

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1380

Session of
1981

INTRODUCED BY VROON, PRATT, MAIALE, LETTERMAN, PERZEL, MERRY,
ITKIN, MORRIS, E. Z. TAYLOR AND PISTELLA, MAY 5, 1981

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 12, 1981

AN ACT

1 Amending the act of November 26, 1978 (P.L.1255, No.299),
2 entitled "An act providing for notice and the right to cure
3 landlord's default to avoid the termination of utility
4 service to tenants," further providing for landlord
5 ratepayers and tenants, and for notice prior to
6 discontinuance of service.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. The definitions of "landlord ratepayer,"
10 "residential building," and "tenant" of section 2, act of
11 November 26, 1978 (P.L.1255, No.299), known as the "Utility
12 Service Tenants Rights Act," are amended and the section is
13 amended by adding a definition to read:

14 Section 2. Definitions.

15 The following words and phrases when used in this act shall
16 have, unless the context clearly indicates otherwise, the
17 meanings given to them in this section:

18 "Billing month." A period of time not to exceed 35 days.

19 "Landlord ratepayer." One or more individuals or an

1 organization listed on a gas, electric, steam or water utility's
2 records as the party responsible for payment of the gas,
3 electric, steam or water service provided to one or more
4 residential units of a residential building or mobile home park
5 of which building or mobile home park the party is not the sole
6 occupant; in the event the landlord ratepayer, as defined above,
7 is not party to a lease between himself or itself and the
8 tenant, as hereinafter defined, the term shall also include the
9 individual or organization to whom the tenant, as hereinafter
10 defined, makes rental payments pursuant to an oral or written
11 lease.

12 * * *

13 "Residential building." A building containing one or more
14 dwelling units occupied by one or more tenants[, but excluding].
15 The term does not include nursing homes, hotels [and], motels or
16 any dwelling wherein the landlord ratepayer is resident and
17 shares common heating facilities with three or less tenants and
18 shares common access to all parts of such dwelling unit.

19 "Tenant." Any person or group of persons [whose]
20 contractually obligated to make rental payments to the landlord
21 ratepayer pursuant to an oral or written lease of a dwelling
22 unit in a residential building or mobile home park who is
23 provided gas, electricity, steam or water[, pursuant to a rental
24 arrangement for the dwelling unit, mobile home or plot of ground
25 within a mobile home park, but] as an included service under
26 such lease and who is not the ratepayer of the company which
27 supplied such gas, electricity, steam or water.

28 Section 2. Subsection (a) of section 3 of the act, repealed
29 in part October 5, 1980 (P.L.693, No.142), is amended to read:

30 Section 3. Notices before service to landlord ratepayer

1 discontinued.

2 (a) Except when required to prevent or alleviate an
3 emergency or except in the case of danger to life or property,
4 before any discontinuance of service within the utility's
5 corporate limits, to a landlord ratepayer for nonpayment a
6 public utility shall:

7 (1) Notify the landlord ratepayer of the proposed
8 discontinuance in writing as prescribed in section 5 at least
9 37 days before the date of discontinuance of service.

10 (2) Notify the following agencies which serve the
11 community in which the affected premises are located in
12 writing [at the time of delivery of notice to the tenants of
13 the proposed discontinuance of service] at least 20 days
14 after the time of delivery of notice to the tenants of the
15 proposed discontinuance and at least ten days before
16 discontinuance of service:

17 (i) the Department of Licenses and Inspections of
18 any city of the first class;

19 (ii) the Department of Public Safety of any city of
20 the second class, second class A or third class; and

21 (iii) the city or county Public Health Department or
22 in the event that such a department does not exist, the
23 Department of Health office responsible for that county.

24 (3) Notify each residential unit reasonably likely to be
25 occupied by an affected tenant of the proposed discontinuance
26 in writing as prescribed in section 6 at least seven days
27 after notice to the landlord ratepayer pursuant to this
28 section and at least 30 days before any such discontinuance
29 of service. However, if within seven days of receipt of the
30 notice to the landlord issued pursuant to this section, the

landlord ratepayer files a petition with the court disputing the right of the utility to discontinue service, such notice shall not be rendered until such petition has been adjudicated by the court provided the landlord ratepayer shall continue to pay the undisputed portion of current bills when due pending the final decision on the petition.

