

As Introduced

**124th General Assembly
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S. B. No. 49

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Hagan**

A B I L L

To amend sections 4905.10, 4911.18, and 4929.01 and to 1
enact sections 4929.20 to 4929.24 of the Revised 2
Code to subject retail natural gas marketers to 3
certification by the Public Utilities Commission. 4
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BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF OHIO:

Section 1. That sections 4905.10, 4911.18, and 4929.01 be 6
amended and sections 4929.20, 4929.21, 4929.22, 4929.23, and 7
4929.24 of the Revised Code be enacted to read as follows: 8

Sec. 4905.10. (A) For the sole purpose of maintaining and 9
administering the public utilities commission and exercising its 10
supervision and jurisdiction over the railroads and public 11
utilities of ~~the~~ this state, an amount equivalent to the 12
appropriation from the public utilities fund created under 13
division (B) of this section to the public utilities commission 14
for railroad and public utilities regulation in each fiscal year 15
shall be apportioned among and assessed against each railroad and 16
public utility within ~~the~~ this state by the commission by first 17
computing an assessment as though it were to be made in proportion 18
to the intrastate gross earnings or receipts, excluding earnings 19

or receipts from sales to other public utilities for resale, of 20
the railroad or public utility for the calendar year next 21
preceding that in which the assessment is made. The commission may 22
include in that first computation any amount of a railroad's or 23
public utility's intrastate gross earnings or receipts that were 24
underreported in a prior year. In addition to whatever penalties 25
apply under the Revised Code to such underreporting, the 26
commission shall assess the railroad or public utility interest at 27
the rate stated in division (A) of section 1343.01 of the Revised 28
Code. The commission shall deposit any interest so collected into 29
the public utilities fund. 30

The final computation of the assessment shall consist of 31
imposing upon each railroad and public utility whose assessment 32
under the first computation would have been fifty dollars or less 33
an assessment of fifty dollars and recomputing the assessments of 34
the remaining railroads and public utilities by apportioning an 35
amount equal to the appropriation to the public utilities 36
commission for administration of the utilities division in each 37
fiscal year less the total amount to be recovered from those 38
paying the minimum assessment, in proportion to the intrastate 39
gross earnings or receipts of the remaining railroads and public 40
utilities for the calendar year next preceding that in which the 41
assessments are made. 42

In the case of an assessment based on intrastate gross 43
receipts under this section against a public utility that is an 44
electric utility as defined in section 4928.01 of the Revised 45
Code, or an electric services company, electric cooperative, or 46
governmental aggregator subject to certification under section 47
4928.08 of the Revised Code, such receipts shall be those 48
specified in the utility's, company's, cooperative's, or 49
aggregator's most recent report of intrastate gross receipts and 50
sales of kilowatt hours of electricity, filed with the commission 51

pursuant to division (F) of section 4928.06 of the Revised Code,
and verified by the commission.

In the case of an assessment based on intrastate gross receipts under this section against a retail natural gas marketer subject to certification under section 4929.20 of the Revised Code, such receipts shall be those specified in the marketer's most recent report of intrastate gross receipts and sales of hundred cubic feet of natural gas, filed with the commission pursuant to division (B) of section 4929.23 of the Revised Code, and verified by the commission.

(B) On or before the first day of October in each year, the commission shall notify each such railroad and public utility of the sum assessed against it, whereupon payment shall be made to the commission, which shall deposit it into the state treasury to the credit of the public utilities fund, which is hereby created. Any such amounts paid into the fund but not expended by the commission shall be credited ratably, after first deducting any deficits accumulated from prior years, by the commission to railroads and public utilities that pay more than the minimum assessment, according to the respective portions of such sum assessable against them for the ensuing calendar year. The assessments for such calendar year shall be reduced correspondingly.

(C) Within five days after the beginning of each fiscal year, the director of budget and management shall transfer from the general revenue fund to the public utilities fund an amount sufficient for maintaining and administering the public utilities commission and exercising its supervision and jurisdiction over the railroads and public utilities of the state during the first four months of the fiscal year. The director shall transfer the same amount back to the general revenue fund from the public utilities fund at such time as the director determines that the

balance of the public utilities fund is sufficient to support the appropriations from the fund for the fiscal year. The director may transfer less than that amount if the director determines that the revenues of the public utilities fund during the fiscal year will be insufficient to support the appropriations from the fund for the fiscal year, in which case the amount not paid back to the general revenue fund shall be payable to the general revenue fund in future fiscal years.

