

SECOND REGULAR SESSION
[TRULY AGREED TO AND FINALLY PASSED]
CONFERENCE COMMITTEE SUBSTITUTE NO. 2 FOR
HOUSE COMMITTEE SUBSTITUTE FOR
SENATE COMMITTEE SUBSTITUTE FOR

SENATE BILL NO. 720

94TH GENERAL ASSEMBLY

2008

3054S.07T

AN ACT

To repeal sections 660.115 and 660.135, RSMo, and to enact in lieu thereof nineteen 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Section A. Sections 660.115 and 660.135, RSMo, are repealed and
2 nineteen new sections enacted in lieu thereof, to be known as sections 260.1050,
3 260.1053, 260.1059, 260.1062, 260.1065, 260.1068, 260.1071, 260.1074, 260.1077,
4 260.1080, 260.1083, 260.1089, 260.1092, 260.1101, 393.108, 393.171, 393.1150,
5 660.115 and 660.135, to read as follows:

260.1050. Sections **260.1050 to 260.1101** may be cited as the
2 "**Manufacturer Responsibility and Consumer Convenience Equipment**
3 **Collection and Recovery Act**".

260.1053. As used in sections 260.1050 to 260.1101, the following
2 terms mean:

3 (1) "Brand", the name, symbol, logo, trademark, or other
4 information that identifies a product rather than the components of the
5 product;

6 (2) "Computer materials", a desktop or notebook computer and
7 includes a computer monitor or other display device that does not
8 contain a tuner;

9 (3) "Consumer", an individual who uses equipment that is
10 purchased primarily for personal or home business use;

11 (4) "Department", department of natural resources;

12 (5) "Equipment", computer materials;

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

13 **(6) "Manufacturer", a person:**

14 **(a) Who manufactures or manufactured equipment under a brand**
15 **that:**

16 **a. The person owns or owned; or**

17 **b. The person is or was licensed to use, other than under a**
18 **license to manufacture equipment for delivery exclusively to or at the**
19 **order of the licensor;**

20 **(b) Who sells or sold equipment manufactured by others under**
21 **a brand that:**

22 **a. The person owns or owned; or**

23 **b. The person is or was licensed to use, other than under a**
24 **license to manufacture equipment for delivery exclusively to or at the**
25 **order of the licensor;**

26 **(c) Who manufactures or manufactured equipment without**
27 **affixing a brand;**

28 **(d) Who manufactures or manufactured equipment to which the**
29 **person affixes or affixed a brand that:**

30 **a. The person does not or has not owned; or**

31 **b. The person is not or was not licensed to use; or**

32 **(e) Who imports or imported equipment manufactured outside**
33 **the United States into the United States unless at the time of**
34 **importation the company or licensee that sells or sold the equipment**
35 **to the importer has or had assets or a presence in the United States**
36 **sufficient to be considered the manufacturer.**

260.1059. 1. The collection, recycling, and reuse provisions of
2 **sections 260.1050 to 260.1101 apply to equipment used and returned to**
3 **the manufacturer by a consumer in this state and do not impose any**
4 **obligation on an owner or operator of a solid waste facility.**

5 **2. Sections 260.1050 to 260.1101 do not apply to:**

6 **(1) Any computer material that is an electronic device that is a**
7 **part of a motor vehicle or any part of a motor vehicle assembled by, or**
8 **for, a vehicle manufacturer or franchised dealer, including replacement**
9 **parts for use in a motor vehicle;**

10 **(2) Any electronic device that is functionally or physically a part**
11 **of, connected to or integrated within a larger piece of equipment**
12 **designed and intended for use in an industrial, governmental,**
13 **commercial, research and development, or medical setting, including**
14 **diagnostic, monitoring, or other medical products as that term is**

15 defined under the federal Food, Drug, and Cosmetic Act or equipment
16 used for security, sensing, monitoring, or anti-terrorism purposes;

17 (3) A covered electronic device that is contained within a clothes
18 washer, clothes dryer, refrigerator and freezer, microwave oven,
19 conventional oven or range, dishwasher, room air conditioner,
20 dehumidifier, or air purifier;

21 (4) Telephone of any type, including mobile telephones and
22 wireless devices;

23 (5) A personal digital assistant or P.D.A.;

24 (6) A consumer's lease of equipment or a consumer's use of
25 equipment under a lease agreement; or

26 (7) The sale or lease of equipment to an entity when the
27 manufacturer and the entity enter into a contract that effectively
28 addresses the collection, recycling, and reuse of equipment that has
29 reached the end of its useful life.

260.1062. 1. Before a manufacturer may offer equipment for sale
2 in this state, the manufacturer shall:

3 (1) Adopt and implement a recovery plan;

4 (2) Submit a written copy of the recovery plan to the department;
5 and

6 (3) Affix a permanent, readily visible label to the equipment with
7 the manufacturer's brand.

