

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
HOUSE COMMITTEE SUBSTITUTE FOR
HOUSE BILL NO. 2279
94TH GENERAL ASSEMBLY

Reported from the Committee on Commerce, Energy and the Environment, May 1, 2008, with recommendation that the Senate Committee Substitute do pass.

5192S.11C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 393.275, 407.300, and 537.340, RSMo, and to enact in lieu thereof ten new sections relating to utilities, with penalty provisions.

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

Section A. Sections 393.275, 407.300, and 537.340, RSMo, are repealed
2 and ten new sections enacted in lieu thereof, to be known as sections 386.572,
3 393.171, 393.275, 407.300, 407.301, 407.302, 407.303, 537.340, 570.055, and
4 570.056, to read as follows:

386.572. 1. No corporation, person, public utility, or municipality
2 **that owns any gas plant shall violate any law or any order, decision,**
3 **decree, rule, direction, demand, or requirement of the commission or**
4 **any part or portion thereof relating to federally mandated natural gas**
5 **safety standards. Notwithstanding the above, a municipality that owns**
6 **any gas plant shall be subject to the provisions of this section only for**
7 **violations of natural gas safety laws, rules, or orders.**

8 **2. The maximum penalties for violations of federally mandated**
9 **natural gas safety standards, or such stricter natural gas safety**
10 **standards or rules as may be approved by the commission, shall not be**
11 **greater than fifteen thousand dollars for each violation with a**
12 **maximum penalty for a continuing violation or a multiple series of**
13 **violations of the same standard or rule provision not to exceed one**
14 **hundred fifty thousand dollars, notwithstanding any provisions of**
15 **subsection 1 of section 386.570 to the contrary. The maximum penalty**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

16 for each violation shall increase to twenty thousand dollars, effective
17 January 1, 2015, twenty-five thousand dollars, effective January 1, 2025,
18 thirty thousand dollars, effective January 1, 2035, and forty thousand
19 dollars, effective January 1, 2040. The maximum penalty for a
20 continuing violation or a multiple series of violations of the same
21 standard or rule provision shall increase to two hundred thousand
22 dollars, effective January 1, 2015, two hundred fifty thousand dollars,
23 effective January 1, 2025, three hundred thousand dollars, effective
24 January 1, 2035, and four hundred thousand dollars, effective January
25 1, 2040. In determining the amount of the penalty, the commission shall
26 consider the nature, circumstances, and gravity of the violation, and
27 also shall consider, with respect to the entity found to have committed
28 the violation:

- 29 (1) The degree of culpability;
- 30 (2) Any history of prior violations;
- 31 (3) The effect of the penalty on the entity's ability to continue
32 operation;
- 33 (4) Any good faith effort in attempting to achieve compliance;
- 34 (5) Ability to pay the penalty; and
- 35 (6) Such other matters as are relevant in the case.

36 3. Every violation of a specific natural gas safety standard or
37 rule by any corporation, person, public utility, or municipality that
38 owns any gas plant is a separate and distinct offense, regardless of
39 whether such violations relate to the same incident. In case of a
40 continuing violation, each day's continuance thereof shall be a separate
41 and distinct offense.

42 4. In construing and enforcing the provisions of this section, the
43 act, omission, or failure of any officer, agent, or employee of any
44 corporation, person, public utility, or municipality that owns any gas
45 plant acting within the scope of official duties of employment shall in
46 every case be considered the act, omission, or failure of such
47 corporation, person, public utility, or municipality that owns any gas
48 plant.

393.171. 1. The commission shall have the authority to grant the
2 permission and approval specified in section 393.170, after the
3 construction or acquisition of any electric plant located in a first class
4 county without a charter form of government has been completed if the

5 **commission determines that the grant of such permission and approval**
6 **is necessary or convenient for the public service. Any such permission**
7 **and approval shall, for all purposes, have the same effect as the**
8 **permission and approval granted prior to such construction or**
9 **acquisition. This subsection is enacted to clarify and specify the law**
10 **in existence at all times since the original enactment of section 393.170.**

11 **2. No permission or approval granted for an electric plant by the**
12 **commission under subsection 1 of this section, nor any special use**
13 **permit issued for any such electric plant by the governing body of the**
14 **county in which the electric plant is located, shall extinguish, render**
15 **moot, or mitigate any suit or claim pending or otherwise allowable by**
16 **law by any landowner or other legal entity for monetary damages**
17 **allegedly caused by the operation or existence of such electric plant.**

