



**SENATE BILL 651 (Asst. Majority Leader Gordon-Booth / Majority Leader Sen. Lightford)  
House Amendment #1  
POSITION PAPER  
SUPPORT  
May 28, 2019**

**Statutory Citation / Short Synopsis**

220 ILCS 5-16-115A; new 16-115E; 16-118; 16-123; Public Utilities Act, Obligations of Alternative Retail Electric Suppliers (ARES)

220 ICLS 19-115; new 19-116; 19-130; 19-135; 20-110; Public Utilities Act, Obligations of Alternative Gas Suppliers (AGS)

818 ILCS 505/2EE (Alternative Retail Electric Suppliers) and 2DDD (Alternative Gas Suppliers), Consumer Fraud and Deceptive Business Practices Act

**Bill History**

SB 651 is an initiative of the Office of the Attorney General (OAG) and is substantially similar in substance and intent to the OAG's SB 1531 from the 2018 Spring Legislative Session that was defeated on Third Reading in the House by a 56-54 roll call.

SB 1531 expanded the Consumer Fraud and Deceptive Business Practices Act (CFA) violations to include all ICC marketing and customer enrollment rules and violations thereof; imposed certain customer enrollment restrictions; required the customer's affirmative consent on automatic contract renewals; required utility price disclosures on supplier marketing materials and utility and supplier comparisons on utility bills; and quarterly price and fixed and variable rate contract offer reports from ARES and AGS to the Illinois Commerce Commission (ICC) and AGO.

SB 3577 (Sen. Harmon) introduced competing legislation in the 2018 Spring Legislative Session from the Illinois Competitive Energy Association (ICEA) and Retail Electric Supply Association (RESA) to SB 1531, but that legislation remained on Second Reading in the Senate. SB 2084 (Sen. Harmon) was introduced during the 2019 Spring Legislative Session on behalf of the ICEA and RESA from the supplier community, but the bill was not posted for committee hearing and was re-assigned to Senate Assignments.

Limited negotiations between certain supplier companies—not the Associations like last year—and the OAG Staff were held by Senate Energy and Public Utilities Chair Cunningham. The Floor Amendments filed by the OAG occurred on Monday, April 29, on this extended deadline bill, the amendments were heard in the Senate Licensing Activities Committee on Tuesday, April 30, and the bill, as amended, passed the Senate on Wednesday, May 1, on a nearly partisan roll call of 43-10.

**House Negotiations**

Over the last 3 weeks, House Public Utilities Chairperson Walsh jump-started face-to-face negotiations between the OAG and ICEA regarding various industry concerns with the underlying bill and has run interference between the two parties. The Speaker and the Speaker's Office Staff have facilitated these discussions and Chairperson's Walsh leadership has led to this agreed-to House Amendment.

## **Effect of Bill**

In sum, this consumer protection bill, as amended, creates two pathways, one through the CFA under the Attorney General and the other through the PUA under the ICC to enforce current ARES/AGS marketing and sales rules and violations thereof. The bill does not change the private right of action meaning that a CFA violation of the imported ICC marketing rules and other CFA provisions by an ARES/AGS could still result in class action lawsuits in court in addition to any AG CFA or ICC PUA enforcement action. In most instances, the bill's provisions are limited to residential customers with some exceptions for small commercial customers.

Overall, the bill enhances the Attorney General's enforcement authority over ARESs and AGSs by expanding the CFA to include (1) nearly all of the ICC's current marketing practice and customer enrollment rules pertaining to all marketing channels and service obligations to customers; (2) sales and enrollment prohibitions of LIHEAP/PIPP recipients; (3) the customer's expressed consent for automatic contract renewals from a fixed price contract to a variable rate contract and required customer notices of the upcoming renewal; and (4) customer termination of any fixed or variable rate contract at any time without early termination fees or penalties.

In particular, the CFA expansion imports 11 out of 13 current ICC marketing practice and customer enrollment rules and 3 out of 6 customer contract and automatic contract renewal rules covered under Part 412, Obligation of Retail Electric Suppliers, of the Administrative Code. The bill, as amended, extends nearly all of these ARES requirements to the AGS in the Alternative Gas Law of the PUA because new ICC rules for AGS marketing and sales (called Part 512, Obligation of AGS) are undergoing a rulemaking proceeding at the ICC at present. The ICC Marketing Practices Rules, now in Part 412 ARES Rules, into the CFA requirements and violations section are outlined below:

- Use of Utility Logo and Name (412.105)
- Minimum Contract Terms and Conditions (412.110)
- Uniform Disclosure Statement (412.115)
- In-Person Solicitation (i.e. Door-To-Door) (412.120)
- Telemarketing (412.130)
- Inbound Enrollment Calls (i.e. customer calls the supplier) (412.410)
- Direct Mail (412.150)
- Online Marketing (412.160)
- Rate Notices to Customers (412.165)
- Records Retention and Availability (412.180)
- Rescission of Contract (412.210)
- Early Termination of Sales Contracts (412.230)
- Contract Renewal (412.240)

## **Key Features of Bill as Amended**

- Expressed consent (affirmative consent) from the customer when a fixed rate contract renews to a variable rate contract, such as a managed month-to-month variable rate or a Time-of-Use variable rate contract. Initially, the expressed consent requirement applied to both fixed and variable rate contracts, but, as amended, the expressed consent requirement only applies to a renewal to a variable rate contract because the variable rate contract is where the abusive and misleading marketing practices have occurred,

such as the “teaser rate” contract that starts with an attractive fixed rate lower rate for three months then renews to a variable rate contract that skyrockets in price over time. The customer must receive a renewal notice describing the current and new contract terms and price, side-by-side comparisons, and give express consent (in writing or electronic signature) to renew the contract during a 30-60 notice period prior to the current contract’s expiration. The bill provides a prospective January 1, 2020 effective date to grandfather existing and pending contracts prior to what is an intended immediate date of this bill. However, if those contracts are still in force after the January 1, 2020 effective date, the renewals must receive the customer’s expressed consent.

