
HOUSE BILL 2860

State of Washington

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By Representatives Poulsen, Morris, Cooper, Kastama, Kessler, Keiser, Butler, Dunshee, Murray, Cody, Constantine, Ogden, Gardner, Romero, Chopp, Regala, Appelwick, Hatfield, Fisher, Doumit, Gombosky, Tokuda, Quall, Lantz, Grant, O'Brien, Wood, Anderson, Dickerson, Conway and Cole

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1 AN ACT Relating to retail electrical customers; adding a new
2 chapter to Title 18 RCW; and creating new sections.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

4 NEW SECTION. **Sec. 1.** (1) The legislature finds that:

5 (a) Electricity is a basic and fundamental need of all residents;

6 (b) Currently Washington's consumer-owned and investor-owned
7 distribution utilities offer consumers a high degree of reliability and
8 service quality while providing some of the lowest rates in the
9 country; and

10 (c) Consumer protection, system reliability, service quality, and
11 low-cost electricity rates could be at risk if electrical deregulation
12 occurs.

13 (2) The legislature intends to:

14 (a) Preserve the benefits of consumer protection, system
15 reliability, high service quality, and low-cost rates in the event of
16 deregulation in the electrical industry;

17 (b) Ensure that all retail electrical customers have the same level
18 of rights and protections;

1 (c) Require the adequate disclosure of the rights afforded to
2 retail electric customers; and

3 (d) Provide for increased protections for consumers against
4 potential unscrupulous business practices that may occur in the
5 marketing of electricity products or services in a deregulated
6 environment.

7 NEW SECTION. **Sec. 2.** The definitions in this section apply
8 throughout this chapter unless the context clearly requires otherwise.

9 (1) "Commission" means the utilities and transportation commission.

10 (2) "Consumer-owned distribution utility" means an electricity
11 distribution utility that is a municipal electric utility formed under
12 Title 35 RCW, a public utility district formed under Title 54 RCW, a
13 cooperative formed under chapter 23.86 RCW, an irrigation district
14 formed under chapter 87.03 RCW, or a mutual corporation or association
15 formed under chapter 24.06 RCW.

16 (3) "Department" means the department of community, trade, and
17 economic development.

18 (4) "Electricity" means electric energy measured in kilowatt hours,
19 or electric capacity measured in kilowatts, or both.

20 (5) "Electricity distribution utility" means a consumer-owned or
21 investor-owned utility that is authorized and engaged in the business
22 of distributing electricity to retail electric customers in the state.

23 (6) "Electricity supplier" means a person or entity that sells
24 electricity directly to more than one retail electric customer,
25 including, but not limited to, electric utilities, aggregators,
26 marketers, brokers, or independent power producers to be distributed by
27 the customer's electricity distribution utility. Electricity suppliers
28 do not include electricity distribution utilities unless the utilities
29 are authorized to sell electricity to retail electric customers who are
30 served by another electricity distribution utility.

31 (7) "Governing body" means the council of a city or town, the
32 commissioners of an irrigation district, municipal electric utility, or
33 public utility district, or the board of directors of an electric
34 cooperative or mutual association that has the authority to set and
35 approve rates.

36 (8) "Investor-owned distribution utility" means an electricity
37 distribution utility owned by investors that meets the definition of an
38 electrical company as defined in RCW 80.04.010.

1 (9) "Proprietary customer information" means (a) information that
2 relates to the source and amount of electricity used by a customer, a
3 customer's payment history, and household data that is made available
4 by the customer solely by virtue of the utility-customer or supplier-
5 customer relationship; and (b) information contained in a customer's
6 bill.

7 (10) "Retail electric customer" means a person or entity that
8 purchases electricity for ultimate consumption and not for resale.

9 NEW SECTION. **Sec. 3.** Each retail electric customer in this state
10 has the right to receive the following disclosures from the electricity
11 distribution utility that provides electricity service to the customer:

12 (1) An explanation of any applicable credit and deposit
13 requirements, including the means by which credit may be established,
14 the conditions under which a deposit may be required, the amount of any
15 deposit, interest paid on the deposit, and the circumstances under
16 which the deposit will be returned or forfeited.

