

SECOND REGULAR SESSION

# SENATE BILL NO. 740

89TH GENERAL ASSEMBLY

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INTRODUCED BY SENATORS McKENNA, FLOTRON, MUELLER, DePASCO, STAPLES, KINDER AND KLARICH.

Read 1st time January 15, 1998, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

S2485.011

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## AN ACT

To amend chapter 386, RSMo, by adding thereto seven new sections relating to certain merchandising practices of utilities.

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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 seven new sections, to be known as sections 386.752, 386.754, 386.756, 386.758, 386.760, 386.762 and 386.764, to read as follows:

**386.752. The general assembly declares it is the public policy of this state to promote free and open competition in the sale and servicing for energy and nonenergy-related products and equipment. Free and open competition in the sale and servicing of energy and nonenergy-related products and equipment promotes the development of energy-efficient, quality products and equipment at reasonable cost to the consumer. Free and open competition promotes the development of a service industry providing quality service at reasonable cost to the consumer. Free and open competition is vital to the continued life of the nonutility, energy-related small business. Free and open competition for energy service contracts promotes the public good. Free and open competition can only be achieved if the market for goods and services is not distorted or dominated by utilities that, by virtue of their special status as regulated monopolies in the development and distribution of energy, have an unfair competitive advantage in other energy-related enterprises.**

**386.754. 1. For the purposes of sections 386.752 to 386.764, the following terms mean:**

**(1) "Affiliate", a person, including an individual, corporation, corporate subsidiary, firm, partnership, incorporated or unincorporated association, political**

**subdivision including a public utility district, city, town and county; and a combination of political subdivisions, that controls, is controlled by, or is under common control with a utility and that is engaged in the sale, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of equipment products, including household appliances;**

**(2) "Commission", the public service commission established in section 386.040;**

**(3) "Emergency service", service performed by a utility to correct malfunctions or interruptions in the generation, transmission, distribution or use of natural gas or electricity that, if not corrected, may endanger life or property or otherwise affect public safety;**

**(4) "Utility", except as provided in subsections 2 and 3 of this section, a person, corporation, political subdivision or other legal entity or authorized representative, operating, maintaining or controlling equipment or facilities for furnishing at retail natural, manufactured or mixed gas or electric service to the public;**

**(5) "Utility contractor", a person, including an individual, corporation, firm, incorporated or unincorporated association or other business or legal entity, that contracts, whether in writing or not in writing, with a utility to provide the sales and services engaged in by affiliates as defined in subdivision (1) of this subsection. The term utility contractor includes a contractor, subcontractor, material supplier or other person. Utility contractor does not include an official or employee of a utility.**

**2. The term utility includes:**

**(1) An entity engaged in the production of gas or electric service for retail sale and regulated by the utilities and transportation commission;**

**(2) Public utility districts;**

**(3) Municipalities;**

**(4) An entity furnishing gas or electric service to another utility for resale; or**

**(5) An entity possessing the exclusive grant or privilege to furnish gas or electric service at retail to consumers in an area or political subdivision in this state.**

**3. The term utility does not include:**

**(1) Cooperative and mutual electric associations that produce or furnish gas or electric service;**

**(2) An entity selling compressed natural gas at retail for use as a vehicular fuel who purchases the gas from a utility;**

**(3) An entity furnishing gas or electric service only to tenants or cooperative or condominium owners in buildings owned, leased or operated by the person, corporation or other legal entity or authorized representative;**

**(4) An entity furnishing gas or electric service to occupants of a manufactured**

home or trailer park, owned, leased or operated by the person, corporation or other legal entity or authorized representative; or

(5) An entity producing or furnishing gas or electric service to fewer than twenty-five persons.