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(D) For the purpose of this section only, "public utility" includes, ~~in:~~

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(1) In addition to an electric utility as defined in section 4928.01 of the Revised Code, an electric services company, an electric cooperative, or a governmental aggregator subject to certification under section 4928.08 of the Revised Code, to the extent of the company's, cooperative's, or aggregator's engagement in the business of supplying or arranging for the supply in this state of any retail electric service for which it must be so certified;

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(2) In addition to a natural gas company as defined in section 4929.01 of the Revised Code, a retail natural gas marketer subject to certification under section 4929.20 of the Revised Code, to the extent of the marketer's engagement in the business of marketing natural gas to consumers in this state and for which business it must be certified.

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(E) Each public utilities commissioner shall receive a salary fixed at the level set by pay range 49 under schedule E-2 of section 124.152 of the Revised Code.

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Sec. 4911.18. (A) For the sole purpose of maintaining and administering the office of the consumers' counsel and exercising the powers of the consumers' counsel under this chapter, an amount equal to the appropriation to the office of the consumers' counsel

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in each fiscal year shall be apportioned among and assessed 115
against each public utility within ~~the~~ this state, as defined in 116
section 4911.01 of the Revised Code, by first computing an 117
assessment as though it were to be made in proportion to the 118
intrastate gross earnings or receipts of the public utility for 119
the calendar year next preceding that in which the assessment is 120
made, excluding earnings or receipts from sales to other public 121
utilities for resale. The office may include in that first 122
computation any amount of a public utility's intrastate gross 123
earnings or receipts underreported in a prior year. In addition to 124
whatever penalties apply under the Revised Code to such 125
underreporting, the office shall assess the public utility 126
interest at the rate stated in division (A) of section 1343.01 of 127
the Revised Code. The office shall deposit any interest so 128
collected into the consumers' counsel operating fund. 129

The final computation of the assessment shall consist of 130
imposing upon each public utility whose assessment under the first 131
computation would have been fifty dollars or less an assessment of 132
fifty dollars and recomputing the assessment of the remaining 133
companies by apportioning an amount equal to the appropriation to 134
the office of consumers' counsel in each fiscal year less the 135
total amount to be recovered from those paying the minimum 136
assessment, in proportion to the intrastate gross earnings or 137
receipts of the remaining companies for the calendar year next 138
preceding that in which the assessments are made, excluding 139
earnings or receipts from sales to other public utilities for 140
resale. 141

In the case of an assessment based on intrastate gross 142
receipts under this section against a public utility that is an 143
electric utility as defined in section 4928.01 of the Revised 144
Code, or an electric services company, electric cooperative, or 145
governmental aggregator subject to certification under section 146

4928.08 of the Revised Code, such receipts shall be those 147
specified in the utility's, company's, cooperative's, or 148
aggregator's most recent report of intrastate gross receipts and 149
sales of kilowatt hours of electricity, filed with the public 150
utilities commission pursuant to division (F) of section 4928.06 151
of the Revised Code, and verified by the commission. 152

In the case of an assessment based on intrastate gross 153
receipts under this section against a retail natural gas marketer 154
subject to certification under section 4929.20 of the Revised 155
Code, such receipts shall be those specified in the marketer's 156
most recent report of intrastate gross receipts and sales of 157
hundred cubic feet of natural gas, filed with the commission 158
pursuant to division (B) of section 4929.23 of the Revised Code, 159
and verified by the commission. 160

(B) On or before the first day of October in each year, the 161
office of consumers' counsel shall notify each public utility of 162
the sum assessed against it, whereupon payment shall be made to 163
the counsel, who shall deposit it into the state treasury to the 164
credit of the consumers' counsel operating fund, which is hereby 165
created. Any such amounts paid into the fund but not expended by 166
the office shall be credited ratably by the office to the public 167
utilities that pay more than the minimum assessment, according to 168
the respective portions of such sum assessable against them for 169
the ensuing calendar year, after first deducting any deficits 170
accumulated from prior years. The assessments for such calendar 171
year shall be reduced correspondingly. 172

(C) Within five days after the beginning of each fiscal year, 173
the director of budget and management shall transfer from the 174
general revenue fund to the consumers' counsel operating fund an 175
amount sufficient for maintaining and administering the office of 176
the consumers' counsel and exercising the powers of the consumers' 177
counsel under this chapter during the first four months of the 178

fiscal year. Not later than the thirty-first day of December of
the fiscal year, the same amount shall be transferred back to the
general revenue fund from the consumers' counsel operating fund.