17 (2) A complete, itemized listing of all rates and charges for which
18 the customer is responsible, including charges, if any, to terminate
19 service.

20 (3) An explanation of the metering or measurement policies and
21 procedures, including the process for verifying the reliability of the
22 meters or measurements and adjusting bills upon discovery of errors in
23 the meters or measurements.

24 (4) An explanation of bill payment policies and procedures,
25 including due dates and applicable late fees.

26 (5) An explanation of the payment arrangement options available to
27 customers, including budget payment plans and the availability of home
28 heating assistance from government and private sector organizations.

29 (6) An explanation of the method by which customers must give
30 notice of their intent to discontinue service, the circumstances under
31 which service may be discontinued by the utility, the conditions that
32 must be met by the utility prior to discontinuing service, and how to
33 avoid disconnection.

34 (7) An explanation of the utility's policies governing the
35 confidentiality of proprietary customer information, including the
36 circumstances under which the information may be disclosed and ways in
37 which customers can control access to the information.

1 (8) An explanation of the methods by which customers may make
2 inquiries to and file complaints with the utility, and the utility's
3 procedures for responding to and resolving complaints and disputes,
4 including a customer's right to appeal a decision by an investor-owned
5 distribution utility to the commission and a decision by a consumer-
6 owned utility to the governing body of the consumer-owned utility.

7 NEW SECTION. **Sec. 4.** (1) An electricity distribution utility
8 shall provide the disclosures required in section 3 of this act to
9 retail electric customers at the following times:

10 (a) At the time service is established;

11 (b) At least thirty days prior to the effective date of any changes
12 to the policies and procedures adopted by the utility under section 5
13 or 6 of this act;

14 (c) At least once a year after the adoption of the policies and
15 procedures by the utility under section 5 or 6 of this act; and

16 (d) At any time upon request of the customer.

17 (2) Required disclosures shall be provided in writing using plain
18 language that is understandable to an ordinary customer and presented
19 in a form that is clear and conspicuous.

20 NEW SECTION. **Sec. 5.** (1) Not later than December 1, 1998, each
21 investor-owned distribution utility shall adopt consumer protection
22 policies and procedures to implement the disclosure requirements of
23 this chapter and any related commission rules, whether the rules are
24 currently existing or adopted under this section. An investor-owned
25 distribution utility shall file its policies and procedures with the
26 commission and may modify the policies and procedures from time to
27 time, subject to the approval of the commission.

28 (2) Not later than October 1, 1998, the commission shall adopt
29 rules necessary for investor-owned distribution utilities to comply
30 with the requirements of this chapter.

31 NEW SECTION. **Sec. 6.** (1) Not later than December 1, 1998, the
32 governing body of each consumer-owned distribution utility shall adopt
33 consumer protection policies and procedures to implement the disclosure
34 requirements of this chapter. The policies and procedures shall be
35 adopted only after one or more public meetings on the matter have been
36 held. A consumer-owned distribution utility shall file its policies

1 and procedures with the department along with a summary of the public
2 meetings held on the policies and procedures. A consumer-owned
3 distribution utility may modify the policies and procedures from time
4 to time, subject to the approval of the utility's governing body after
5 a public meeting on the matter.

6 (2) Upon request of the governing body of a consumer-owned
7 distribution utility, the department, the attorney general, and the
8 commission shall provide technical assistance to a consumer-owned
9 distribution utility in the development of its policies and procedures.

10 NEW SECTION. **Sec. 7.** Not later than December 1, 1998, the
11 department shall report to the legislature on the consumer protection
12 policies and procedures adopted by consumer-owned distribution
13 utilities under this chapter. The report shall summarize the policies
14 and procedures adopted, including areas where the policies and
15 procedures were consistent among the consumer-owned distribution
16 utilities and areas where the policies and procedures were inconsistent
17 among the consumer-owned distribution utilities. The report shall also
18 summarize the level of public participation reported by the consumer-
19 owned distribution utilities during the development of the policies and
20 procedures.