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Section 3. Subsection (b) of section 5 and sections 6, 7 and 8 of the act are amended to read:

Section 5. Delivery and contents of discontinuance notice to landlord ratepayer.

* * *

(b) Any one of the following procedures shall constitute effective notice to the landlord under section 3:

(1) Notice by certified mail if the utility receives a return receipt signed by the landlord ratepayer or his agent.

(2) Notice by personal service of the landlord ratepayer or his agent.

(3) [After unsuccessful attempts at personal service on two separate days, notice] Notice by first class mail and conspicuously posting at the landlord ratepayer's principal place of business or the business address which the landlord provided the utility as his address for receiving communications.

Section 6. Delivery and contents of first discontinuance notice to tenants.

The notice required to be given to a tenant pursuant to section 3 shall be [mailed or otherwise delivered to the address of each affected tenant] sent by first class mail to each affected TENANT BY NAME AT HIS individual dwelling unit and

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1 posted in common areas, and shall contain the following
2 information:

3 (1) the date on which the notice is rendered;

4 (2) the date on or after which service will be
5 discontinued;

6 [(3) the circumstances under which service to the
7 affected tenant may be continued, specifically referring to
8 the conditions set out in section 7;]

9 (4) on each account, the bill for the [30-day] billing
10 month period preceding the notice to the tenants except in
11 the case of gas-nonheating, water and sewer service where the
12 billing period is bimonthly or quarterly, the utility shall
13 provide an estimate of costs for the previous billing month;

14 (5) [the statutory rights of a tenant to deduct the
15 amount of any direct payment to the utility from any rent
16 payments then or thereafter due; to be protected against any
17 retaliation by the landlord for exercising such statutory
18 right; to recover money damages from the landlord for any
19 such retaliation;] the following statement of the tenant's
20 rights:

21 ~~"The payment of your landlord's utility bill is overdue, and~~ <—
22 ~~therefore the utility service to your dwelling may be~~
23 ~~terminated in 30 days. It is important that you understand~~
24 ~~that you have the following rights:~~

25 ~~(i) You will have a 30 day period in which you must~~
26 ~~act in one of the following ways:~~

27 ~~(A) Take no action and have service terminated~~
28 ~~in 30 days.~~

29 ~~(B) Have future service provided and billed to~~
30 ~~you if there is already an individual meter serving~~

~~your unit or if this can be done by simply installing a meter with only minor changes in the pipelines or wiring and without acquiring new right of ways.~~

~~Before you decide to make this change to put service in your own name, you should discuss with the utility company the costs involved in installing a new meter.~~

~~(C) Act as a group with the other tenants or individually to pay the outstanding bill for the prior billing month. (In the case of cities of the first class the notice shall contain this additional information: For the first 30 day period, tenants shall not be required to pay more than the total of their collective rental payments for the month.) No tenant shall be required to pay a deposit or to establish credit in his or her own name nor shall any tenant be responsible for any debts or obligations of the landlord, or previous tenant in order to obtain continued service. If you live in a multiple occupancy dwelling which is served by one meter, the outstanding bill contained in this notice is for the total usage of all of the tenants served by the meter, rather than the usage for an individual dwelling.~~

~~(ii) If you send a payment to the utility to try to pay this bill, but you and the other tenants are unable to pay the entire amount of the bill, the service will be shut off, and the utility will refund your payment.~~

~~(iii) You may deduct any direct payment to the utility from any rent payment then or thereafter due.~~

~~(iv) You have the right to have the utility, upon~~

~~receiving any payment, notify your landlord of the amount paid by any tenant.~~

~~(v) The landlord may not retaliate against you by increasing your rent, by attempting to evict you, or by any other means, for exercising these rights which are granted to you by the act of November 26, 1978 (P.L.1255, No.299), known as the "Utility Service Tenants Rights Act."~~

~~(vi) If you have any questions, you may call your utility at the following number: (Insert appropriate telephone number)."~~

NOTICE

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YOUR UTILITIES MAY BE SHUT OFF.

PLEASE READ THIS NOTICE ABOUT YOUR RIGHTS.