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(D) As used in this section, "public utility" includes, ~~in:~~

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(1) In addition to an electric utility as defined in section
4928.01 of the Revised Code, an electric services company, an
electric cooperative, or a governmental aggregator subject to
certification under section 4928.08 of the Revised Code, to the
extent of the company's, cooperative's, or aggregator's engagement
in the business of supplying or arranging for the supply in this
state of any retail electric service for which it must be so
certified;

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(2) In addition to a natural gas company as defined in
section 4929.01 of the Revised Code, a retail natural gas marketer
subject to certification under section 4929.20 of the Revised
Code, to the extent of the marketer's engagement in the business
of marketing natural gas to consumers in this state and for which
business it must be certified.

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Sec. 4929.01. As used in this chapter:

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(A) "Alternative rate plan" means a method, alternate to the
method of section 4909.15 of the Revised Code, for establishing
rates and charges, under which rates and charges may be
established for a commodity sales service or ancillary service
that is not exempt pursuant to section 4929.04 of the Revised Code
or for a distribution service. Alternative rate plans may include,
but are not limited to, methods that provide adequate and reliable
natural gas services and goods in this state; minimize the costs
and time expended in the regulatory process; tend to assess the
costs of any natural gas service or goods to the entity, service,
or goods that cause such costs to be incurred; afford rate

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stability; promote and reward efficiency, quality of service, or 210
cost containment by a natural gas company; or provide sufficient 211
flexibility and incentives to the natural gas industry to achieve 212
high quality, technologically advanced, and readily available 213
natural gas services and goods at just and reasonable rates and 214
charges. Alternative rate plans also may include, but are not 215
limited to, automatic adjustments based on a specified index or 216
changes in a specified cost or costs. 217

(B) "Ancillary service" means a service that is ancillary to 218
the receipt or delivery of natural gas to consumers, including, 219
but not limited to, storage, pooling, balancing, and transmission. 220

(C) "Commodity sales service" means the sale of natural gas 221
to consumers, exclusive of any distribution or ancillary service. 222

(D) "Comparable service" means any regulated service or goods 223
whose availability, quality, price, terms, and conditions are the 224
same as or better than those of the services or goods that the 225
natural gas company provides to a person with which it is 226
affiliated or which it controls, or, as to any consumer, that the 227
natural gas company offers to that consumer as part of a bundled 228
service that includes both regulated and exempt services or goods. 229

(E) "Consumer" means any person or association of persons 230
purchasing, delivering, storing, or transporting, or seeking to 231
purchase, deliver, store, or transport, natural gas, including 232
industrial consumers, commercial consumers, and residential 233
consumers, but not including natural gas companies. 234

(F) "Distribution service" means the delivery of natural gas 235
to a consumer at the consumer's facilities, by and through the 236
instrumentalities and facilities of a natural gas company, 237
regardless of the party having title to the natural gas. 238

(G) "Natural gas company" means a natural gas company, as 239
defined in section 4905.03 of the Revised Code, that is a public 240

utility as defined in section 4905.02 of the Revised Code and 241
excludes a retail natural gas marketer. 242

(H) "Person," except as provided in division (J) of this 243
section, has the same meaning as in section 1.59 of the Revised 244
Code, and includes this state and any political subdivision, 245
agency, or other instrumentality of this state and includes the 246
United States and any agency or other instrumentality of the 247
United States. 248

(I) "Billing or collection agent" means a fully independent 249
agent, not affiliated with or otherwise controlled by a retail 250
natural gas marketer subject to certification under section 251
4929.20 of the Revised Code, to the extent that the agent is under 252
contract with such marketer solely to provide billing and 253
collection for retail natural gas on behalf of the marketer. 254