21 NEW SECTION. **Sec. 8.** (1) The commission shall study the current
22 and potential future impacts on the issues of cost shifting, system
23 reliability, and service quality that Washington consumers will or may
24 face as a result of the restructuring of the wholesale and retail
25 electricity markets. The study shall analyze the following issues and,
26 where appropriate, identify issues where the model of potential retail
27 restructuring results in a significantly different analysis:

28 (a) The types of cost-shifting by electricity distribution
29 utilities and electricity suppliers from which consumers will need
30 protection, including ways to define, measure, detect, control, deter,
31 and sanction the cost-shifting;

32 (b) The types of system reliability issues related to electricity
33 distribution utilities from which consumers and electricity
34 distribution utilities will need protection, including ways to maintain
35 the integrity of the state's distribution systems and protect the
36 safety of the maintenance and operation workers of the systems; and

1 (c) The types of service quality problems related to electricity
2 distribution utilities and electricity suppliers from which consumers
3 will need protection, including ways to define, measure, detect,
4 control, deter, and sanction the service quality problems.

5 (2) The commission shall submit its report to the governor and the
6 legislature by December 1, 1998.

7 NEW SECTION. **Sec. 9.** Sections 10 through 16 of this act apply to
8 electricity suppliers that are authorized to market, promote, sell, or
9 provide electricity to retail electric customers as a product separate
10 from the distribution services provided by the customers' electricity
11 distribution utilities. However, nothing in this chapter shall be
12 construed to provide electricity suppliers the authority to market,
13 promote, sell, or provide electricity to retail electric customers as
14 products separate from the distribution services provided by
15 electricity distribution utilities.

16 NEW SECTION. **Sec. 10.** (1) An electricity supplier that makes an
17 oral solicitation to sell electricity directly to a retail electric
18 customer for distribution by the customer's electricity distribution
19 utility shall disclose as part of the oral solicitation the following
20 information:

21 (a) The average price for various usage patterns, based on regional
22 load profiles;

23 (b) Notice that the price is for generation only and that
24 additional rates and charges will apply from the customer's electricity
25 distribution utility;

26 (c) A description of the contract length, including beginning and
27 ending dates, and the method of renewal;

28 (d) The fuel mix used to supply the product and the air emissions
29 of sulfur dioxide, nitrogen oxide, and carbon dioxide per kilowatt hour
30 for each source of generation in the fuel mix, except that when the
31 electricity will be supplied without regard to a particular source of
32 generation, then that fact shall be disclosed; and

33 (e) Any other material terms or conditions of the sale.

34 (2) Prior to selling electricity to a retail electric customer for
35 distribution by the customer's electricity distribution utility, an
36 electricity supplier shall disclose the following information in
37 writing to the customer:

1 (a) The electricity supplier's policies and procedures regarding
2 the consumer protection issues for which disclosure is required under
3 section 3 of this act;

4 (b) The terms and conditions for which disclosure is required under
5 subsection (1) of this section;

6 (c)(i) The fuel mix used to supply the product, shown as a pie
7 chart where each resource comprising five percent or more of the total
8 fuel mix is separately listed; and

9 (ii) The air emissions of sulfur dioxide, nitrogen oxide, and
10 carbon dioxide per kilowatt hour for each source of generation in the
11 fuel mix, relative to the regional average emissions per kilowatt hour
12 for each resource, except that when the electricity will be supplied
13 without regard to a particular source of generation, then that fact
14 shall be disclosed;

15 (d) An explanation of whether the rates or charges are fixed or
16 variable and, if variable, a description of the formula by which those
17 rates or charges may change; and

18 (e) A description of any other products or services to be provided
19 by the electricity supplier, if any, other than electricity.

20 (3) Required disclosures under this section shall be provided using
21 plain language that is understandable to ordinary customers and
22 presented in a form that is clear and conspicuous.

23 NEW SECTION. **Sec. 11.** (1) Prior to engaging in the business of
24 selling or advertising to sell electricity directly to a retail
25 electric customer for distribution by the customer's electricity
26 distribution utility, an electricity supplier shall establish a
27 customer service facility or other means to receive and respond to
28 customer complaints and inquiries regarding service. The facility
29 shall be adequately staffed from at least 7 a.m. until 7 p.m. and be
30 reachable by a toll-free number.

