

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1834

Session of
1977

INTRODUCED BY MESSRS. WHITE, OLIVER, RICHARDSON, CIANCIULLI,
WIGGINS, MRS. SCANLON, MRS. KELLY, MESSRS. GIAMMARCO AND
WILLIAMS, NOVEMBER 1, 1977

AS REPORTED FROM COMMITTEE ON CONSUMER AFFAIRS, HOUSE OF
REPRESENTATIVES, AS AMENDED, NOVEMBER 15, 1977

AN ACT

1 Providing for notice and the right to cure landlord's default to
2 avoid the termination of utility service to tenants.

3 The General Assembly of the Commonwealth of Pennsylvania
4 hereby enacts as follows:

5 Section 1. Short title.

6 This act shall be known and may be cited as the "Utility
7 Service Tenants' Rights Act."

8 Section 2. Definitions.

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

12 "Bill." A written statement from a utility to a customer
13 setting forth the amount of gas, electricity, steam or water
14 consumed or estimated to have been consumed for the billing
15 period set forth in the utility's tariff and the charges
16 therefor.

17 "Landlord customer." 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 building or mobile home park of which
5 building or mobile home park such party is not the sole
6 occupant.

7 "MOBILE HOME." A TRANSPORTABLE, SINGLE-FAMILY DWELLING UNIT <—
8 INTENDED FOR PERMANENT OCCUPANCY AND CONSTRUCTED AS A SINGLE
9 UNIT, OR AS TWO OR MORE UNITS DESIGNED TO BE JOINED INTO ONE
10 INTEGRAL UNIT CAPABLE OF AGAIN BEING SEPARATED FOR REPEATED
11 TOWING, WHICH ARRIVES AT A SITE COMPLETE AND READY FOR OCCUPANCY
12 EXCEPT FOR MINOR AND INCIDENTAL UNPACKING AND ASSEMBLY
13 OPERATIONS AND CONSTRUCTED SO THAT IT MAY BE USED WITHOUT A
14 PERMANENT FOUNDATION.

15 "Mobile home park." Any site, lot, field or tract of land,
16 privately or publicly owned or operated, upon which three or
17 more mobile homes, occupied for dwelling or sleeping purposes,
18 are or are intended to be located.

19 "Municipal corporation." All cities, boroughs, towns,
20 townships, or counties of this Commonwealth, and also any public
21 corporation, authority, or body whatsoever created or organized
22 under any law of this Commonwealth.

23 "Projected bill." A written statement of the amount which
24 would be owed if the same quantity of gas, electricity, steam or
25 water were supplied at current rates as was supplied for the
26 same billing period during the previous year; but, if no service
27 was rendered to the account during the same billing period for
28 the previous year or if the demand for such service is
29 significantly different from that of the previous year, such
30 written statement shall be based upon a reasonable method of

1 estimating charges for usage.

2 "Public utility." A municipal corporation now or hereafter
3 owning or operating within its corporate boundaries equipment or
4 facilities for:

5 (1) Producing, generating, transmitting, distributing or
6 furnishing natural or artificial gas, electricity, or steam
7 for the production of light, heat, or power to or for the
8 public for compensation.

9 (2) Diverting, developing, pumping, impounding,
10 distributing, or furnishing water to or for the public for
11 compensation.

12 "Residential building." A building containing one or more
13 dwelling units occupied by one or more tenants, but excluding
14 nursing homes, hotels and motels.

15 "Tenant." Any person or group of persons whose dwelling unit
16 in a residential building or mobile home park is provided gas,
17 electricity, steam or water, pursuant to a rental arrangement
18 FOR SUCH DWELLING UNIT, MOBILE HOME OR PLOT OF GROUND WITHIN A <—
19 MOBILE HOME PARK, but who is not the customer of the company
20 which supplied such gas, electricity, steam or water.

21 Section 3. Notices before service to landlord customer
22 discontinued.

23 Except when required to prevent or alleviate an emergency or
24 except in the case of danger to life or property, before any
25 discontinuance of service within the utility's corporate limits,
26 to a landlord customer for nonpayment a public utility shall:

27 (1) Notify the landlord customer of the proposed
28 discontinuance in writing as prescribed in section 5 at least
29 37 days before the date of discontinuance of service.