(J) "Retail natural gas marketer" means any person, as 255
defined in section 1.59 of the Revised Code notwithstanding 256
division (H) of this section, that is engaged on a for-profit or 257
not-for-profit basis in the business of marketing natural gas to 258
consumers in this state as a result of a rule or order adopted or 259
issued by the public utilities commission under Chapter 4905. of 260
the Revised Code or an exemption granted by the commission under 261
sections 4929.04 to 4929.08 of the Revised Code. "Retail natural 262
gas marketer" excludes a natural gas company, a billing or 263
collection agent, or a producer or gatherer of gas to the extent 264
such producer or gatherer is not a natural gas company under 265
section 4905.03 of the Revised Code and is not engaged on a 266
for-profit or not-for-profit basis in the business of marketing 267
natural gas to consumers in this state. 268

Sec. 4929.20. (A) Beginning on the effective date of initial 269
rules adopted pursuant to this division to establish a 270
certification system for retail natural gas marketers, no retail 271

natural gas marketer shall market natural gas to a consumer in 272
this state without first being certified by the public utilities 273
commission regarding its managerial, technical, and financial 274
capability and providing a financial guarantee sufficient to 275
protect customers and natural gas companies from default. 276
Certification shall be granted pursuant to procedures and 277
standards the commission shall prescribe in accordance with rules 278
adopted under section 4929.10 of the Revised Code. However, 279
certification or certification renewal shall be deemed approved 280
thirty days after the filing of an application with the commission 281
unless the commission suspends that approval for good cause shown. 282
In the case of such a suspension, the commission shall act to 283
approve or deny certification or certification renewal to the 284
applicant not later than ninety days after the date of the 285
suspension. 286

(B) Capability standards adopted in rules pursuant to 287
division (A) of this section shall be sufficient to ensure 288
compliance with section 4929.22 of the Revised Code and with the 289
minimum service requirements established under section 4929.23 of 290
the Revised Code. The rules shall include procedures for 291
biennially renewing certification. 292

(C) The commission may suspend, rescind, or conditionally 293
rescind the certification of any retail natural gas marketer 294
issued under this section if the commission determines, after 295
reasonable notice and opportunity for hearing, that the marketer 296
has failed to comply with any applicable certification standards 297
or has engaged in anticompetitive or unfair, deceptive, or 298
unconscionable acts or practices in this state. 299

(D) No natural gas company, on and after the effective date 300
of initial rules adopted pursuant to division (A) of this section 301
to establish a certification system for retail natural gas 302
marketers, shall knowingly distribute natural gas, to a retail 303

consumer in this state, for any retail natural gas marketer that
has not been certified by the commission pursuant to this section.

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Sec. 4929.21. (A)(1) Beginning on the effective date of
initial rules adopted pursuant to division (A) of section 4929.20
of the Revised Code to establish a certification system for retail
natural gas marketers, no person shall operate in this state as a
retail natural gas marketer, unless that person first does both of
the following:

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(a) Consents irrevocably to the jurisdiction of the courts of
this state and service of process in this state, including,
without limitation, service of summonses and subpoenas, for any
civil or criminal proceeding arising out of or relating to such
operation, by providing that irrevocable consent in accordance
with division (A)(4) of this section;

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(b) Designates an agent authorized to receive that service of
process in this state, by filing with the public utilities
commission a document designating that agent.

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(2) Beginning on the effective date of initial rules adopted
pursuant to division (A) of section 4929.20 of the Revised Code to
establish a certification system for retail natural gas marketers,
no person shall continue to operate as such retail natural gas
marketer unless that person continues to consent to such
jurisdiction and service of process in this state and continues to
designate an agent as provided under this division, by refiling in
accordance with division (A)(4) of this section the appropriate
documents filed under division (A)(1) of this section or, as
applicable, the appropriate amended documents filed under division
(A)(3) of this section. Such refiling shall occur during the month
of December of every fourth year after the initial filing of a
document under division (A)(1) of this section.

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(3) If the address of the person filing a document under

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division (A)(1) or (2) of this section changes, or if a person's agent or the address of the agent changes, from that listed on the most recently filed of such documents, the person shall file an amended document containing the new information.

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(4) The consent and designation required by divisions (A)(1), (2), and (3) of this section shall be in writing, on forms prescribed by the commission. The original of each such document or amended document shall be legible and shall be filed with the commission, with a copy filed with the office of the consumers' counsel and with the attorney general's office.