31 (2) The customer service facility or other means shall, at a
32 minimum, receive and respond to:

33 (a) Reports of interruption of service at any time of day;

34 (b) Inquiries from customers regarding billing amounts and
35 practices;

36 (c) Requests for information regarding the price, product
37 information, and terms of service provided by the electricity supplier;

1 (d) Inquiries regarding conservation efforts, if any, made by the
2 electricity supplier;

3 (e) Requests for appealing a decision of the electricity supplier.

4 (3) There shall be no charge for use of the facility or other means
5 by any person.

6 NEW SECTION. **Sec. 12.** (1) An agreement between an electricity
7 supplier and a retail electric customer for the purchase and sale of
8 electricity may only be made in writing.

9 (2) No electricity supplier shall change, or request or authorize
10 any other entity to change, a retail electric customer's electricity
11 product or supplier unless and until the submitting electricity
12 supplier has obtained the customer's written or electronic
13 authorization and provided verification of the authorization to the
14 current electricity supplier and electricity distribution utility.

15 (3) Retail electric customers are not obligated for unauthorized
16 charges resulting from an unwritten purchase and sale agreement or an
17 unlawful charge, and electricity suppliers may not bill customers for
18 the charges.

19 (4) An electricity supplier is liable to a retail electric customer
20 for liquidated damages in the amount of one hundred dollars for each
21 unauthorized change.

22 NEW SECTION. **Sec. 13.** It is an unfair or deceptive act or
23 practice and a violation of this section for any electricity supplier
24 to place a commercial telephone solicitation to any residence that will
25 be received before 8:00 a.m. or after 5:00 p.m. at the retail electric
26 customer's local time, notwithstanding the provisions of RCW
27 19.158.040(2).

28 NEW SECTION. **Sec. 14.** (1) Any person making an express or implied
29 claim concerning an electricity product must, at the time the claim is
30 made, possess and rely upon a reasonable basis substantiating the
31 claim.

32 (2) An electricity supplier making an expressed or implied claim
33 relating to any aspect of an electricity product included in the
34 disclosures required under section 10 of this act may substantiate the
35 claims with the information required to be disclosed under those
36 sections.

1 (3) Electricity suppliers may make express or implied marketing
2 claims relating to their projected performance if, at the time the
3 claim is made, they possess and rely upon a reasonable basis for
4 substantiating the claim. If the actual performance differs from the
5 projected performance in a material way during any six-month period
6 that an agreement is in effect, the electricity service provider shall
7 provide the retail electric customer, in a timely manner, with a brief,
8 written explanation for the difference and a notice that as a result of
9 the difference, the customer has the right to change suppliers without
10 incurring any transfer charge.

11 NEW SECTION. **Sec. 15.** (1) All electricity distribution utilities
12 and electricity suppliers shall protect the confidentiality of
13 proprietary information of, and relating to, retail electric customers.
14 An electricity distribution utility or electricity supplier that
15 receives or obtains proprietary customer information from another
16 electricity distribution utility or electricity supplier for the
17 purposes of providing retail electric service shall use the information
18 only for such a purpose, and shall not use the information for its own
19 marketing efforts.

20 (2) Except as required by law or with the approval of the customer,
21 an electricity distribution utility or electricity supplier that
22 receives or obtains proprietary customer information by virtue of its
23 provision of electricity or related services shall only use, disclose,
24 or permit access to individually identifiable proprietary customer
25 information in its provision of electricity from which the information
26 is derived or services necessary to, or used in, the provision of
27 electricity service. Nothing in this subsection shall be construed to
28 prohibit an electricity distribution utility or electricity supplier
29 from using, disclosing, or permitting access to proprietary customer
30 information obtained from its customers to initiate, render, bill, or
31 collect for electricity and related services.

32 (3) An electricity distribution utility or electricity supplier
33 shall disclose proprietary customer information, upon affirmative
34 written request by the customer, to any person designated by the
35 customer.