**386.756. 1. Except as otherwise provided in sections 386.752 to 386.764, a utility may not engage in the sale, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of products or equipment, including household appliances, that are not used for delivering or measuring utility service.**

**2. A utility may not engage in the sale, lease, rental, installation, construction, modernization, retrofit, maintenance or repair of products or equipment, including household appliances or sell any type of warranty coverage on such products or equipment except by an affiliate.**

**3. A utility may not grant an unfair preference or privilege to an affiliate in the transaction of business between the utility and the affiliate or to a utility contractor in awarding a contract; except that, the commission, as provided in section 386.764, shall adopt rules governing the awarding of a contract by a utility to a utility contractor and guidelines for waiver of such rules, such as lack of competitors or other circumstances when a waiver would not impede the public policy of the state as provided in section 386.752.**

**4. A utility or its agent, employee or representative may not refer or direct customers to specific individuals or companies engaged in the sale or servicing of energy-consuming products, equipment or appliances, including an affiliate or utility contractor.**

**5. A utility may not lend money to or guarantee, endorse or act as a surety on the debts, liabilities, bonds, notes, contracts or other obligations or otherwise assist financially, an affiliate.**

**6. A utility may not purchase, receive, hold or otherwise acquire the stock, shares, bonds, debentures, notes or other securities or other interest in an affiliate unless the utility pays at least the fair market value for the interest acquired.**

**7. A utility may not sell, lease, rent, assign or transfer real or personal property to an affiliate, unless the utility receives at least the fair market value for the property sold, leased, rented, assigned or transferred.**

**8. The provisions of this section shall not be construed to prohibit a utility from providing emergency service or providing any service required by law.**

**9. The provisions of sections 386.752 to 386.764 shall not apply to any utility, or its affiliates or utility contractors, that for a period of five years prior to the effective date engaged in any services otherwise prohibited by subsection 1 of this section.**

**10. This section does not affect existing contracts involving those services or**

business transactions stated in subsections 1 to 8 of this section. On expiration of contracts or after July 1, 1998, whichever comes first, the parties involved in the expiring contracts will no longer legally enter into a contract for the services or business transactions stated in subsections 1 to 8 of this section, with the exceptions of those parties exempted under subsection 9 of this section.

11. A utility that violates any provision of this section is guilty of a civil offense and may be subject to a civil penalty of up to twenty-five thousand dollars for each separate and distinct offense.

**386.758. 1.** An affiliate may engage in the sale, lease, rental, installation, maintenance or repair of equipment, products or appliances that are dependent upon energy supplied by a utility for their operation only if it is in compliance with the following requirements:

(1) The name of the affiliate may not resemble the name of the utility. Neither the utility nor the affiliate may trade upon, promote or advertise their affiliated status;

(2) The affiliate may not have a place of business at or on premises owned or occupied by the utility. The affiliate may not share the use of premises, equipment, inventory, personnel or other resources of the utility;

(3) The affiliate may not advertise, promote or market its products or services through mailings of the utility of advertisements in which the utility's name is set forth;

(4) The affiliate shall maintain accounts, books and records separate and distinct from those of the utility;

(5) Costs and expenses involved in operating the affiliate shall be borne by the affiliate and not by the utility;

(6) Revenues from the affiliate may not be provided or disbursed to the utility;

(7) Assets of the affiliate shall be maintained separate and distinct from the assets of the utility;

(8) The affiliate shall transact its business in the state separate and independent of the utility so as not to gain a competitive advantage by virtue of its status as an affiliate.

2. Any affiliate who violates any provision of this section is guilty of a civil offense and may be fined up to twenty-five thousand dollars for each violation.

**386.760.** The public service commission shall administer the provisions of sections 386.752 to 386.764. The commission has jurisdiction over utilities, affiliates and utility contracts to ensure compliance with sections 386.752 to 386.764.

**386.762.** The public service commission shall:

(1) Review, inspect and audit books, accounts and other records kept by a utility, affiliate or utility contractor and make the findings available to the commission;

(2) Investigate the operations of a utility, affiliate or utility contractor and their

**relationship to each other for the purpose of ensuring compliance with sections 386.752 to 386.764.**

**386.764. The public service commission shall adopt administrative rules and conduct hearings to administer and ensure compliance with sections 386.752 to 386.764.**

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