18 **3. The commission's authority under subsection 1 of this section**
19 **shall expire on August 28, 2009.**

393.275. 1. The commission shall notify the governing body of each city
2 or county imposing a business license tax pursuant to section 66.300, 92.045,
3 94.110, 94.270 or 94.360, RSMo, or a similar tax adopted pursuant to charter
4 provisions in any constitutional charter city with a population of at least three
5 hundred fifty thousand inhabitants which is located in more than one county, on
6 gross receipts of any gas corporation, electric corporation, water corporation or
7 sewer corporation of any tariff increases authorized for such firm doing business
8 in that city or county if the approved increase exceeds seven percent. The
9 commission shall include with such notice to any city or county the percentage
10 increase approved for the utility, together with an estimate of the annual increase
11 in gross receipts resulting from the tariff increase on customers residing in that
12 city or county. The provisions of this subsection shall not apply to rate
13 adjustments in the purchase price of natural gas which are approved by the
14 commission.

15 **2. The governing body of each city or county notified of a tariff increase**
16 **as provided in subsection 1 of this section shall reduce the tax rate of its business**
17 **license tax on the gross receipts of utility corporations. Within sixty days of the**
18 **effective date of the tariff increase, the tax rate shall be reduced to the extent**
19 **necessary so that revenue for the ensuing twelve months will be approximately**
20 **equal to the revenue received during the preceding twelve months plus a growth**
21 **factor. The growth factor shall be equal to the average of the additional revenue**

22 received in each of the preceding three years. However, a city or county may
23 maintain the tax rate of its business license tax on the gross receipts of utility
24 corporations without reduction if an ordinance to maintain the tax rate is enacted
25 by the governing body of the city or an order to maintain the tax rate is issued
26 by the governing body of the county after September 28, 1985. The provisions of
27 this subsection shall not apply to rate adjustments in the purchase price of
28 natural gas which are approved by the commission **and such purchased gas**
29 **adjustment rates shall include the gas cost portion of net write-offs**
30 **incurred by the gas corporation in providing service to system sales**
31 **customers upon the filing and approval of new rate schedules**
32 **applicable to such customers. Such rate schedules shall be designed to**
33 **simultaneously decrease the gas corporation's base rates and increase**
34 **its purchased gas adjustment rates by like amounts so as to reasonably**
35 **ensure that the gas cost portion of the net write-offs applicable to such**
36 **customers, as such portion is determined by the commission, is only**
37 **being recovered once through the gas corporation's purchased gas**
38 **adjustment rates. Increases and decreases in the gas cost portion of net**
39 **write-offs shall thereafter be reflected in the gas corporation's**
40 **purchased gas adjustment rates pursuant to tariff provisions approved**
41 **by the commission provided, however, that such tariff provisions shall:**

42 (1) Limit increases or decreases in the gas cost portion of net
43 write-offs as reflected in purchased gas adjustment rates to once each
44 year;

45 (2) Require a true-up of the gas cost portion of net write-offs as
46 reflected in purchased gas adjustment rates once each year; and

47 (3) Require commission review of the gas cost portion of net
48 write-offs as reflected in purchased gas adjustment rates once each
49 year to insure that the gas corporation is prudently pursuing collection
50 of amounts owed by its customers.

407.300. 1. Every **purchaser or collector of, or dealer in, junk, scrap**
2 **metal**, or any secondhand property shall keep a register [which shall contain the
3 name and address of the person from whom] **containing a written or**
4 **electronic record for each purchase or trade in which each type of**
5 **metal subject to the provisions of this section is obtained for**
6 **value. There shall be a separate record for each transaction involving**
7 any:

8 (1) Copper, brass, or bronze;

9 **(2) Aluminum wire [or is purchased,], cable, pipe, tubing, bar, ingot,**
10 **rod, fitting, or fastener; or**

11 **(3) Material containing copper or aluminum that is knowingly**
12 **used for farming purposes as "farming" is defined in section 350.010,**
13 **RSMo;**

14 whatever may be the condition or length of such [copper wire or cable]
15 metal. The record shall contain the following data: A copy of the
16 driver's license or photo identification issued by the state or by the
17 United States government or agency thereof to the person from whom
18 the material is obtained, which shall contain a current address of the
19 person from whom the material is obtained; [the residence or place of
20 business and driver's license number of such person;] and the date, time, and
21 place of and a full description of each such purchase or trade including the
22 quantity by weight thereof[; and shall permit any peace officer to inspect the
23 register at any reasonable time].