30 (2) Notify the Attorney General in writing of the

1 proposed discontinuance of service.

2 (3) Notify the following agencies which serve the
3 community in which the affected premises are located in
4 writing of the proposed discontinuance of service:

5 (i) the Department of Licenses and Inspections of
6 any city of the first class;

7 (ii) the Department of Public Safety of any city of
8 the second class, second class A, or third class;

9 (iii) the city or county Public Health Department;
10 and

11 (iv) the grantees of Emergency Energy Funds from the
12 Community Services Agency.

13 (4) Notify each residential unit reasonably likely to be
14 occupied by an affected tenant of the proposed discontinuance
15 in writing as prescribed in section 6 at least seven days
16 after notice to the landlord customer pursuant to this
17 section, and at least 30 days before any such discontinuance
18 of service. However, if before the tenants are notified
19 pursuant to this section, the landlord customer files a
20 petition with the court opposing the right of the utility to
21 notify the tenants, such notice shall not be rendered until
22 such petition has been adjudicated by the court of common
23 pleas or the Commonwealth Court.

24 Section 4. Identifying tenants.

25 (a) Upon receiving a lawful request for the names and
26 addresses of the affected tenants pursuant to this act, it shall
27 be the duty of the landlord customer to provide the utility with
28 the names and addresses of every affected tenant of any building
29 or mobile home park for which the utility is proposing to
30 discontinue service.

(b) Such information shall be provided by the landlord customer:

(1) within seven days of receipt of the notice to the landlord customer required by section 3; or

(2) within three days of any adjudication by a court having jurisdiction that the landlord customer must provide the requested information if the landlord files a petition opposing the utility's request to obtain the information within seven days of receipt of the notice to the landlord customer.

(c) It shall be the duty of any public utility to pursue any appropriate legal remedy it has, necessary to obtain from the landlord customer, the names and addresses of all affected tenants of a building or mobile home park for which the utility is proposing discontinuance of service to such landlord customer.

Section 5. Contents of discontinuance notice to landlord customer.

The notice required to be given to a landlord customer pursuant to section 3 shall contain the following information:

(1) the amount owed the utility by the landlord customer for each affected account;

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

(3) the date on or after which the company will notify tenants of the proposed discontinuance of service and of their rights under sections 7, 9 and 10;

(4) that the landlord customer may avoid discontinuance of service by paying the utility the full amount due for the accounts in question prior to the intended date of

1 discontinuance or by paying a portion of the amount due and
2 making an equitable arrangement with the utility to pay the
3 balance; and

4 (5) the right of the landlord customer to:

5 (i) file a petition with the court within seven days
6 of receipt of notice to the landlord customer of the
7 proposed discontinuance of service, opposing the
8 utility's request for the names and addresses of tenants;

9 (ii) file a petition with the court opposing the
10 notification of tenants of the proposed discontinuance of
11 service; and

12 (iii) file a petition with the court opposing the
13 discontinuance of service to the landlord customer.

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

16 The notice required to be given to a tenant pursuant to
17 section 3 shall be mailed or otherwise delivered to the address
18 of each affected tenant, and shall contain the following
19 information:

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

21 (2) the date on or after which service will be
22 discontinued;

23 (3) the circumstances under which service to the
24 affected tenant may be continued, specifically referring to
25 the conditions set out in section 7;

26 (4) the projected bill;

27 (5) the statutory rights of a tenant to deduct the
28 amount of any direct payment to the utility from any rent
29 payments then or thereafter due; to be protected against any
30 retaliation by the landlord for exercising such statutory

1 right; to recover money damages from the landlord for any
2 such retaliation;

3 (6) that tenants may make payment to the utility on
4 account of nonpayment by the landlord customer only by check
5 or money order drawn by the tenant to the order of the
6 utility; and

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

9 The information in paragraphs (1) through (7) shall be posted
10 by the utility in those common areas of the building or mobile
11 home park where it is reasonably likely to be seen by the
12 affected tenants. Any officer or employee of the utility may at
13 any reasonable time, enter the common hallways and common areas
14 of such building for the purpose of complying with the
15 provisions of this section.