36 (4) An electricity distribution utility or electricity supplier
37 that receives or obtains proprietary customer information by virtue of
38 its provision of electricity or related services may use, disclose, or

1 permit access to aggregate customer information other than for the
2 purposes described in subsection (2) of this section. An electricity
3 distribution utility may use, disclose, or permit access to aggregate
4 customer information other than for the purposes described in
5 subsection (2) of this section only if it provides the information to
6 other electricity suppliers on reasonable and nondiscriminatory terms
7 and conditions upon reasonable request of the suppliers. For the
8 purposes of this subsection, "aggregate information" means collective
9 data that relates to a group or category of services or customers, from
10 which individual customer identities and characteristics have been
11 removed. Aggregate information shall not be released without
12 permission of the affected customers when the information concerns a
13 group of customers that is small enough to reveal the probable usage,
14 billing, or payment behavior of any individual members of the customer
15 group. There is a rebuttable presumption that a customer group with
16 less than twenty-five members meets this criteria.

17 NEW SECTION. **Sec. 16.** (1) It is an unfair or deceptive act or
18 practice and a violation of this section for any electricity supplier
19 to engage in the following conduct:

20 (a) Failing to disclose in a clear and conspicuous manner, before
21 a retail electric customer authorizes payment for an electricity
22 product offered:

23 (i) The information required in section 10 of this act;

24 (ii) All material restrictions, limitations, or conditions to
25 purchase, receive, or use the products or services that are the subject
26 of the sales offer; and

27 (iii) In any one-time price inducements, all material restrictions,
28 limitations, or conditions to receive or redeem the inducement that is
29 the subject of the sales offer;

30 (b) Misrepresenting, directly or by implication, any of the
31 following:

32 (i) The information required in section 10 of this act;

33 (ii) All material restrictions, limitations, or conditions to
34 purchase, receive, or use the products or services that are the subject
35 of the sales offer;

36 (iii) In any one-time price inducements, all material restrictions,
37 limitations, or conditions to receive or redeem the inducement that is
38 the subject of the sales offer; or

1 (iv) An electricity supplier's affiliation with, or endorsement by,
2 any government or third-party organization; or

3 (c) Making a false or misleading statement to induce any person to
4 pay for electricity or other related services.

5 (2) For the purposes of this section, an electricity supplier
6 includes any person authorized by the electricity supplier to market,
7 promote, or sell electricity or other related services.

8 NEW SECTION. **Sec. 17.** (1) The acts and practices covered by
9 sections 10 through 16 of this act vitally affect the public interest,
10 the electricity bills of consumers, and the competitive positions of
11 businesses and industries for the purposes of applying chapter 19.86
12 RCW, the consumer protection act. Unfair or deceptive methods of
13 marketing, promoting, selling, and providing electricity and ancillary
14 services are unreasonable in relation to the development of competitive
15 markets for power and are injurious to the public interest.

16 (2) Every electricity supplier that markets, promotes, sells, or
17 provides electricity directly to retail electric customers for delivery
18 by the customer's electricity distribution utility must comply with the
19 requirements of sections 10 through 16 of this act. Failure to comply
20 with these sections constitutes an unfair or deceptive act or practice
21 for the purposes of applying chapter 19.86 RCW, the consumer protection
22 act.

23 (3) Any actions or transactions after the effective date of this
24 act, related to the marketing, promoting, selling, or the provision of
25 electricity directly to retail electric customers for delivery by the
26 customer's electricity distribution utility shall not be deemed
27 otherwise permitted, prohibited, or regulated by the commission for the
28 purposes of establishing an exemption under RCW 19.86.170, and shall be
29 deemed to be acting in trade or commerce for the purposes of applying
30 chapter 19.86 RCW, the consumer protection act.

31 NEW SECTION. **Sec. 18.** Sections 1 through 6 and 9 through 12 of
32 this act constitute a new chapter in Title 18 RCW.

33 NEW SECTION. **Sec. 19.** If any provision of this act or its
34 application to any person or circumstance is held invalid, the

1 remainder of the act or the application of the provision to other
2 persons or circumstances is not affected.

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