YOUR LANDLORD HASN'T PAID HIS UTILITY BILL FOR YOUR BUILDING. YOUR UTILITIES WILL BE SHUT OFF IN 30 DAYS UNLESS YOU DO SOMETHING.

YOU HAVE THE FOLLOWING RIGHTS:

1. YOU CAN JOIN WITH THE OTHER TENANTS TO PAY THE UTILITY BILL FOR THE LAST BILLING MONTH. OR YOU CAN PAY THE TOTAL BILL YOURSELF. IF YOU PAY EITHER WAY, YOU DO NOT HAVE TO PAY A DEPOSIT OR GET CREDIT GRANTED IN YOUR NAME. YOU WILL NOT HAVE TO PAY YOUR LANDLORDS DEBTS OR THE DEBTS OF PRIOR TENANTS. IF YOUR BUILDING HAS ONE METER FOR MANY TENANTS, THE UTILITY BILL IS FOR ALL THE TENANTS, AND MUST BE PAID IN FULL. THE UTILITY COMPANY WILL TELL YOUR LANDLORD HOW MUCH YOU PAID FOR UTILITIES.

2. IF YOU ONLY PAY PART OF THE LAST MONTHLY BILLING, YOUR UTILITIES WILL BE SHUT OFF AND THE UTILITY COMPANY WILL RETURN YOUR MONEY.

1 3. YOU MAY DEDUCT YOUR PAYMENT TO THE UTILITY
2 COMPANY FROM YOUR RENT DUE NOW OR FROM FUTURE RENT.

3 4. YOUR LANDLORD CANNOT PUNISH YOU IF YOU PAY
4 THE UTILITY BILL. YOUR LANDLORD CANNOT RAISE YOUR
5 RENT, CANNOT EVICT YOU AND CANNOT HURT YOU IN ANY
6 OTHER WAY.

7 5. YOU CAN GET YOUR UTILITY SERVICE BILLED IN
8 ONLY YOUR NAME IF YOUR UNIT HAS ITS OWN METER. OR,
9 YOU CAN GET YOUR OWN SERVICE IF A METER CAN BE PUT IN
10 WITH ONLY A FEW CHANGES IN PIPES, WIRES AND LAND.
11 PLEASE CALL THE UTILITY COMPANY IF YOU WANT A NEW
12 METER. THEY WILL TELL YOU HOW MUCH IT WILL COST.

13 6. IF YOU HAVE ANY QUESTIONS, PLEASE TELEPHONE
14 YOUR UTILITY COMPANY OR THE PUBLIC UTILITY COMMISSION
15 (PUC) AT THESE NUMBERS: (INSERT TELEPHONE NUMBERS).

16 (6) that tenants may make payment to the utility on
17 account of nonpayment by the landlord ratepayer only by check
18 or money order drawn by the tenant to the order of the
19 utility.[]; and

20 (7) a telephone number at the utility which a tenant may
21 call for an explanation of his rights.]

22 The information in paragraphs (1) through [(7)] (6) shall be
23 posted by the utility in those common areas of the building or
24 mobile home park where it is reasonably likely to be seen by the
25 affected tenants. Any officer or employee of the utility may at
26 any reasonable time, enter the common hallways and common areas
27 of such building for the purpose of complying with the
28 provisions of this section.

29 Section 7. Rights of tenants to continued service.

30 (a) At any time before or after service within the utility's

1 corporate limits is discontinued by a public utility on account
2 of nonpayment by the landlord ratepayer, the affected tenants
3 may apply to the utility to have service continued or resumed. A
4 public utility shall not discontinue such service or shall
5 promptly resume service previously discontinued if it receives
6 from the tenants an amount equal to the bill for the affected
7 account of the landlord ratepayer for the [30-day] billing month
8 period preceding the notice to the tenants. Thereafter, such
9 utility shall notify each tenant of the total amount of the bill
10 for the second and each succeeding billing month period [of 30
11 days or less] and if the tenants fail to make payment of any
12 such bill within 30 days of the delivery of the notice to the
13 tenants, the utility may commence discontinuance [procedures] of
14 service: Provided, That no such discontinuance may occur until
15 30 days after each tenant has [received written] been furnished
16 notice of the proposed discontinuance as prescribed in section
17 8. All payments by tenants to a utility on account of nonpayment
18 by the landlord ratepayer shall be made by a check or money
19 order drawn by the tenant to the order of the utility. Upon
20 receiving any such payment, the utility shall notify the
21 landlord ratepayer who is liable for the utility service of the
22 amount or amounts paid by any tenant and the amount or amounts
23 credited to the landlord's bill for each tenant pursuant to the
24 provisions of this section. [In the event that the tenants fail
25 to satisfy the requirements of this section to maintain or
26 restore service and service to the affected dwelling units is
27 discontinued, the utility shall refund to each tenant the amount
28 paid by such tenant toward the bill which the tenants failed to
29 pay, upon the request of the tenant or after holding the
30 tenant's payment during 60 consecutive days of discontinued

