

HOUSE No. 4499

The Commonwealth of Massachusetts

HOUSE OF REPRESENTATIVES, April 4, 2024.

The committee on Telecommunications, Utilities and Energy, to whom was referred the petition (accompanied by bill, House, No. 3155) of Tackey Chan relative to competitive energy supply, reports recommending that the accompanying bill (House, No. 4499) ought to pass.

For the committee,

JEFFREY N. ROY.

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**In the One Hundred and Ninety-Third General Court
(2023-2024)**

An Act modernizing competitive energy supply.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Section 1 of chapter 164 of the General Laws, as appearing in the 2020
2 Official Edition, is hereby amended by inserting the following definition:-

3 “energy marketer” any person, firm, partnership, association or private corporation that
4 markets, advertises, or otherwise offers to sell generation service to retail customers that is acting
5 as an agent for a supplier.

6 SECTION 2. Section 1D of chapter 164 of the General Laws, as so appearing, is hereby
7 amended by inserting, before the word “Beginning” in line 1, the following:- (i)

8 SECTION 3. Section 1F of said chapter 164 of the General Laws, as so appearing, is
9 hereby amended by striking out subparagraph (iii) of paragraph (1), and inserting in place thereof
10 the following 3 subparagraphs:-

11 (iii) All energy brokers, energy marketers, and other suppliers seeking to do business in
12 the commonwealth shall submit a license application to the department, subject to rules and

13 regulations promulgated by the department and subject to a fee, the amount to be determined by
14 the department; provided, said amount shall not be less than \$10,000. Each energy marketer or
15 other supplier that applies for a retail license shall execute and maintain a bond issued by a
16 qualifying surety or insurance company authorized to transact business in the commonwealth of
17 Massachusetts in favor of the commonwealth. The amount of the bond shall equal \$5,000,000
18 per retail license as issued by the department. The bond shall be conditioned upon the full and
19 faithful performance of all duties and obligations of the applicant as a retail supplier and shall be
20 valid for a period of not less than 1 year. The cost of the bond shall be paid by the applicant. The
21 applicant shall file a copy of this bond, with a notarized verification page from the issuer, as part
22 of its application for certification.

23 (iv) Any third-party who contracts with or is otherwise directly engaged and compensated
24 by a supplier to sell electric generation services, or contracts with and is directly compensated by
25 a third-party marketer of the supplier to sell electric generation services on behalf of a supplier,
26 shall be a legal agent of the supplier. No third-party may sell electric generation services on
27 behalf of a supplier unless such third party has received appropriate training directly from such
28 supplier. This subparagraph (iv) shall not apply to third-party Electricity Brokers as defined
29 under 220 CMR 11.02, or consultants or agents acting on behalf of customers that are
30 compensated by the customer as part of the customer's electric contract price.

31 (v) The department shall develop a training and educational program for any entity or
32 individual that is licensed by the department under this section as a competitive supplier. The
33 department shall develop the program in consultation with interested stakeholders, including
34 competitive suppliers. The program shall require that a designated representative of each
35 licensed competitive supplier demonstrate a thorough understanding of the department's

36 regulations regarding sales, consumer protection and any other matter the department deems
37 appropriate though an online training program. At the conclusion of the training, the department
38 shall conduct an online examination and, on a satisfactory score, certify that the designated
39 representative of the licensed competitive supplier has successfully completed the training. The
40 department shall determine the schedule and frequency by which a designated representative of a
41 licensed competitive supplier must complete the training and certification. The department may
42 not issue a license to a new competitive supplier until a designated representative of the new
43 competitive supplier completes the training and certification. The department may adopt
44 regulations that include appropriate penalties for failure to comply with this subparagraph. The
45 department shall use the assessments collected in accordance with paragraph (13) for the initial
46 development of the training and educational program. The department may establish reasonable
47 fees as authorized to fund the training and educational program.

