



## 96TH GENERAL ASSEMBLY

### State of Illinois

2009 and 2010

SB3627

Introduced 2/11/2010, by Sen. Ira I. Silverstein

#### SYNOPSIS AS INTRODUCED:

220 ILCS 5/16-115C

Amends the Public Utilities Act. Provides that all third-party sales representatives engaged in the marketing of retail electricity supply, including exclusive and non-exclusive agents, must, prior to the customer signing a contract, disclose in writing that they are not employed by the electric utility operating in the applicable service territory and, if applicable, that they are compensated in whole or part on a commission basis. Provides that for telephonic solicitations, the disclosure may initially be made verbally prior to the customer signing a contract, with a follow-up written disclosure required prior to any customer contract being finalized. Includes the Illinois Power Agency and its employees from being exempt as being licensed agents, brokers, and consultants engaged in the procurement or sale of retail electricity supply for third parties and changes the requirements of parties already subject to licensure. Provides that any person or entity required to be licensed under specified provisions must, among other requirements, disclose in plain language in writing to all customers, prior to the customer signing a contract, the total anticipated remuneration to be paid to it by any third party over the period of the proposed underlying customer contract. Removes provisions requiring agents, brokers, and consultants to file copies of their verified financial statements with the Commission on an annual basis. Makes changes concerning disciplinary actions against agents, brokers, and consultants. Effective immediately.

LRB096 18256 MJR 36138 b

1 AN ACT concerning utilities.

2 **Be it enacted by the People of the State of Illinois,**  
3 **represented in the General Assembly:**

4 Section 5. The Public Utilities Act is amended by changing  
5 Section 16-115C as follows:

6 (220 ILCS 5/16-115C)

7 Sec. 16-115C. Licensure of agents, brokers, and  
8 consultants engaged in the procurement or sale of retail  
9 electricity supply for third parties.

10 (a) The purpose of this Section is to adopt licensing and  
11 code of conduct rules in a competitive retail electricity  
12 market to protect Illinois consumers from unfair or deceptive  
13 acts or practices and to provide persons acting as agents,  
14 brokers, and consultants engaged in the procurement or sale of  
15 retail electricity supply for third parties with notice of the  
16 illegality of those acts or practices.

17 (a-5) All third-party sales representatives engaged in the  
18 marketing of retail electricity supply, including exclusive  
19 and non-exclusive agents, must, prior to the customer signing a  
20 contract, disclose in writing that they are not employed by the  
21 electric utility operating in the applicable service territory  
22 and, if applicable, that they are compensated in whole or part  
23 on a commission basis. For telephonic solicitations, the

1 disclosure may initially be made verbally prior to the customer  
2 signing a contract, with a follow-up written disclosure  
3 required prior to any customer contract being finalized.

4 (b) For purposes of this Section, "agents, brokers, and  
5 consultants engaged in the procurement or sale of retail  
6 electricity supply for third parties" means any person or  
7 entity that attempts to procure on behalf of or sell retail  
8 electric service to an electric customer in the State. "Agents,  
9 brokers, and consultants engaged in the procurement or sale of  
10 retail electricity supply for third parties" does not include  
11 the Illinois Power Agency or any of its employees, any entity  
12 licensed as an alternative retail electric supplier pursuant to  
13 83 Ill. Adm. Code 451 offering retail electric service on its  
14 own behalf, any person who is an employee of and acts ~~acting~~  
15 exclusively on behalf of a single alternative retail electric  
16 supplier ~~on condition that exclusivity is disclosed to any~~  
17 ~~third party contracted in such agent capacity,~~ any person or  
18 entity representing a municipal power agency, as defined in  
19 Section 11-119.1-3 of the Illinois Municipal Code, or any  
20 person or entity that is attempting to procure on behalf of or  
21 sell retail electric service to a third party that is eligible  
22 to purchase electric power and energy under a tariff or service  
23 classification that has been declared competitive pursuant to  
24 Section 16-113 of this Act ~~that has aggregate billing demand of~~  
25 ~~all of its affiliated electric service accounts in Illinois of~~  
26 ~~greater than 1,500 kW.~~

1 (c) No person or entity shall act as an agent, broker, or  
2 consultant engaged in the procurement or sale of retail  
3 electricity supply for third parties unless that person or  
4 entity is licensed by the Commission under this Section or is  
5 offering services on their own behalf under 83 Ill. Adm. Code  
6 451.