1 service, whichever occurs first.] Tenants requesting continued
2 utility service under the provisions of this section, except
3 those individually subscribing for service pursuant to
4 subsection (b), shall not be considered utility customers, but
5 shall be considered to be acting on behalf of the landlord
6 ratepayer, who shall remain liable to the utility for service
7 provided after notice to tenants. In the event the tenants fail
8 to satisfy the requirements of this subsection with regard to
9 the first billing month period preceding notice to the tenant,
10 the utility shall refund any such moneys received from a tenant
11 to the tenant. Any payments made by the tenants shall be applied
12 first against the bill for the billing month preceding notice to
13 the tenants, and then against bills for service rendered
14 subsequent to such bill. Upon discontinuance of service to the
15 tenants for failure to pay the utility's bill for service in
16 full for any subsequent month, the provisions of subsection
17 (a.1) shall apply.

18 (a.1) A utility shall refund to a tenant any overpayment
19 made by the tenant to the utility in the final month of service
20 when the tenant signs a form provided by the utility swearing or
21 affirming that all the following facts are true:

22 (1) The tenant has not deducted the entire final payment
23 to the utility from any rental payment to the landlord.

24 (2) The entire final payment to the utility is not
25 offset by rent legally owing to the landlord at the time of
26 making the application for refund pursuant to this
27 subsection.

28 (3) The tenant has permanently departed the residential
29 building at the time of making the application.

30 (b) Any tenant of a residential building or mobile home park

1 who has been notified of a proposed discontinuance of utility
2 service pursuant to section 3 shall have the right to agree to
3 subscribe for future service individually if this can be
4 accomplished without a major revision of distribution facilities
5 or additional right-of-way acquisitions.

6 (c) This act shall not impair or affect any regulation of a
7 governing body of a public utility of a city of the first class
8 which provides that only in the first 30-day period after notice
9 to tenants, the tenants shall not be required to pay more than
10 the total of their collective rental payments for the month to
11 be entitled to continued service. In subsequent billing months,
12 the tenants shall pay the entire amount for the appropriate
13 billing month period.

14 Section 8. Delivery and contents of subsequent discontinuance
15 notices to tenants.

16 Subsequent notices required to be given to a tenant pursuant
17 to section 7 shall be [mailed or otherwise delivered to the
18 address of each affected tenant] sent by first class mail to
19 each affected TENANT BY NAME AT HIS individual dwelling unit and <—
20 posted in common areas and shall contain the following
21 information:

22 (1) the date on or after which service will be
23 discontinued;

24 (2) the amount due, which shall include the arrearage on
25 any earlier bill due from tenants;

26 (3) a telephone number at the utility which a tenant may
27 call for an explanation of his rights; [and]

28 (4) the right of a tenant to file a petition with the
29 court to enforce any legal right that he may have; and

30 (5) the right of a tenant to apply for a refund where

1 appropriate pursuant to section 7(a.1).

2 Section 4. Section 18 of the act, repealed in part October
3 5, 1980 (P.L.693, No.142), is amended to read:

4 Section 18. Penalties for removing, interfering or tampering
5 with notices.

6 (a) Any landlord ratepayer who fails to provide a utility
7 with the names and addresses of affected tenants pursuant to
8 section 4 shall forfeit and pay to the Commonwealth a civil
9 penalty of not more than \$500 for each day of the landlord
10 ratepayer's failure to respond. The court [in its discretion
11 may] shall award the utility reasonable attorneys' fees, filing
12 fees and reasonable costs of suit for any action against the
13 landlord ratepayer which was necessary to obtain the names and
14 addresses of affected tenants pursuant to section 4.