24 **2. The records required under this section shall be maintained**
25 **for a minimum of twenty-four months from when such material is**
26 **obtained and shall be available for inspection by any law enforcement**
27 **officer.**

28 **3. Anyone convicted of violating this section shall be [fined not less than**
29 **twenty-five dollars nor more than five hundred dollars, or imprisoned for not less**
30 **than thirty days nor more than six months, or both] guilty of a class A**
31 **misdemeanor.**

32 **4. This section shall not apply to any of the following**
33 **transactions:**

34 **(1) Any transaction for which the total amount paid for all**
35 **regulated scrap metal purchased or sold does not exceed fifty dollars;**

36 **(2) Any transaction for which the seller, including a farm or**
37 **farmer, has an existing business relationship with the scrap metal**
38 **dealer and is known to the scrap metal dealer making the purchase to**
39 **be an established business or political subdivision that operates a**
40 **business with a fixed location that can be reasonably expected to**
41 **generate regulated scrap metal and can be reasonably identified as**
42 **such a business; or**

43 **(3) Any transaction for which the type of metal subject to**
44 **subsection 1 of this section is a minor part of a larger item, except for**
45 **equipment used in the generation and transmission of electrical power**

46 or telecommunications.

407.301. 1. No scrap metal dealer shall knowingly purchase or
2 possess a metal beer keg, whether damaged or undamaged, or any
3 reasonably recognizable part thereof, on any premises that the dealer
4 uses to buy, sell, store, shred, melt, cut, or otherwise alter scrap metal
5 except when the purchase is from the brewer or its authorized
6 representative. For purposes of this section, "keg" shall have the same
7 meaning as in section 311.082, RSMo.

8 2. Anyone who is found guilty of, or pleads guilty to, violating
9 this section shall be guilty of a class A misdemeanor punishable only by
10 fine. Nothing in this section shall be construed to preclude a person
11 violating this section from also being prosecuted for any applicable
12 criminal offense.

407.302. 1. No scrap yard shall purchase any metal that can be
2 identified as belonging to a public or private cemetery or to a political
3 subdivision or electrical cooperative, municipal utility, or a utility
4 regulated under chapter 386 or 393, RSMo, including bleachers,
5 guardrails, signs, street and traffic lights or signals, and manhole cover
6 or covers, whether broken or unbroken, from anyone other than the
7 cemetery or monument owner, political subdivision, electrical
8 cooperative or utility, or manufacturer of the metal or item described
9 in this section unless such person is authorized in writing by the
10 cemetery or monument owner, political subdivision, electrical
11 cooperative or utility, or manufacturer to sell the metal.

12 2. Anyone convicted of violating this section shall be guilty of a
13 class B misdemeanor.

407.303. 1. Any scrap metal dealer paying out an amount that is
2 five hundred dollars or more shall make such payment in the form of
3 a check or shall pay by any method in which a financial institution
4 makes and retains a record of the transaction.

5 2. This section shall not apply to any transaction for which the
6 seller has an existing business relationship with the scrap metal dealer
7 and is known to the scrap metal dealer making the purchase to be an
8 established business or political subdivision that operates a business
9 with a fixed location that can be reasonably expected to generate
10 regulated scrap metal and can be reasonably identified as such a
11 business.

537.340. 1. If any person shall cut down, injure or destroy or carry away
2 any tree placed or growing for use, shade or ornament, or any timber, rails or
3 wood standing, being or growing on the land of any other person, including any
4 governmental entity, or shall dig up, quarry or carry away any stones, ore or
5 mineral, gravel, clay or mold, or any ice or other substance or material being a
6 part of the realty, or any roots, fruits or plants, or cut down or carry away grass,
7 grain, corn, flax or hemp in which such person has no interest or right, standing,
8 lying or being on land not such person's own, or shall knowingly break the glass
9 or any part of it in any building not such person's own, the person so offending
10 shall pay to the party injured treble the value of the things so injured, broken,
11 destroyed or carried away, with costs. Any person filing a claim for damages
12 pursuant to this section need not prove negligence or intent.

