercise the right to 219  
intervene, and to be heard in its own right, in a public 220  
utilities commission proceeding regarding a reseller's 221  
certificate, the assessment of forfeitures, or the recovery of 222  
damages under this chapter. 223

Sec. 4934.11. (A) No reseller, including every officer, 224  
agent, or employee of a reseller acting in an official capacity, 225  
shall violate or fail to comply, or by omission fail to comply, 226  
with any section of this chapter or any order, direction, or 227  
requirement of the public utilities commission made under 228  
authority of this chapter. 229

(B) (1) For each violation, failure, or omission described 230  
in division (A) of this section, the reseller shall be liable to 231  
the person or the residential consumer injured in the amount of 232  
treble the damages sustained in consequence of the violation, 233  
failure, or omission, plus reasonable attorney's fees. 234

(2) A residential consumer, the office of the consumers' 235  
counsel, or the attorney general may bring an action under this 236  
section to recover damages from a reseller required to be 237  
certified under section 4934.05 of the Revised Code. In an 238  
action brought under this section, the office of the consumer's 239  
counsel, at the discretion of the consumers' counsel, may 240  
represent any or all residential consumers served by the 241  
reseller, or the office of consumers' counsel may exercise the 242

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| <u>right to intervene and to be heard in its own right.</u>             | 243 |
| <u>(3) Any monetary damages awarded to a residential consumer</u>       | 244 |
| <u>under this section shall include the following:</u>                  | 245 |
| <u>(a) The return of improper or unlawful charges collected</u>         | 246 |
| <u>from the consumer;</u>   | 247 |
| <u>(b) An amount equal to treble the amount of damages</u>              | 248 |
| <u>sustained in consequence of the violation, failure, or omission.</u> | 249 |
| <u>(4) Monetary damages awarded also shall include reasonable</u>       | 250 |
| <u>attorney's fees for the representative of the consumer,</u>          | 251 |
| <u>including, if applicable, the office of the consumers' counsel.</u>  | 252 |
| <u>(5) Any damages recovered under division (B) of this</u>             | 253 |
| <u>section are in addition to, and not a replacement for, any</u>       | 254 |
| <u>forfeiture assessed under division (C) of this section.</u>          | 255 |
| <u>(C) (1) Except as provided in divisions (C) (2) and (3) of</u>       | 256 |
| <u>this section, the commission shall assess a forfeiture of not</u>    | 257 |
| <u>more than one thousand dollars against a reseller for each</u>       | 258 |
| <u>violation, failure, or omission described in division (A) of</u>     | 259 |
| <u>this section. The amount of a forfeiture assessed under division</u> | 260 |
| <u>(C) (1) of this section shall be commensurate with the severity</u>  | 261 |
| <u>of the violation, failure, or omission.</u>                          | 262 |
| <u>(2) The commission shall assess a forfeiture of not more</u>         | 263 |
| <u>than ten thousand dollars against a reseller for each violation,</u> | 264 |
| <u>failure, or omission described in division (A) of this section,</u>  | 265 |
| <u>if the commission concludes that the violation, failure, or</u>      | 266 |
| <u>omission was the result of the reseller engaging in deception or</u> | 267 |
| <u>fraud or endangering public health or safety.</u>                    | 268 |
| <u>(3) The commission shall assess a forfeiture of ten</u>              | 269 |
| <u>thousand dollars against a reseller for each violation of</u>        | 270 |

section 4934.05 of the Revised Code. 271

(4) Each day's continuance of a violation, failure, or 272  
omission subject to a forfeiture under division (C) (1), (2), or 273  
(3) of this section is a separate offense. 274

(5) All forfeitures collected under this section shall be 275  
deposited in the state treasury to the credit of the general 276  
revenue fund. 277

(D) Actions to recover forfeitures provided for in this 278  
section shall be prosecuted in the name of the state on behalf 279  
of residential consumers injured by resellers' actions or 280  
inaction and may be brought in the court of common pleas of any 281  
county in which the reseller is located.Actions shall be 282  
commenced and prosecuted by the attorney general if the attorney 283  
general is directed to do so by the commission or may be 284  
instituted by the office of the consumers' counsel. 285

(E) In addition to any forfeitures assessed under this 286  
section, the commission may, if a reseller demonstrates a 287  
pattern of violations, failures, or omissions described in 288  
division (A) of this section, suspend, conditionally suspend, 289  
revoke, or refuse to renew the reseller's certificate to 290  
operate. 291

**Sec. 4934.30.** The public utilities commission shall not 292  
require a public utility to permit the resale of utility service 293  
in its certified territory, unless provided for in the terms of 294  
the public utility's resale tariff. 295

**Sec. 4934.31.** If, on the effective date of this section, 296  
the resale of natural gas utility service is prohibited by the 297  
terms of a natural gas company's tariff, nothing in this chapter 298  
permits the resale of the natural gas company's utility service 299

for the period during which the natural gas company's tariff is 300  
in effect. 301

**Sec. 4934.32.** (A) Except as provided in division (B) of 302  
this section, nothing in this chapter prohibits the public 303  
utilities commission from determining whether a person that 304  
sells utility service to a residential consumer, as measured 305  
through one or more submeters, is a public utility. 306

(B) The commission shall not determine a person described 307  
in division (A) of this section to be a public utility if the 308  
person is either of the following: 309

(1) A reseller with a current and valid certificate to 310  
operate from the commission pursuant to section 4934.05 of the 311  
Revised Code; 312

(2) Not required to have a certificate under section 313  
4934.05 of the Revised Code. 314

**Sec. 4934.35.** (A) The public utilities commission shall 315  
submit two reports to the general assembly regarding the 316  
effectiveness of the utility service provided to residential 317  
consumers under this chapter. The first report shall be 318  
submitted not later than one and one-half years after the 319  
effective date of this section, and the second report shall be 320  
submitted not later than two and one-half years after the 321  
effective date of this section. 322

(B) Both reports shall be submitted after consultation 323  
with the consumers' counsel and shall address utility service 324  
provided under this chapter and the commission's findings 325  
regarding all of the following: 326

(1) Whether the price and quality of the utility service 327  
provided protects the interests of residential consumers; 328

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| <u>(2) Whether the quality of service provided is at least at</u>     | 329 |
| <u>the same quality level as the consumer would otherwise receive</u> | 330 |
| <u>from a public utility for that service;</u>                        | 331 |
| <u>(3) Whether the price for the utility service provided is</u>      | 332 |
| <u>comparable to the price the consumer would otherwise pay a</u>     | 333 |
| <u>public utility for that service.</u>                               | 334 |