48 SECTION 4. Said section 1F of said chapter 164 of the General Laws, as so appearing, is
49 hereby further amended by adding after subparagraph (ix) of paragraph (8)(a), the following new
50 subparagraph:-

51 (x) Energy brokers, energy marketers, or other suppliers that market and sell to
52 residential customers using in-person or door-to-door marketing practices, must use a third-party
53 verification process as defined in subparagraph (iii), above. Energy brokers, marketers, or other
54 suppliers that market using in-person or door-to-door marketing shall track the phone numbers
55 used for third-party verifications. Third-party verifications used in conjunction with in-person or
56 door-to-door marketing practices are prohibited from using non-fixed voice over internet
57 protocols or phone numbers that cannot otherwise be affiliated with said third-party. Any in-
58 person or door-to-door agent who initiates a sale shall not consummate a sale and shall terminate

59 the interaction if the individual is unable to understand or communicate in the language in which
60 the marketing or solicitation is being conducted.

61 SECTION 5. Subsection (8) of said section 1F of said chapter 164 of the General Laws,
62 as so appearing, is hereby amended by striking in paragraph (b) the words “30 days” and
63 inserting in place thereof the following:- two years.

64 SECTION 6. Said subsection (8) of said section 1F of said chapter 164 is hereby further
65 amended in paragraph (d) by striking out the figure “\$3,000”, and inserting in place thereof the
66 following:- \$5,000.

67 SECTION 7. Said section 1F of said chapter 164 of the General Laws, as amended by
68 section 78 of chapter 8 of the acts of 2021, is hereby further amended by adding at the end
69 thereof the following 3 new paragraphs:-

70 (11) For energy brokers, energy marketers, or other suppliers that market to customers
71 using in-person or door-to-door marketing, each agent representing the broker, marketer, or
72 supplier shall wear an identification badge which is visible at all times during the encounter and
73 accurately identifies: (i) such agent’s first name and unique agent identification number; (ii) the
74 energy broker, energy marketer, or supplier that such agent works for; (iii) the company trade
75 name or D/B/A, if different from the energy broker, energy marketer, or supplier name; (iv) the
76 agent’s photograph; and (v) the customer service phone number of the energy broker, energy
77 marketer, or supplier.

78 (12) For energy brokers, energy marketers, or other suppliers that market to customers
79 using telephone solicitations, each broker, marketer, or supplier agent who initiates a call or who
80 receives an incoming call shall not consummate a sale and shall terminate the interaction if the

81 individual is unable to understand or communicate in the language in which the marketing or
82 solicitation is being conducted.

83 (13) The department shall establish an office of retail market oversight, herein after
84 referred to as the “office”, to be funded by: the fee established in subparagraph (iii) of paragraph
85 (1) and; an annual assessment of retail suppliers and brokers based on a formula to be determined
86 by the department not to exceed \$10,000 annually per licensed entity. The office shall have the
87 power to actively seek input from all interested parties and to develop a thorough understanding
88 and critical analyses of the tools and techniques used to promote retail energy competition in
89 other states. The office shall monitor existing competitive conditions in the commonwealth,
90 identify barriers to retail competition for all customer classes, and actively explore and propose
91 to the department solutions to overcome identified barriers and enhance retail competition. The
92 office shall, in coordination with the office of ratepayer advocacy established in section 11E of
93 chapter 12, publish on a quarterly basis the number of complaints filed against each supplier, and
94 other information deemed relevant by the office. The office shall have the authority to address
95 violations by suppliers through the imposition of a probationary status which may include, but
96 not be limited to, enhanced oversight, additional reporting requirements, and submission for
97 department approval of a plan for any fines or remediation to customers specific to any supplier
98 that violates regulations or any rules subject to this chapter. The office shall report to the
99 department any recommendations for suspension or revocation of a license.

100 SECTION 8. Chapter 164 of the General Laws, as so appearing, is hereby amended by
101 inserting after section 1K the following section:-

102 Section 1L. (a) As used in this section, the following words shall, unless the context
103 otherwise requires, have the following meanings:-

104 “low-income customer,” a retail customer in the commonwealth who is on a residential
105 low-income discount distribution rate as set forth in subsection (4) of section 1F, or participates
106 in a low-income energy assistance program, including, but not limited to, the Low-Income Home
107 Energy Affordability Program or “LIHEAP”.