8 2. The recovery plan shall enable a consumer to recycle
9 equipment without paying a separate fee at the time of recycling and
10 shall include provisions for:

11 (1) The manufacturer's collection from a consumer of any
12 equipment that has reached the end of its useful life and is labeled with
13 the manufacturer's brand; and

14 (2) Recycling or reuse of equipment collected under subdivision
15 (1) of this subsection.

16 3. The collection of equipment provided under the recovery plan
17 shall be:

18 (1) Reasonably convenient and available to consumers in this
19 state; and

20 (2) Designed to meet the collection needs of consumers in this
21 state.

22 4. Examples of collection methods that alone or combined meet
23 the convenience requirements of this section include a system:

24 (1) By which the manufacturer or the manufacturer's designee
25 offers the consumer an option for returning equipment by mail at no
26 charge to the consumer;

27 (2) Using a physical collection site that the manufacturer or the
28 manufacturer's designee keeps open and staffed and to which the
29 consumer may return equipment; and

30 (3) Using a collection event held by the manufacturer or the
31 manufacturer's designee at which the consumer may return equipment.

32 5. Collection services under this section may use existing
33 collection and consolidation infrastructure for handling equipment and
34 may include systems jointly managed by a group of manufacturers,
35 electronic recyclers and repair shops, recyclers of other commodities,
36 reuse organizations, not-for-profit corporations, retailers, recyclers,
37 and other suitable operations. If a manufacturer or its designee offers
38 a mail-back system as described in subsection 4 of this section, either
39 individually or by working together with a group of manufacturers or
40 by working with others, it shall be deemed to meet the convenience
41 requirements of this section.

42 6. The recovery plan shall include information for the consumer
43 on how and where to return the manufacturer's equipment. The
44 manufacturer:

45 (1) Shall include collection, recycling, and reuse information on
46 the manufacturer's publicly available Internet site;

47 (2) Shall provide collection, recycling, and reuse information to
48 the department; and

49 (3) May include collection, recycling, and reuse information in
50 the packaging for or in other materials that accompany the
51 manufacturer's equipment when the equipment is sold.

52 7. Information about collection, recycling, and reuse on a
53 manufacturer's publicly available Internet site does not constitute a
54 determination by the department that the manufacturer's recovery plan
55 or actual practices are in compliance with sections 260.1050 to 260.1101
56 or other state or federal law.

57 8. Each manufacturer shall submit a report to the department
58 not later than January thirty-first of each year that includes:

59 (1) The weight of equipment collected, recycled, and reused
60 during the preceding calendar year; and

61 (2) Documentation certifying that the collection, recycling, and

62 reuse of equipment during the preceding calendar year was conducted
63 in a manner that complies with section 260.1089 regarding sound
64 environmental management.

65 9. If more than one person is a manufacturer of a certain brand
66 of equipment as defined by section 260.1053, any of those persons may
67 assume responsibility for and satisfy the obligations of a manufacturer
68 under sections 260.1050 to 260.1101 for that brand. If none of those
69 persons assumes responsibility or satisfies the obligations of a
70 manufacturer for the equipment of that brand, the department may
71 consider any of those persons to be the responsible manufacturer for
72 purposes of sections 260.1050 to 260.1101.

73 10. The obligations under sections 260.1050 to 260.1101 of a
74 manufacturer who manufactures or manufactured equipment, or sells
75 or sold equipment manufactured by others, under a brand that was
76 previously used by a different person in the manufacture of the
77 equipment extends to all equipment bearing that brand regardless of
78 its date of manufacture.

260.1065. 1. A person who is a retailer of equipment shall not sell
2 or offer to sell new equipment in this state unless the equipment is
3 labeled with the manufacturer's label and the manufacturer is included
4 on the department's list of manufacturers that have recovery plans.

5 2. Retailers can go to the department's Internet site as outlined
6 in section 260.1071 and view all manufacturers that are listed as having
7 registered a collection program. Covered electronic products from
8 manufacturers on that list may be sold in or into this state.

9 3. A retailer is not required to collect equipment for recycling or
10 reuse under sections 260.1050 to 260.1101.

260.1068. 1. A manufacturer or retailer of equipment is not liable
2 in any way for information in any form that a consumer leaves on
3 computer materials that are collected, recycled, or reused under
4 sections 260.1050 to 260.1101.

5 2. The consumer is responsible for any information in any form
6 left on the consumer's computer materials that are collected, recycled,
7 or reused.

8 3. Compliance with sections 260.1050 to 260.1101 does not exempt
9 a person from liability under other law.

260.1071. 1. The department shall educate consumers regarding
2 the collection, recycling, and reuse of equipment.