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(B) A person who enters this state pursuant to a summons, subpoena, or other form of process authorized by this section is not subject to arrest or service of process, whether civil or criminal, in connection with other matters that arose before the person's entrance into this state pursuant to such summons, subpoena, or other form of process.

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(C) Divisions (A) and (B) of this section do not apply to any of the following:

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(1) A corporation incorporated under the laws of this state that has appointed a statutory agent pursuant to section 1701.07 or 1702.06 of the Revised Code;

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(2) A foreign corporation licensed to transact business in this state that has appointed a designated agent pursuant to section 1703.041 of the Revised Code;

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(3) Any other person that is a resident of this state or that files consent to service of process and designates a statutory agent pursuant to other laws of this state.

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Sec. 4929.22. For the protection of consumers in this state, the public utilities commission shall adopt rules under section 4929.10 of the Revised Code specifying the necessary minimum

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service requirements of a retail natural gas marketer subject to 365
certification under section 4929.20 of the Revised Code regarding 366
the marketing of natural gas, directly or through its billing and 367
collection agent. Rules adopted under this section shall include a 368
prohibition against unfair, deceptive, and unconscionable acts and 369
practices in the marketing, solicitation, and sale of natural gas 370
and in the administration of any contract for service, and also 371
shall include additional consumer protections concerning all of 372
the following: 373

(A) Contract disclosure. The rules shall include requirements 374
that a retail natural gas marketer subject to certification under 375
section 4929.20 of the Revised Code do both of the following: 376

(1) Provide consumers with adequate, accurate, and 378
understandable pricing and terms and conditions of the contract, 379
including any switching fees, and with a document containing the 380
terms and conditions of pricing and other aspects of the contract 381
before the consumer enters into the contract for service; 382

(2) Disclose the conditions under which a customer may 383
rescind a contract without penalty. 384

(B) Service termination. The rules shall include disclosure 385
of the terms identifying how customers may switch suppliers or 386
terminate the contract, including any required notice and any 387
penalties. 388

(C) Minimum content of customer bills. The rules shall 389
include all of the following requirements, which shall be 390
standardized: 391

(1) Price disclosure and disclosures of total billing units 392
for the billing period and historical annual usage; 393

(2) To the maximum extent practicable, separate listing of 394

each price component to enable a customer to recalculate its bill for accuracy; 395
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(3) Identification of the retail natural gas marketer; 397

(4) Statement of where and how payment may be made and provision of a toll-free or local customer assistance and complaint number for the retail natural gas marketer, as well as a consumer assistance telephone number or numbers for state agencies, such as the commission, the office of the consumers' counsel, and the attorney general's office, with the available hours noted; 398
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(5) Other than for the first billing after the effective date of initial rules adopted pursuant to division (A) of section 4929.20 of the Revised Code to establish a certification system for retail natural gas marketers, highlighting and clear explanation on each customer bill, for two consecutive billing periods, of any changes in the rates, terms, and conditions of a contract. 405
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(D) Disconnection and service termination, including requirements with respect to master-metered buildings. The rules shall include policies and procedures that are consistent with sections 4933.12 and 4933.122 of the Revised Code and the commission's rules adopted under those sections, and that provide for all of the following: 412
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(1) Coordination between suppliers, including marketers, for the purpose of maintaining service; 418
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(2) The allocation of partial payments between suppliers, including marketers when service components are jointly billed; 420
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(3) A prohibition against blocking, or authorizing the blocking of, customer access to other retail natural gas service when a customer is delinquent in payments to the retail natural gas marketer; 422
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(4) A prohibition against switching, or authorizing the switching of, a customer's supplier of retail natural gas service without the prior consent of the customer in accordance with appropriate confirmation practices, which may include independent, third-party verification procedures. 426
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(5) A requirement of disclosure of the conditions under which a customer may rescind a decision to switch its supplier without penalty; 431
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(6) Specification of any required notice and any penalty for early termination of contract. 434
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(E) Minimum service quality, safety, and reliability. 436