108 “residential retail customer,” a retail customer in the commonwealth who is on a
109 residential distribution rate.

110 (b) Effective January 1, 2023, no supplier shall execute a new contract or renew an
111 existing contract for generation services with any low-income customer. The department shall
112 establish a competitive procurement process for the supply of retail electric service for low-
113 income customers in each utility service territory. The process shall be a retail auction with
114 oversight by the department. The department shall open a proceeding to establish rules for
115 implementing this section within 90 days of the effective days of this act.

116 (c) As a condition of licensure, or any licensure renewal as of July 1, 2023, under
117 subsection 1 of section 1F of chapter 164, each supplier shall:

118 (1) not extend a supply agreement with a residential retail customer beyond the
119 agreement’s stated term without providing at least two notices prior to the end of the supply
120 agreement’s stated term;

121 (2) not charge a termination or early cancellation fee of a contract to a residential retail
122 customer; provided, however, this provision shall not apply to charges or fees for devices,
123 equipment, or other non-commodity services;

124 (3) not make a material change in the terms or duration of any individual residential
125 contract for the provision of electric generation services by a supplier without providing two
126 disclosure notices to the customer and the options available to the customer ahead of the
127 proposed change;

128 (4) no less than quarterly, provide to the department: (i) a list detailing each rate the
129 supplier charged to residential retail customers in the last quarter; and (ii) the number of low-
130 income and non-low-income residential retail customers charged each rate included in such list
131 by rate class. The department shall require that suppliers publish at least one publicly available
132 rate from each supplier on the department's website; and

133 (5) no less than annually, provide data to the department concerning any renewable
134 energy certificates retired in connection with the generation service provided to individual
135 residential retail customers. Such data shall include the geographic location and fuel type of
136 each such renewable energy certificate, whether each certificate is RPS Class I eligible, pursuant
137 to section 11F of chapter 25A, and the percentage of the supply purchased from Class I
138 generation in excess of the supplier's annual Class I obligation. The department shall publish
139 this information from each supplier on its website.

140 (d) No license may be transferred without prior approval by the department. No customer
141 may be assigned or transferred without prior notice to the department. Notice of such customer
142 assignment or customer transfer shall be provided to the department at least thirty days prior to

143 the effective date of the assignment or transfer of a customer from one supplier to another
144 supplier. The department may, upon its review of such notice, require certain conditions or deny
145 assignment or transfer of such customer.

146 (e) Any violation of the conditions of licensure enumerated in this section shall be
147 penalized pursuant to subsection (7) of section 1F, at no less than \$10,000 per violation per day.
148 In addition, the attorney general is hereby authorized to bring an action under section 4 of
149 chapter 93A to enforce the consumer protection provisions of this section and to obtain
150 restitution, civil penalties, injunctive relief and any other relief awarded pursuant to said chapter
151 93A. Impersonating an employee of a distribution company or misrepresenting the business
152 relationship between the supplier and the distribution company shall be punishable by a fine of
153 not less than \$10,000 per incident, in addition to any other remedies that may be otherwise
154 applicable under this chapter or chapter 93A.

155 (f) No less than quarterly, the department shall publish each supplier's and electric and
156 gas distribution companies' complaint data, sourced from complaints made to the department as
157 well as those made to the attorney general, as provided to the department annually, on the
158 department's website. Such complaint data shall be and shall include, but not be limited to, the
159 total number of complaints received regarding the supplier and verified by the department or the
160 attorney general, the number of complaints received for misleading or false marketing, the
161 number of complaints for unauthorized switching, the number of complaints for Do Not Call list
162 violations, and the number of complaints for aggressive marketing. Complaints shall be
163 represented as a proportion of customers served.

164 SECTION 9. Notwithstanding any general or special law to the contrary, nothing in this
165 Act shall be construed to apply to an entity organizing or administering a program pursuant to
166 section 137 of chapter 164.