15 (b) Any person who removes, interferes or tampers with a
16 notice to tenants of proposed discontinuance of service, posted
17 pursuant to section 6 shall be guilty of a violation of this
18 section and shall be punished by a fine not to exceed [\$25]
19 \$300.

20 (c) Any landlord ratepayer who willfully denies an agent or
21 employee of the utility access to the common areas of his
22 residential building for the purpose of posting or delivering
23 notices to tenants pursuant to this act, shall be subject to a
24 civil penalty of not more than \$500 for each day that such
25 access is denied.

26 Section 5. The act is amended by adding a section to read:
27 Section 18.1. Petition to appoint receiver.

28 (a) Notwithstanding the foregoing sections of this act, when
29 a landlord ratepayer is two or more months in arrears in his
30 utility payments, the affected utility shall have the right to

petition the court of common pleas of the county wherein the
leased premises are located to appoint a receiver to collect
rent payments otherwise due the landlord ratepayer directly from
the tenants and to pay all overdue and subsequent utility bills
therefrom. The provisions of this section shall not be construed
to supersede any tenant rights or defenses under law regarding
payment of rent. This right may be exercised only in those
situations that involve 20 or more rental units in which the
units UNITS WHICH are not individually metered by the utility.

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Upon appointment the receiver shall notify the tenants of his
powers and their rights under law regarding payment of rent and
continued utility service by first class mail, certified mail,
personal service or posting each unit in the leased premises.

(b) The affected utility under this section shall not
discontinue utility service if it receives payment from the
receiver in the amounts specified in subsection (c)(2) within 60
days from the date of notice to the tenants of the appointment
of a receiver is mailed or delivered.

(c) The receiver shall:

(1) Collect all rent directly from the tenants.

(2) Pay the utility bills equal to the amount due, for
the billing month period prior to the tenant receiving notice
of the appointment of the receiver and continuing with all
future bills as they become due.

(3) After payment of the amounts in paragraph (2), any
excess moneys shall be applied pursuant to further order of
the court.

(4) Return the remainder to the landlord ratepayer, less
the cost of the notification made to the tenants, plus a 2%
administrative fee.

1 (d) The receiver shall continue to collect the rents and
2 make disbursements in the manner provided in subsection (c)
3 until the second rental period ends after all of the following
4 conditions have been met:

5 (1) The landlord ratepayer deposits in escrow with the
6 utility, a sum equal to the utility charges for the two
7 highest monthly periods in the preceding 12 months.

8 (2) The landlord ratepayer demonstrates to the
9 satisfaction of the court of common pleas that it has the
10 financial resources necessary to resume its obligation to the
11 utility and tenants.

12 (3) The landlord ratepayer pays the undisputed portion
13 of all outstanding utility bills.

14 At such time, rental payments will once again be made to the
15 landlord ratepayer. Notice of this change shall be made to the
16 tenants by the receiver by means of first class mail, certified
17 mail, personal service, or posting each unit in the leased
18 premises paid by the landlord ratepayer.

19 (e) The escrow fund established under subsection (d)(1)
20 shall not be considered a prepayment of utility costs and shall
21 only be applied against outstanding utility bills at the time a
22 new receiver is appointed for a subsequent failure by the
23 landlord ratepayer to pay utility bills for a two month period.
24 Said escrow fund shall be returned to the landlord ratepayer not
25 later than 90 days nor earlier than 60 days, after the landlord
26 ratepayer obtains a court order releasing such funds and
27 certifying that timely payment of utility bills has been made
28 for the immediately preceding 24 consecutive months.

29 (f) Any funds held in escrow by the utility shall bear
30 interest at a rate to the landlord 1% lower than actually

1 received in a regular savings account at a commercial bank
2 within the court's jurisdiction and the remaining 1% shall be
3 remitted to the court for administrative costs.

4 (g) In the event more than one utility company is affected
5 by any landlord ratepayer's failure to pay utility bills, the
6 court shall appoint the same receiver to function for all
7 aggrieved utilities.

8 Section 6. This act shall take effect in 30 days.