3 2. The department shall host or designate another person to host
4 an Internet site providing consumers with information about the
5 recycling and reuse of equipment, including best management practices
6 and information about and links to information on:

7 (1) Manufacturers' collection, recycling, and reuse programs,
8 including manufacturers' recovery plans; and

9 (2) Equipment collection events, collection sites, and community
10 equipment recycling and reuse programs.

 260.1074. 1. The department may conduct audits and inspections
2 to determine compliance with sections 260.1050 to 260.1101.

3 2. The department and the attorney general, as appropriate, shall
4 enforce sections 260.1050 to 260.1101 and, except as provided by
5 subsections 4 and 5 of this section, take enforcement action against any
6 manufacturer, retailer, or person who recycles or reuses equipment for
7 failure to comply with sections 260.1050 to 260.1101.

8 3. The attorney general may file suit to enjoin an activity related
9 to the sale of equipment in violation of sections 260.1050 to 260.1101.

10 4. The department shall issue a written warning notice to a
11 person upon the person's first violation of sections 260.1050 to
12 260.1101. The person shall comply with sections 260.1050 to 260.1101
13 not later than the sixtieth day after the date the warning notice is
14 issued.

15 5. A retailer who receives a warning notice from the department
16 that the retailer's inventory violates sections 260.1050 to 260.1101
17 because it includes equipment from a manufacturer that has not
18 submitted the recovery plan required by section 260.1062 shall bring
19 the inventory into compliance with sections 260.1050 to 260.1101 not
20 later than the sixtieth day after the date the warning notice is issued.

21 6. (1) The department may assess a penalty against a
22 manufacturer that does not label its equipment or adopt, implement, or
23 submit a recovery plan as required by section 260.1062. No penalty
24 shall be assessed for a first violation and the amount of the penalty
25 shall not exceed ten thousand dollars for the second violation or
26 twenty-five thousand dollars for each subsequent violation.

27 (2) Any penalty collected under this section shall be credited to
28 the "Equipment Recycling Subaccount", which is hereby created, in the
29 hazardous waste fund. Moneys in the subaccount shall be used for the
30 purpose of administering the provisions of sections 260.1050 to

31 **260.1101. The state treasurer shall be custodian of the subaccount and**
32 **may approve disbursements from the fund in accordance with sections**
33 **30.170 and 30.180, RSMo. Upon appropriation, money in the subaccount**
34 **shall be used solely for the administration of sections 260.1050 to**
35 **260.1101. Any moneys remaining in the subaccount at the end of the**
36 **biennium shall revert to the credit of the general revenue fund. The**
37 **state treasurer shall invest moneys in the fund in the same manner as**
38 **other funds are invested. Any interest and moneys earned on such**
39 **investments shall be credited to the subaccount.**

260.1077. Financial or proprietary information submitted to the
2 **department under sections 260.1050 to 260.1101 shall not be considered**
3 **a public record under chapter 610, RSMo.**

260.1080. The department shall compile information from
2 **manufacturers and issue an electronic report to the committee in each**
3 **house of the general assembly having primary jurisdiction over**
4 **environmental matters not later than March first of each year.**

260.1083. Sections 260.1050 to 260.1101 do not authorize the
2 **department to impose a fee, including a recycling fee or registration**
3 **fee, on a consumer, manufacturer, retailer, or person who recycles or**
4 **reuses equipment.**

260.1089. 1. All equipment collected under sections 260.1050 to
2 **260.1101 shall be recycled or reused in a manner that complies with**
3 **federal, state, and local law.**

4 **2. The department shall, by rule, adopt as mandatory standards**
5 **for recycling or reuse of equipment in this state the standards provided**
6 **by "Electronics Recycling Operating Practices" as approved by the**
7 **board of directors of the Institute of Scrap Recycling Industries, Inc.,**
8 **April 25, 2006, or other standards issued from the U.S. Environmental**
9 **Protection Agency, if available.**

260.1092. 1. If federal law establishes a national program for the
2 **collection and recycling of equipment and the department determines**
3 **that the federal law substantially meets the purposes of sections**
4 **260.1050 to 260.1101, the department may adopt an agency statement**
5 **that interprets the federal law as preemptive of sections 260.1050 to**
6 **260.1101.**

7 **2. Sections 260.1050 to 260.1101 shall expire on the date the**
8 **department issues a statement under this section.**