7 (d) The Commission shall create requirements for licensure  
8 as an agent, broker, or consultant engaged in the procurement  
9 or sale of retail electricity supply for third parties, which  
10 shall include all of the following criteria:

11 (1) Technical competence.

12 (2) Managerial competence.

13 (3) Financial responsibility, including the posting of  
14 an appropriate performance bond.

15 (4) Annual reporting requirements.

16 (e) Any person or entity required to be licensed under this  
17 Section must:

18 (1) disclose in plain language in writing to all  
19 customers, prior to the customer signing a contract,  
20 ~~persons it solicits~~ the total anticipated remuneration to  
21 be paid to it by any third party over the period of the  
22 proposed underlying customer contract;

23 (2) not hold itself out as independent or unaffiliated  
24 with any supplier, or both, or use words reasonably  
25 calculated to give that impression, unless the person  
26 offering service under this Section has no contractual

1 relationship with any retail electricity supplier or its  
2 affiliates regarding retail electric service in Illinois;

3 (3) not utilize false, misleading, materially  
4 inaccurate, defamatory, or otherwise deceptive language or  
5 materials in the soliciting or providing of its services;

6 (4) maintain copies of all marketing materials  
7 disseminated to third parties for a period of not less than  
8 3 years;

9 (5) not present electricity pricing information in a  
10 manner that favors one supplier over another, unless a  
11 valid pricing comparison is made utilizing all relevant  
12 costs and terms; and

13 (6) comply with the requirements of Sections 2EE, 2FF,  
14 2GG, and 2HH of the Consumer Fraud and Deceptive Business  
15 Practices Act.

16 (f) Any person or entity licensed under this Section shall  
17 file with the Commission all of the following information no  
18 later than March of each year:

19 (1) A verified report detailing any and all contractual  
20 relationships that it has with certified electricity  
21 suppliers in the State regarding retail electric service in  
22 Illinois.

23 (2) A verified report detailing the distribution of its  
24 customers with the various certified electricity suppliers  
25 in Illinois during the prior calendar year. A report under  
26 this Section shall not be required to contain

1 customer-identifying information.

2 (3) (Blank) ~~A copy of its verified financial statement.~~

3 (4) A verified statement of any changes to the original  
4 licensure qualifications and notice of continuing  
5 compliance with all requirements.

6 (g) The Commission shall have jurisdiction over  
7 disciplinary proceedings and complaints for violations of this  
8 Section. The findings of a violation of this Section by the  
9 Commission shall result in a progressive disciplinary scale.  
10 For a first violation, the Commission may, in its discretion,  
11 ~~shall~~ suspend the license of the person so disciplined for a  
12 period of up to ~~no less than~~ one month. For a second violation  
13 within a 5-year period, the Commission shall suspend the  
14 license for the person so disciplined for a period of up to ~~not~~  
15 ~~less than~~ 6 months. For a third or subsequent violation within  
16 a 5-year period, the Commission shall suspend the license of  
17 the disciplined person for a period of up to ~~not less than~~ 2  
18 years.

19 (h) This Section shall not apply to a retail customer that  
20 operates or manages either directly or indirectly any  
21 facilities, equipment, or property used or contemplated to be  
22 used to distribute electric power or energy if that retail  
23 customer is a political subdivision or public institution of  
24 higher education of this State, or any corporation, company,  
25 limited liability company, association, joint-stock company or  
26 association, firm, partnership, or individual, or their

1 lessees, trusts, or receivers appointed by any court whatsoever  
2 that are owned or controlled by the political subdivision,  
3 public institution of higher education, or operated by any of  
4 its lessees or operating agents.

5 (Source: P.A. 95-679, eff. 10-11-07.)

6 Section 99. Effective date. This Act takes effect upon  
7 becoming law.