

SECOND REGULAR SESSION

# HOUSE BILL NO. 1289

## 96TH GENERAL ASSEMBLY

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INTRODUCED BY REPRESENTATIVES HIGDON (Sponsor), GATSCHENBERGER,  
FUNDERBURK AND KLIPPENSTEIN (Co-sponsors).

4286L.011

D. ADAM CRUMBLISS, Chief Clerk

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### AN ACT

To amend chapter 386, RSMo, by adding thereto one new section relating to the use of smart meters.

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*Be it enacted by the General Assembly of the state of Missouri, as follows:*

Section A. Chapter 386, RSMo, is amended by adding thereto one new section, to be known as sections 386.825, to read as follows:

**386.825. 1. As used in this section, unless the context clearly requires otherwise, the following terms mean:**

**(1) "Electronic monitoring", the use of smart meters or any other technologies to record information regarding the consumption and use of electricity by individual residences;**

**(2) "Person", a state or federal military organization, a law enforcement organization or agency whether local, state, or federal, a business, a corporation, a partnership, a union, an association of any kind, or an individual person;**

**(3) "Smart meter", a meter that records consumption of electric energy at certain intervals and communicates that information back to a utility for any purpose whatsoever;**

**(4) "Utility", an electric utility regulated by the Missouri public service commission under chapters 386 and 393, a rural electric cooperative regulated under chapter 394, a municipal utility, or any other utility whether authorized or unauthorized by Missouri law that sells electrical power to end user individual residences within this state.**

**2. (1) No utility shall collect, store, use, sell, give, or transfer by any other means to any other person the content of records obtained by electronic monitoring. However,**

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

17 **this subsection shall not inhibit the internal use of such information by utilities for the sole**  
18 **purpose of billing and monitoring electrical usage to comply with local, state, or federal**  
19 **laws and regulations governing the safe and efficient provision of electrical services to the**  
20 **public.**

21 **(2) In no case shall records obtained from electronic monitoring that contain**  
22 **identifying information related to individual residences be retained for a period longer**  
23 **than one year. Aggregate information on power usage that does not identify individual**  
24 **residences as consumer of electricity may be maintained indefinitely by a utility.**

25 **(3) The transfer of information or failure to destroy information in violation of this**  
26 **section shall be a civil crime with a penalty of not less than ten thousand dollars per**  
27 **violation nor more than twenty-five thousand dollars per violation. A second violation**  
28 **shall result in a penalty of not less than one hundred thousand dollars nor more than two**  
29 **hundred thousand dollars.**

30 **(4) Any court of proper jurisdiction may enforce the civil penalty provisions of this**  
31 **subsection by granting attorney fees. A court may grant injunctive relief, including but not**  
32 **limited to, an order to permanently cease all electronic monitoring and conduct billing by**  
33 **other methods where deemed appropriate.**

34 **(5) There shall be no implicit waiver of rights under this subsection, to a customer.**  
35 **A customer may, by his or her express written consent, waive the requirement of this**  
36 **subsection. However, no utility shall induce or entice any such waiver by the promise of**  
37 **any monetary gain or a reduction in electrical billing charges. Such waiver shall contain**  
38 **an explicit acknowledgment in not less than one-half inch boldface type that the electronic**  
39 **monitoring records may be transferred to third parties by the utility and could be used in**  
40 **a criminal prosecution of the individual waiving his or her rights under this subsection.**  
41 **Such waiver shall be notarized and properly signed.**

42 **3. (1) Any information obtained in violation of this section is inadmissible in a**  
43 **court of law within this state. No evidence consisting of such information shall be admitted**  
44 **based on any common law doctrine of waiver, any constitutional doctrine consisting of**  
45 **exceptions to inadmissibility, or any local, state, or federal rule of evidence.**

46 **(2) Any evidence obtained as a result of information obtained in violation of this**  
47 **section is inadmissible in a court of law within this state. If any evidence was actually**  
48 **discovered as a result of information obtained in violation of this section, then such**  
49 **evidence is inadmissible without regard to any common law doctrine of waiver, any**  
50 **constitutional doctrines of exceptions to inadmissibility, or any local, state, or federal rules**  
51 **of evidence.**

52           **(3) A prosecutor may introduce evidence of electronic monitoring identifying**  
53 **individual residences where such information is obtained by a proper warrant that is based**  
54 **on the Fourth Amendment standard and state statutory requirements for reasonable**  
55 **suspicion involving other evidence of criminal wrongdoing. However, such evidence shall**  
56 **be obtained by a warrant issued prior to the one-year deadline for the destruction of such**  
57 **evidence mandated by this section in order to be admissible in a court of law.**

58           **(4) If any conviction is obtained at a trial by judge and jury, where evidence was**  
59 **presented in violation of this section, then such conviction is null and void, and it shall be**  
60 **set aside. No retrial on the same or a lesser included offense shall be allowed.**

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