AMENDED IN SENATE APRIL 21, 1999

SENATE BILL No. 1159

Introduced by Senator Sher

February 26, 1999

An act to amend Section 366.5 of the Public Utilities Code, relating to public utilities.

LEGISLATIVE COUNSEL'S DIGEST

SB 1159, as amended, Sher. Electrical restructuring: electric service: changes.

(1) Existing law prohibits any change in the aggregator or supplier of electric power for any small commercial customer from being made until the change has been verified, as prescribed.

This bill would require specific procedures for a confirmation of change made via a telephone transaction, an Internet transaction, or a written transaction. The bill would require an aggregator or provider of electric power to keep a record of a confirmation for ~~two~~ *2* years from the date of that confirmation, and to make those records available*, upon request,* to *the customer and* the ~~commission~~ *Public Utilities Commission* in the course of certain commission investigations. Because a violation of these provisions would be a crime, the bill would impose a state-mandated local program by creating a new crime.

The *bill would authorize the commission to require third-party verification for all residential changes described above if certain findings are made.*

(2) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Section 366.5 of the Public Utilities Code is amended to read:

366.5. (a) No change in the aggregator or supplier of electric power for any small commercial customer may be made until one of the following means of confirming the change has been completed:

(1) Independent third-party telephone verification.

(2) Receipt of a written confirmation received in the mail from the consumer after the consumer has received an information package confirming the agreement.

(3) The customer signs a document fully explaining the nature and effect of the change in service.

(4) The customer's consent is obtained through electronic means, including but not limited to, computer transactions.

(b) No change in the aggregator or provider of electric power for any residential customer may be made over the telephone until the change has been confirmed by an independent third-party verification company, as follows:

(1) The third-party verification company shall meet each of the following criteria:

(A) Be independent from the entity that seeks to provide the new service.

(B) Not be directly or indirectly managed, controlled, or directed, or owned wholly or in part, by an entity that seeks to provide the new service or by any corporation, firm, or person who directly or indirectly manages, controls, or directs, or owns more than 5 percent of the entity.

(C) Operate from facilities physically separate from those of the entity that seeks to provide the new service.

(D) Not derive commission or compensation based upon the number of sales confirmed.

(2) The entity seeking to verify the sale shall do so by connecting the resident by telephone to the third-party verification company or by arranging for the third-party verification company to call the customer to confirm the sale.

(3) The third-party verification company shall obtain the customer's oral confirmation regarding the change, and shall record that confirmation by obtaining appropriate verification data. The record shall be available to the customer upon request. Information obtained from the customer through confirmation shall not be used for marketing purposes. Any unauthorized release of this information is grounds for a civil suit by the aggrieved resident against the entity or its employees who are responsible for the violation.

(4) Notwithstanding paragraphs (1), (2), and (3), an aggregator or provider of electric power shall not be required to comply with these provisions when the customer directly calls an aggregator or provider of electric power to change service providers. However, an aggregator or provider of electric power shall not avoid the verification requirements by asking a customer to contact an aggregator or provider of electric power directly to make any change in the service provider.

(c) No change in the aggregator or provider of electric power for any residential customer may be made via an Internet transaction, in which the customer accesses the website of the aggregator or provider, unless both of the following occur with respect to confirming the change:

(1) In addition to any other information gathered in the course of the transaction, the customer shall be asked to read and respond to a separate screen that states, in easily legible text, the following:

"I acknowledge that in entering this transaction I am voluntarily choosing to change the entity that supplies me with my electric power."

(2) The separate screen shall offer the customer the option to complete or terminate the transaction.

(d) *(1)* No change in the aggregator or provider of electric power for any residential customer may be made via a written transaction unless the change has been confirmed, as provided in this subdivision. In order to comply with this subdivision, in addition to any other information gathered in the course of the transaction, and in addition to any other signature required, the customer ~~shall be asked to sign a separate line, contained within a box set off from the rest of the document, under the~~ *shall be asked to sign and date a document separate from that written transaction, containing the* following words printed in ten point type or larger:

"I acknowledge that in signing this contract or agreement, I am ~~a~~ voluntarily choosing to change the entity that supplies me with electric power."

(2) The acknowledgement document described in paragraph (1) may not be included with a check or in connection with a sweepstakes solicitation.

(e) Any aggregator or provider of electric power offering electricity service to residential and small commercial customers that ~~violates the verification procedures described in this section shall be liable to the~~ *switches the electric service of a customer without the customer's consent shall be liable to the* aggregator or provider of electric power offering electricity services previously selected by the customer in an amount equal to all charges paid by the customer after the violation *and shall refund to the customer any amount in excess of the amount that the customer would have been obligated to pay had the customer not been switched*.

(f) An aggregator or provider of electric power shall keep a record of the confirmation of a change pursuant to subdivision (b), (c), or (d) for two years from the date of that confirmation, and shall make those records available*, upon request, to the customer and* to the commission in the course of a commission investigation of a customer complaint or an investigation pursuant to subdivision (c) of Section 394.2.

(g) Public agencies are exempt from this section to the extent they are serving customers within their jurisdiction.

(h) *Notwithstanding subdivisions (c) and (d), the commission may require third-party verification for all residential changes to electric service providers if it finds that the application of subdivisions (c) and (d) results in the unauthorized changing of a customer's electric service provider.*

(i) An electrical corporation is exempt from this section for customers that default to the service of the electrical corporation.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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