16 Section 7. Rights of tenants to continued service.

17 At any time before or after service within the utility's
18 corporate limits is discontinued by a public utility on account
19 of nonpayment by the landlord customer, the affected tenants may
20 apply to the utility to have service continued or resumed. A
21 public utility shall not discontinue such service or shall
22 promptly resume service previously discontinued if it receives
23 from the tenants an amount equal to a projected bill for the 30-
24 day period commencing on the later of the date of the planned
25 discontinuance or the date service is resumed. Thereafter, such
26 utility shall notify each tenant of the total amount of the
27 projected bill for the second and each succeeding period of 30
28 days or less. If the tenants fail to make payment of any
29 projected bill before the start of the period for which the bill
30 is projected, the utility may commence discontinuance

1 procedures: Provided, That no such discontinuance may occur
2 until 30 days after each tenant has received written notice of
3 the proposed discontinuance as prescribed in section 8. All
4 payments by tenants to a utility on account of nonpayment by the
5 landlord customer shall be made by a check or money order drawn
6 by the tenant to the order of the utility. Upon receiving any
7 such payment, the utility shall notify the landlord customer who
8 is liable for the utility service of the amount or amounts paid
9 by any tenant pursuant to the provisions of this section. In the
10 event that the tenants fail to satisfy the requirements of this
11 section to maintain or restore service FOR THE PERIOD OF ANY <—
12 PROJECTED BILL, and service to the affected dwelling units is
13 discontinued, the utility shall refund to each tenant the amount
14 paid by such tenant ~~on account of nonpayment by the landlord~~ <—
15 ~~customer~~, FOR SUCH PROJECTED BILL, upon the request of the <—
16 customer or after holding the customer's payment during 60
17 consecutive days of discontinued service, whichever occurs
18 first.

19 Section 8. Delivery and contents of subsequent discontinuance
20 notices to tenants.

21 Subsequent notices required to be given to a tenant pursuant
22 to section 7 shall be mailed or otherwise delivered to the
23 address of each affected tenant and shall contain the following
24 information:

25 (1) the date on or after which service will be
26 discontinued;

27 (2) the amount due, which shall include the arrearage on
28 any earlier projected bill due from tenants;

29 (3) a telephone number at the utility which a tenant may
30 call for an explanation of his rights; and

1 (4) the right of a tenant to file a petition with the
2 court to enforce any legal right that he may have.

3 Section 9. Tenant's right to withhold rent.

4 Any tenant who has made a payment to a utility on account of
5 nonpayment by the landlord customer pursuant to this act may
6 subsequently recover the amount paid to the utility either by
7 deducting said amount from any rent or payment on account of
8 taxes or operating expenses then or thereafter due from such
9 tenant to the person to whom he would otherwise pay his rent or
10 by obtaining reimbursement from the ~~person to whom he last paid~~ <—
11 ~~rent.~~ LANDLORD CUSTOMER. <—

12 Section 10. Payment of arrearage by the tenants.

13 For good cause shown upon petition of the utility to the
14 court, a hearing shall be held and the court thereafter may
15 require the tenants to pay a portion of the arrearage of the
16 landlord customer's account deemed just and reasonable. Payment
17 of any portion of an arrearage may be required only if the
18 utility proves that the total monthly rent due the landlord
19 customer from the tenants is greater than the projected bill for
20 the same period of time. Payment of any portion of an arrearage
21 may not be required if the tenants prove that there are claims
22 of other utilities against the withheld rent, or that such a
23 requirement would impose an undue burden upon the tenants. If
24 more than one utility claims the withheld rent, such utilities
25 by mutual agreement may join together in a single proceeding
26 under this section.

27 Section 11. Waiver prohibited.

28 Any waiver of the tenant's right to notice of proposed
29 discontinuance of service or right to withhold rent under this
30 act shall be void and unenforceable.

