

**HOUSE . . . . . No. 3514**

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**The Commonwealth of Massachusetts**

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**In the Year Two Thousand Nine**  
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An Act promoting reliable and high quality utility service in the commonwealth..

*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 40A of chapter 82 of the General Laws, as appearing in the 2006  
2 Official Edition, is hereby amended by inserting at the end thereof the following new paragraph:-

3 The designation markings required by this section shall be performed by trained  
4 permanent employees of the utility unless otherwise authorized by a collective bargaining  
5 agreement. If no such trained permanent employees are available, the department of  
6 telecommunications and energy may certify and license outside companies to perform such  
7 designation markings. Moreover, to receive a building permit from any municipality, or political  
8 subdivision thereof, for any work requiring excavation, an individual shall provide certification  
9 of compliance with this section. Any utility that violates any provision of this section shall forfeit  
10 a penalty as determined by the department of telecommunications and energy. Penalties incurred  
11 under this section shall not be included as expenses in connection with the establishment of rates  
12 by said company.

13 SECTION 2. Section 1C of Chapter 164 of the General Laws, as appearing in the 2006  
14 Official Edition, is hereby amended by striking said section 1C and inserting in place thereof the  
15 following:-

16 Section 1C. Any marketing company or other competitive or unregulated operation or  
17 entity of an electric or gas company shall be in the form of an affiliate of said company and shall  
18 be separate from any generation, transmission, or distribution company affiliate of the electric or  
19 gas company. The department shall promulgate standards of conduct which shall ensure the  
20 separation of such affiliates and which shall be consistent with the following provisions: (i) a  
21 distribution or gas company, or an affiliate thereof, shall not directly or indirectly use proceeds  
22 obtained from providing regulated services, or assets obtained with such proceeds, to subsidize  
23 non-regulated services; said prohibition shall extend to the use of vehicles, service tools,  
24 instruments, or employees, and the costs, salaries and benefits related thereto; (ii) a distribution  
25 or gas company shall not give any affiliates any preference over non-affiliated suppliers or  
26 customers thereof in matters relating to any product or service; (iii) all products, services,  
27 discounts, rebates, and fee waivers offered by a distribution or gas company shall be available to  
28 all customers and suppliers simultaneously, to the extent technically possible, on a comparable  
29 basis; (iv) a distribution or gas company shall process all same or similar requests for any  
30 product, service, or information in the same manner and within the same period of time; (v) a  
31 distribution or gas company shall not condition or tie the provision of any product, service, or  
32 rate agreement by the distribution or gas company to the provision of any product or service to  
33 which an affiliate is involved; (vi) a distribution or gas company shall not share with any affiliate  
34 any market information acquired or developed by the distribution or gas company in the course  
35 of responding to requests for distribution or gas service or any proprietary customer information

36 including, but not limited to, mailing lists, marketing information, and other customer related  
37 information, without prior written authorization from the customer and unless the use of such  
38 information is available to all commercial businesses on a non-discriminatory basis; (vii) a  
39 distribution or gas company shall refrain from presenting that any advantage accrues to  
40 customers or others in the use of its services as a result of that customer or others dealing with  
41 any such affiliate; (viii) a distribution or gas company shall not share any portion of its name or  
42 logo with any affiliate; (ix) a distribution or gas company shall not engage in joint advertising or  
43 marketing programs with any affiliate; and (x) employees of a distribution or gas company shall  
44 not be shared with, and shall be physically separated from those of, any generating or marketing  
45 affiliate.

46         Upon the filing of a written complaint with the department requesting determination of  
47 compliance by a distribution or gas company, or an affiliate of a distribution or gas company,  
48 with the provisions of this section or any rule, order, or other action promulgated pursuant  
49 thereto, the department shall investigate the complaint, and upon the determination that there are  
50 reasonable grounds to proceed, the department shall promptly initiate formal complaint  
51 proceedings. If the department determines that there is no reasonable basis for initiating a formal  
52 complaint proceeding, it shall so advise, in writing, the person filing such written complaint  
53 within 90 days of the date on which the complaint was filed, if a reasonable basis for the  
54 complaint does exist the person filing the complaint shall be notified within 90 days.

55         The department shall establish such penalties as necessary to assure compliance;  
56 provided, however, that any penalty incurred under this section shall not be included as expenses  
57 in connection with the establishment of rates by said distribution or gas company. Any final  
58 judgment or determination issued by the department, as a result of an investigation or otherwise,

59 that an electric or gas company or an affiliate thereof has violated either (1) the provisions of this  
60 section; or (2) any rule, order, or settlement promulgated pursuant thereto, shall be prima facie  
61 evidence in any civil action against the distribution or gas company or its affiliate to recover  
62 damages or obtain injunctive relief.

63 A violation of this section shall constitute an unfair or deceptive act or practice under the  
64 provisions of chapter 93A, notwithstanding any contrary provision of any other law of the  
65 commonwealth or any exemption provided by said chapter 93A.

66 It shall be the duty of the Attorney General of the Commonwealth to institute proceedings  
67 in the Superior Court to prevent and restrain violations of this section. When the Attorney  
68 General has reason to believe an electric or gas company or its affiliate is engaging in a violation  
69 of this section, the Attorney General may bring an action to enjoin the electric or gas company,  
70 the affiliate, or both, from engaging in a violation of this section.

71 The Department may approve an exemption from the requirements of this section upon a  
72 showing by the distribution or gas company that such an exemption would be in the best interests  
73 of the ratepayers and have no anticompetitive effect, and that costs can be fully and accurately  
74 allocated between the distribution or gas company and its affiliate. Such exemption shall be valid  
75 for a period of two years and may be extended by the Department after public hearing. Annually,  
76 as a condition of maintaining its exemption, and as part of any petition to extend an exemption,  
77 the distribution or gas company shall make a filing with the Department showing that the  
78 exemption continues to be in the best interests of the ratepayers and have no anticompetitive  
79 effect, and showing the full allocation of costs between the distribution or gas company and its

80 affiliate. Such filings shall be open to public inspection. Any party may petition the department  
81 at any time to revoke an exemption granted pursuant to this section.