(F) Customer information. The rules shall include requirements that the retail natural gas marketer make generic customer load pattern information available to other retail natural marketers, or natural gas companies on a comparable and nondiscriminatory basis, and make customer-specific information available to other retail natural gas marketers, or natural gas companies on a comparable and nondiscriminatory basis unless, as to customer-specific information, the customer objects. The rules shall ensure that each retail natural gas marketer provide clear and frequent notice to its customers of the right to object and of applicable procedures. The rules shall establish the exact language that shall be used in all such notices. 437
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Sec. 4929.23. (A) A retail natural gas marketer subject to certification under section 4929.20 of the Revised Code shall provide the public utilities commission with such information, regarding its marketing business for which it is subject to certification, as the commission considers necessary to carry out sections 4929.20 to 4929.24 of the Revised Code. The commission shall take such measures as it considers necessary to protect the confidentiality of any such information. 449
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(B) The commission shall require each retail natural gas marketer subject to certification under section 4929.20 of the Revised Code to file an annual report of such receipts and sales from the provision of its marketing business for which it is subject to certification. For the purpose of the reports, sales of hundred cubic feet of natural gas are deemed to occur at the meter of the retail customer. 457
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Sec. 4929.24. (A)(1) The public utilities commission has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or complaint or initiative of the commission regarding the marketing of natural gas by a retail natural gas marketer subject to certification under section 4929.20 of the Revised Code. 464
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(2) The commission also has jurisdiction under section 4905.26 of the Revised Code, upon complaint of any person or complaint or initiative of the commission, to determine whether a retail natural gas marketer subject to certification under section 4929.20 of the Revised Code has violated or failed to comply with any provision of sections 4929.20 to 4929.23 of the Revised Code regarding its marketing business for which it is subject to certification or any rule or order adopted or issued by the commission for purposes of those sections. 470
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(B) In addition to its authority under division (C) of section 4929.20 of the Revised Code and to any other remedies provided by law, the commission, after reasonable notice and opportunity for hearing in accordance with section 4905.26 of the Revised Code, may do any of the following: 479
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(1) Order rescission of a contract, or restitution to customers, in any complaint brought pursuant to division (A)(1) or (2) of this section; 484
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(2) Order any remedy or forfeiture provided under sections 487

4905.54 to 4905.60 and 4905.64 of the Revised Code upon a finding 488
under division (A)(2) of this section that the retail natural gas 489
marketer subject to certification under section 4929.20 of the 490
Revised Code has violated or failed to comply, regarding its 491
marketing business for which it is subject to certification, with 492
any provision of sections 4929.20 to 4929.23 of the Revised Code 493
or any rule or order adopted or issued under those sections. 494

(C)(1) In addition to the authority conferred under section 495
4911.15 of the Revised Code, the consumers' counsel may file a 496
complaint under division (A)(1) or (2) of this section on behalf 497
of residential consumers in this state or appear before the 498
commission as a representative of those consumers pursuant to any 499
complaint filed under division (A)(1) or (2) of this section. 500

(2) In addition to the authority conferred under section 501
4911.19 of the Revised Code, the consumers' counsel, upon 502
reasonable grounds, may file with the commission under section 503
4905.26 of the Revised Code a complaint for discovery if the 504
recipient of an inquiry under section 4911.19 of the Revised Code 505
fails to provide a response within the time specified in that 506
section. 507

(D) The commission's jurisdiction with respect to a natural 508
gas company under Chapter 4905. of the Revised Code extends to any 509
violation of division (D) of section 4929.20. 510

Section 2. That existing sections 4905.10, 4911.18, and 511
4929.01 of the Revised Code are hereby repealed. 512

Section 3. Any person, as defined in section 1.59 of the 513
Revised Code, that, prior to the effective date of initial rules 514
adopted pursuant to division (A) of section 4929.20 of the Revised 515
Code as enacted by this act to establish a certification system 516
for retail natural gas marketers, is engaged on a for-profit or 517

not-for-profit basis in the business of marketing natural gas to 518
consumers in this state as a result of a rule or order adopted or 519
issued prior to the effective date of this act by the Public 520
Utilities Commission under Chapter 4905. of the Revised Code, may 521
continue to engage in such business until the Commission acts upon 522
the person's application under section 4929.20 of the Revised Code 523
as enacted by this act, provided the person files an application 524
with the Commission for certification in accordance with that 525
section not later than ninety days after the effective date of the 526
initial rules. 527