- Prescribed rate disclosures at the front end of a fixed or variable rate contract sale and 30-60-day renewal notices and disclosures including side-by-side comparison of current to next contract price, when the current contract expires, when the new contract begins and expires, the customer’s right to terminate, and cancellation procedures.
- Customer termination of any contract at any time without early termination fees or penalties beginning January 1, 2020. Current law provides a \$50 ETF cap for residential customers and a \$150 ETF cap for small commercial customers. The bill provides a prospective January 1, 2020 effective date to grandfather existing or pending contracts prior to an intended immediate effective date. However, if those contracts are still in force after the January 1, 2020 effective date, the supplier cannot charge an ETF even if the existing contract provides for such or the ARES/AGS risks a CFA violation.
- Non-English speaking customer protections require marketing materials and customer enrollment information must be in the customer’s language, if the customer cannot communicate or understand English, and door-to-door (in-person) and telemarketing solicitations must be terminated if the customer cannot communicate or understand English.
- The utility Price-to-Compare is required on all ARES/AGS marketing materials, on all ARES/AGS issued bills (Single Bill), and on the utility issued bill that combines the supplier charge and the utility delivery service charge (Utility Combined Billing) so that the customer can compare the supplier price to the utility price. If the customer is in the ComEd service territory, the Purchased Electric Adjustment range must be disclosed.
- ARES/AGS disclosure on all marketing materials that it is not the utility, the same statement during any marketing solicitation channel (in-person, telemarketing, direct mail, online, inbound calls) and cannot use the name, logo, insignia, wording, apparel, service offering of any utility (i.e. utility impersonation) or governmental body or consumer group in order to thwart misleading the customer that the ARES/AGS is the utility or endorsed by the utility or governmental or consumer groups. Prescribed identification requirements are mandated for ARES/AGS in-person solicitation along with premise limitations where the ARES/AGS sales agent can solicit customers.
- Enrollment prohibition of LIHEAP and PIPP recipients beginning January 1, 2020, except for municipal aggregation programs or an ICC-approved guaranteed savings program

lower than the utility supply price, in order to thwart alleged targeting of low-income communities. Establishes a utility enrollment block of the customer pending enrollment if the utility's system indicates that the customer is a LIHEAP/PIPP recipient and provides certain procedural requirements for the ICC to approve an ARES/AGS guaranteed savings program offer.

- Mandated ARES/AGS annual reports to the ICC and AG regarding fixed rate, variable rate, and Time-Of Use variable rate contracts offered to customer including all charges and fees offered in the prior year beginning May 31, 2020 for ARES and January 1, 2020 for AGS. Requires that this information be included in the ICC's (i.e. ORMD) Annual Electric Report published in June and its Annual Gas Report in October. Mandates that ARES/AGS include all of its offers and rates and charges on the supplier's website upon the effective date of the bill.
- Allows the utility's customer call center representatives to provide information to and answer questions from ARES-served customer inquiries to the utility about the utility PTC and supplier charges. This provision mirrors a ComEd Petition before the ICC to allow the Company without violating certain non-compete with the ARES rules. In December 2018, the ICC ordered ComEd and Ameren to include the PTC on its monthly utility bill for ARES-served customers, which has prompted approximately 13,000 calls to ComEd CSR's about what is the PTC and other inquiries.
- Enhances the ICC's enforcement powers under the PUA in three ways: 1) Allows the ICC On Its Own Motion to take enforcement action against an ARES/AGS rather than based on a customer complaint filed at the ICC; 2) authorizes ICC to require an ARES/AGS to enter into a prescribed compliance plan to correct marketing practices deemed to violate the PUA or ICC rules, but does not limit other ICC enforcement action prior to the compliance plan nor limit the AG's enforcement authority because of a compliance plan; 3) increases the bonding ARES bonding requirements to \$500,000 from \$300,000 to serve residential and small commercial customer plus an additional \$500,000 if the ARES/AGS intends to engage in door-to-door (in-person) solicitations for a total of \$1 million for electric and \$1 million for gas or \$2 million for an ARES that is also an AGS for these solicitation types. These requirements will likely drive out undercapitalized and bottom-of-the market suppliers and cause all suppliers to be more vigilant about marketing practices or risk a PUA or CFA enforcement action or both. Moreover, the requirement presents increased underwriting risks and additional bond procurement costs than exist today.
- The bill largely applies to residential and small commercial customers with an exception of impersonating the utility, which applies to all customers. There is not a broad exemption for C & I customers, but the bill limits the marketing rule requirements to residential and small commercial customers.

## **Support or Opposition of the Bill**



ICEA supports this comprehensive consumer protection bill that will crack down on abusive and unscrupulous suppliers, while at the same time, will not harm suppliers that play by the rules or the viability of retail competition and customer choice in the competitive retail electric or natural gas markets. While some modifications have been made based on suppliers' market experience and input, the bill's core elements and intent have not been watered down. The bill, as amended, will likely become the toughest and strongest enforcement and consumer protection provisions governing the competitive energy markets in the country.

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