13 **2. Notwithstanding the provisions of subsection 1 of this section,**
14 **the following rules shall apply to the trimming, removing, and**
15 **controlling of trees and other vegetation by any electric supplier:**

16 **(1) Every electric supplier that operates electric transmission or**
17 **distribution lines shall have the authority to maintain the same by**
18 **trimming, removing, and controlling trees and other vegetation posing**
19 **a hazard to the continued safe and reliable operation thereof;**

20 **(2) An electric supplier may exercise its authority under**
21 **subdivision (1) of this subsection if the trees and other vegetation are**
22 **within the legal description of any recorded easement, or in the**
23 **absence of a recorded easement, the following:**

24 **(a) Within ten feet, plus one-half the length of any attached cross**
25 **arm, of either side of the centerline of electricity lines potentially**
26 **energized at or below 34.5 kilovolts measured line to line and located**
27 **within the limits of any city; or**

28 **(b) Within thirty feet of either side of the centerline of electricity**
29 **lines potentially energized at or below 34.5 kilovolts measured line to**
30 **line and located outside the limits of any city; or**

31 **(c) Within fifty feet of either side of the centerline of electricity**
32 **lines potentially energized between 34.5 and one hundred kilovolts**
33 **measured line to line; or**

34 **(d) Within the greater of the following for any electricity lines**
35 **potentially energized at one hundred kilovolts or more measured line**
36 **to line:**

37 **a. Seventy-five feet to either side of the centerline; or**

38 b. Any required clearance distance adopted by either the Federal
39 Energy Regulatory Commission or an Electric Reliability Organization
40 authorized by the Energy Policy Act of 2005, 16 U.S.C. Section
41 824o. Such exercise shall be considered reasonable and necessary for
42 the proper and reliable operation of electric service and shall create a
43 rebuttable presumption, in claims for property damage, that the
44 electric supplier acted with reasonable care, operated within its rights
45 regarding the operation and maintenance of its electricity lines, and
46 has not committed a trespass;

47 (3) An electric supplier may trim, remove, and control trees and
48 other vegetation outside the provisions in subdivision (2) of this
49 subsection if such actions are necessary to maintain the continued safe
50 and reliable operation of its electric lines;

51 (4) An electric supplier may secure from the owner or occupier
52 of land greater authority to trim, remove, and control trees and other
53 vegetation than the provisions set forth in subdivision (2) of this
54 subsection and may exercise any and all rights regarding the trimming,
55 removing, and controlling of trees and other vegetation granted in any
56 easement held by the electric supplier;

57 (5) An electric supplier may trim or remove any tree of sufficient
58 height outside the provisions of subdivision (2) of this subsection when
59 such tree, if it were to fall, would threaten the integrity and safety of
60 any electric transmission or distribution line and would pose a hazard
61 to the continued safe and reliable operation thereof;

62 (6) Prior to the removal of any tree under the provisions of
63 subdivision (5) of this subsection, an electric supplier shall notify the
64 owner or occupier of land, if available, at least fourteen days prior to
65 such removal, unless either the electric supplier deems the removal to
66 be immediately necessary to continue the safe and reliable operation
67 of its electricity lines, or the electric supplier is trimming or removing
68 trees and other vegetation following a major weather event or other
69 emergency situation;

70 (7) If any tree which is partially trimmed by an electric supplier
71 dies within three months as a result of such trimming, the owner or
72 occupier of land upon which the tree was trimmed may request in
73 writing that the electric supplier remove such tree at the electric
74 supplier's expense. The electric supplier shall respond to such request

75 within ninety days;

76 (8) Nothing in this subsection shall be interpreted as requiring
77 any electric supplier to fully exercise the authorities granted in this
78 subsection.

79 3. For purposes of this section, the term "electric supplier" means
80 any rural cooperative that is subject to the provisions of chapter 394,
81 RSMo, and any electric corporation which is required by its bylaws to
82 operate on the not-for-profit cooperative business plan, with its
83 consumers who receive service as the stockholders of such corporation
84 and that holds a certificate of public convenience and necessity to
85 serve a majority of its customer-owners in counties of the third
86 classification as of August 28, 2003.

570.055. Any person who steals or appropriates, without consent
2 of the owner, any wire, electrical transformer, metallic wire associated
3 with transmitting telecommunications, or any other device or pipe that
4 is associated with conducting electricity or transporting natural gas or
5 other combustible fuels shall be guilty of a class C felony.

570.056. Any person who steals or appropriates, without consent
2 of the owner, any property located on the premises of electrical
3 cooperatives or municipal utilities or utilities regulated under chapter
4 386, RSMo, shall be guilty of a class D felony.

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