

As Introduced

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

S. B. No. 95

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

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

<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
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<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
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<u>(2) The person is not specifically exempt from the commission's jurisdiction under Title XLIX of the Revised Code.</u>	59
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<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
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<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
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<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
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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 74 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 79 80 81
<u>(E) "Resident" has the same meaning as in section 4781.01 of the Revised Code.</u>	82 83
<u>(F) "Residential consumer" means a resident, tenant, or unit owner.</u>	84 85
<u>(G) "Submetering infrastructure" includes submeters and the wires or pipes that connect submeters to master meters.</u>	86 87
<u>(H) "Unit owner" has the same meaning as in section 5311.01 of the Revised Code.</u>	88 89
<u>(I) "Utility service" means electric, natural gas, water-works, or sewage disposal system service.</u>	90 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 93 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 96 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

<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

<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

<u>section 4934.05 of the Revised Code.</u>	271
<u>(4) Each day's continuance of a violation, failure, or</u>	272
<u>omission subject to a forfeiture under division (C) (1), (2), or</u>	273
<u>(3) of this section is a separate offense.</u>	274
<u>(5) All forfeitures collected under this section shall be</u>	275
<u>deposited in the state treasury to the credit of the general</u>	276
<u>revenue fund.</u>	277
<u>(D) Actions to recover forfeitures provided for in this</u>	278
<u>section shall be prosecuted in the name of the state on behalf</u>	279
<u>of residential consumers injured by resellers' actions or</u>	280
<u>inaction and may be brought in the court of common pleas of any</u>	281
<u>county in which the reseller is located.Actions shall be</u>	282
<u>commenced and prosecuted by the attorney general if the attorney</u>	283
<u>general is directed to do so by the commission or may be</u>	284
<u>instituted by the office of the consumers' counsel.</u>	285
<u>(E) In addition to any forfeitures assessed under this</u>	286
<u>section, the commission may, if a reseller demonstrates a</u>	287
<u>pattern of violations, failures, or omissions described in</u>	288
<u>division (A) of this section, suspend, conditionally suspend,</u>	289
<u>revoke, or refuse to renew the reseller's certificate to</u>	290
<u>operate.</u>	291
<u>Sec. 4934.30. The public utilities commission shall not</u>	292
<u>require a public utility to permit the resale of utility service</u>	293
<u>in its certified territory, unless provided for in the terms of</u>	294
<u>the public utility's resale tariff.</u>	295
<u>Sec. 4934.31. If, on the effective date of this section,</u>	296
<u>the resale of natural gas utility service is prohibited by the</u>	297
<u>terms of a natural gas company's tariff, nothing in this chapter</u>	298
<u>permits the resale of the natural gas company's utility service</u>	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

<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