

FIRST REGULAR SESSION

# HOUSE BILL NO. 1175

## 98TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVE REMOLE.

2456H.011

D. ADAM CRUMBLISS, Chief Clerk

### AN ACT

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

*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 section 386.825, to read as follows:

**386.825. 1. As used in this section 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. This subsection shall not inhibit the internal use of such information by utilities for the sole purpose of billing and monitoring electrical usage to comply with local, state, or federal

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.

18 laws and regulations governing the safe and efficient provision of electrical services to the  
19 public.

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

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

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

33 (5) There shall be no implicit waiver of rights under subdivisions (1) and (2) of this  
34 subsection to a customer. A customer may, by his or her express written consent, waive  
35 the requirement of subdivisions (1) and (2) of this subsection. However, no utility shall  
36 induce or entice any such waiver by the promise of any monetary gain or a reduction in  
37 electrical billing charges. Such waiver shall be in writing, signed, and contain an explicit  
38 acknowledgment that the electronic monitoring records may be transferred to third parties  
39 by the utility.

40 (6) A utility utilizing electronic monitoring or smart meter technology on a  
41 customer's property shall disclose such use to the customer. Such disclosure shall be  
42 printed conspicuously on each utility bill and contain an explicit acknowledgment that  
43 electronic monitoring or smart meter technology is utilized on a customer's property in not  
44 less than one-half inch boldface type.

45 (7) A customer may opt out of any electronic monitoring and smart meter usage on  
46 his or her property by providing a written, signed declaration to his or her utility which  
47 clearly states his or her desire to opt out of electronic monitoring and smart meter usage  
48 on his or her property. If a customer opts out of electronic monitoring, the utility shall then  
49 provide an analog utility meter for the customer at no additional charge. No utility shall  
50 induce or entice any such waiver by the promise of any monetary gain or a reduction in  
51 electrical billing charges.

52 3. (1) Any information obtained in violation of this section is inadmissible as  
53 evidence in a court of law within this state.

54           **(2) If any evidence was actually discovered as a result of information obtained in**  
55 **violation of this section, then such evidence is inadmissible without regard to any common**  
56 **law doctrine of waiver, any constitutional doctrines of exceptions to inadmissibility, or any**  
57 **local, state, or federal rules of evidence.**

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

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

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