260.1101. 1. The department shall adopt any rules required to

2 **implement sections 260.1050 to 260.1101 not later than July 1, 2009. Any**
3 **rule or portion of a rule, as that term is defined in section 536.010,**
4 **RSMo, that is created under the authority delegated in this section**
5 **shall become effective only if it complies with and is subject to all of**
6 **the provisions of chapter 536, RSMo, and, if applicable, section 536.028,**
7 **RSMo. This section and chapter 536, RSMo, are nonseverable and if any**
8 **of the powers vested with the general assembly pursuant to chapter**
9 **536, RSMo, to review, to delay the effective date, or to disapprove and**
10 **annul a rule are subsequently held unconstitutional, then the grant of**
11 **rulemaking authority and any rule proposed or adopted after August**
12 **28, 2008, shall be invalid and void.**

13 **2. Sections 260.1050 to 260.1101 shall not be enforced before rules**
14 **developed under this section are promulgated.**

15 **3. It shall not be considered a violation of sections 260.1050 to**
16 **260.1101 for a retailer to sell any inventory accrued before the effective**
17 **date of sections 260.1050 to 260.1101.**

393.108. For purposes of this section, the hot weather rule shall
2 **mean the period of time from June first to September thirtieth, in**
3 **which the discontinuance of gas and electric service to all residential**
4 **users, including all residential tenants of apartment buildings, for**
5 **nonpayment of bills where gas or electricity is used as the source of**
6 **cooling or to operate the only cooling equipment at the residence, is**
7 **prohibited in the following situations:**

8 **(1) On any day when the National Weather Service local forecast**
9 **between 6:00 a.m. and 9:00 p.m. for the following twenty-four hours**
10 **predicts that the temperature shall rise above ninety-five degrees**
11 **Fahrenheit or that the heat index shall rise above one hundred five**
12 **degrees Fahrenheit;**

13 **(2) On any day when utility personnel are not available to**
14 **reconnect utility service during the immediately succeeding day or**
15 **days and the National Weather Service local forecast between 6:00 a.m.**
16 **and 9:00 p.m. predicts that the temperature during the period of**
17 **unavailability shall rise above ninety-five degrees Fahrenheit or that**
18 **the heat index shall rise above one hundred five degrees Fahrenheit;**
19 **and**

20 **(3) In any other applicable situations provided for in rules**
21 **established and amended by the public service commission.**

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**
18 **plant. Expenses incurred by an electrical corporation in association**
19 **with the payment of any such damages shall not be recoverable, in any**
20 **form at any time, from the ratepayers of any such electrical**
21 **corporation.**

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

393.1150. For any electric plant unlawfully constructed after
2 **August 28, 2008, in any suit or claim brought by any landowner or other**
3 **legal entity for monetary damages allegedly caused by the operation or**
4 **existence of such electric plant, the measure of damages shall be treble**
5 **the actual damages to the plaintiff's real estate proved as determined**
6 **by a judge or jury, plus court costs and reasonable attorney fees.**

660.115. 1. For each eligible household, an amount not exceeding [six]
2 **eight** hundred dollars for each fiscal year may be paid from the utilicare
3 stabilization fund to the primary or secondary heating source supplier, or both,
4 including suppliers of heating fuels, such as gas, electricity, wood, coal, propane
5 and heating oil. For each eligible household, an amount not exceeding [six] **eight**
6 hundred dollars for each fiscal year may be paid from the utilicare stabilization
7 fund to the primary or secondary cooling source supplier, or both; provided that
8 the respective shares of overall funding previously received by primary and
9 secondary heating and cooling source suppliers on behalf of their customers shall
10 be substantially maintained.

11 2. For an eligible household, other than a household located in publicly
12 owned or subsidized housing, an adult boarding facility, an intermediate care
13 facility, a residential care facility or a skilled nursing facility, whose members
14 rent their dwelling and do not pay a supplier directly for the household's primary
15 or secondary heating or cooling source, utilicare payments shall be paid directly
16 to the head of the household, except that total payments shall not exceed eight
17 percent of the household's annual rent or one hundred dollars, whichever is less.

 660.135. 1. **The utilicare stabilization fund for any fiscal year**
2 **shall be funded, subject to appropriations, by the general assembly.**
3 [Not more than five million dollars from state general revenue shall be
4 appropriated by the general assembly to the utilicare stabilization fund
5 established pursuant to section 660.136 for the support of the utilicare program
6 established by sections 660.100 to 660.136 for any fiscal year, except in
7 succeeding years the amount of state funds may be increased by a percentage
8 which reflects the national cost-of-living index or seven percent, whichever is
9 lower.]

10 2. The department of social services [may] **shall**, in coordination with the
11 department of natural resources, apply a portion of the funds appropriated
12 annually by the general assembly to the utilicare stabilization fund established
13 pursuant to section 660.136 to the low income weatherization assistance program
14 of the department of natural resources; provided that any project financed with
15 such funds shall be consistent with federal guidelines for the Weatherization
16 Assistance Program for Low-Income Persons as authorized by 42 U.S.C. 6861.

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