1 Section 12. Retaliation by landlord customer prohibited.

2 It shall be unlawful for any landlord customer or agent or
3 employee thereof to threaten or take reprisals against a tenant
4 because the tenant exercised his rights under section 7, 9, or
5 10. Any landlord customer, or agent or employee thereof who
6 threatens or takes such reprisals against any tenant shall be
7 liable for damages which shall be two months' rent or the actual
8 damages sustained by the tenant, whichever is greater, and the
9 costs of suit and reasonable attorney's fees. The receipt of any
10 notice of termination of tenancy except for nonpayment of rent
11 or of increase in rent or of any substantial alteration in the
12 terms of tenancy within six months after the tenant has acted
13 pursuant to section 7, 9 or 10 to avoid discontinuance of
14 utility service shall create a rebuttable presumption that such
15 notice is a reprisal against the tenant for exercising his
16 rights under section 7, 9 or 10.

17 Section 13. Duties of the Attorney General.

18 The Attorney General shall have the power and it shall be his
19 duty to enforce this act.

20 Section 14. Assurances of voluntary compliance.

21 In the administration of this act, the Attorney General may
22 accept an assurance of voluntary compliance with respect to any
23 method, act or practice deemed to be violative of the act from
24 any person who has engaged or was about to engage in such
25 method, act or practice. Such assurance may include a
26 stipulation for voluntary payment by the alleged violator
27 providing for the restitution by the alleged violator to any
28 person in interest of money, property or other things received
29 from them in connection with the violation of this act. Any such
30 assurance shall be in writing and be filed with the court of

1 common pleas in the county in which the alleged violator
2 resides, has his principal place of business, or is doing
3 business, or the Commonwealth Court. Such assurance of voluntary
4 compliance shall not be considered an admission of violation for
5 any purpose. Matters thus closed may at any time be reopened by
6 the Attorney General for further proceedings in the public
7 interest.

8 Section 15. Restraining prohibited acts.

9 Whenever the Attorney General has reason to believe that any
10 person is using or is about to use any method, act or practice
11 declared in this act to be unlawful and that proceedings would
12 be in the public interest, he may bring an action in the name of
13 the Commonwealth against such person to restrain by temporary or
14 permanent injunction the use of such method, act or practice.
15 The action may be brought in the court of common pleas of the
16 county in which such person resides, has his principal place of
17 business, or is doing business, or may be brought in the
18 Commonwealth Court. The said courts are authorized to issue
19 temporary or permanent injunctions to restrain and prevent
20 violations of this act and such injunctions shall be issued
21 without bond.

22 Section 16. Payment of costs and restitution.

23 Whenever any court issues a permanent injunction to restrain
24 and prevent violations of this act, the court may in its
25 discretion provide for payment by defendant or defendants to the
26 Commonwealth of the court costs of the action. In addition, the
27 court may in its discretion direct that the defendant or
28 defendants restore to any person in interest any moneys or
29 property, real or personal, which may have been acquired by
30 means of any violation of this act, under terms and conditions

1 established by the court.

2 Section 17. Civil penalties; violation of injunction or
3 assurance of voluntary compliance.

4 Any person who violates the term of an injunction issued
5 under section 15 or any of the terms of an assurance of
6 voluntary compliance duly filed in court shall forfeit and pay
7 to the Commonwealth a civil penalty of not more than \$5,000 for
8 each violation. For the purposes of this section, the court
9 issuing an injunction, or in which an assurance of voluntary
10 compliance is filed shall retain jurisdiction, and the cause
11 shall be continued; and, in such cases the Attorney General,
12 acting in the name of the Commonwealth, may petition for
13 recovery of civil penalties and any other equitable relief
14 deemed needed or proper.

15 Section 18. Civil penalties; willful violations.

16 In any action brought under section 15, if the court finds
17 that a person is willfully using or has willfully used a method,
18 act or practice declared unlawful, the Attorney General, acting
19 in the name of the Commonwealth of Pennsylvania, may recover, on
20 behalf of the Commonwealth of Pennsylvania, a civil penalty not
21 exceeding \$1,000 per violation, which civil penalty shall be in
22 addition to other civil penalties which may be granted under
23 this act.

24 Section 19. Penalties for removing, interfering or tampering
25 with notices.

26 Any person who removes, interferes or tampers with notices to
27 tenants of proposed discontinuance of service, posted pursuant
28 to section 6 shall be guilty of a violation of this section and
29 shall be punished by a fine not to exceed \$25.

30 Section 20. Effective date.

1 This act shall take effect immediately.