

FINAL BILL REPORT

SHB 1896

C 285 L 15
Synopsis as Enacted

Brief Description: Providing a statewide minimum privacy policy for disclosure of customer energy use information.

Sponsors: House Committee on Technology & Economic Development (originally sponsored by Representatives Smith, Hudgins, Tarleton and Young).

House Committee on Technology & Economic Development
Senate Committee on Energy, Environment & Telecommunications

Background:

Disclosures to Retail Electric Customers.

Except for small utilities, each electric utility must provide its retail electric customers with certain disclosures, including an explanation of the utility's policies governing the confidentiality of proprietary customer information, including the circumstances under which the information may be disclosed and the ways in which customers can control access to the information.

"Small utility" means any consumer-owned utility with 25,000 or fewer electric meters in service, or that has an average of seven or fewer customers per mile of distribution line.

"Proprietary customer information" means information that relates to the source and amount of electricity used by a retail electric customer, a retail electric customer's payment history, household data, and information contained in an electric bill.

Disclosures of Private Information.

The Utilities and Transportation Commission (UTC) prohibits investor-owned utilities from disclosing or selling private consumer information with or for a utility's affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings to a customer who does not already subscribe to that service or product, unless the utility obtains the customer's written or electronic permission. "Private consumer information" includes the customer's name, address, telephone number, and any other personally identifying information.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Consumer-owned utilities are not under the regulatory jurisdiction of the UTC.

Consumer Protection Act.

The Washington Consumer Protection Act (CPA) declares that unfair and deceptive practices in trade or commerce are illegal. The CPA allows a person injured by an unfair or deceptive practice to bring a private cause of action for damages. The Office of the Attorney General may investigate and prosecute claims under the CPA on behalf of the state or individuals in the state.

Energy Benchmarking Programs.

Gas and electric utilities serving more than 25,000 customers are required to maintain energy use data for nonresidential buildings and certain public agency buildings. These data must be maintained in such a way as to allow them to be inputted into the United States Environmental Protection Agency's Energy Star Portfolio Manager (Portfolio Manager).

Gas and electric utilities serving over 25,000 customers must upload building energy use data into Portfolio Manager. In doing so, the utility may not disclose personally identifying information.

Owners of nonresidential buildings that are over 10,000 square feet in size must disclose Portfolio Manager data and ratings for the previous 12 months to prospective buyers, lenders, or renters. There are no penalties specified for noncompliance with disclosure requirements.

Summary:

Disclosures to Retail Electric Customers.

Each electric utility, except for a small utility, must provide its retail electric customers with an explanation of the utility's policies governing the confidentiality of private, as well as proprietary, customer information, including the circumstances under which the information may be disclosed and the ways in which customers can control access to the information. "Private customer information" includes a retail electric customer's name, address, telephone number, and other personally identifying information. The definition for "proprietary customer information" is expanded to include the technical configuration and destination of the electricity used by a retail electric customer.

Sales of Retail Electric Customers' Information.

An electric utility, including a small utility, may not sell private or proprietary customer information.

Disclosures of Retail Electric Customers' Information.

An electric utility, including a small utility, may not disclose private or proprietary retail electric customer information with or to its affiliates, subsidiaries, or any other third party for

the purposes of marketing services or product offerings to a retail electric customer who does not already subscribe to the service or product, unless the utility has first obtained the customer's written or electronic permission.

An electric utility must retain certain information for each instance of a retail electric customer's consent for disclosure of his or her private or proprietary customer information, if provided electronically. A utility may collect and release retail electric customer information in aggregate form if the aggregated information does not allow any specific customer to be identified.

Customer permission is not required for the disclosure of private or proprietary customer information by an electric utility to a third party with which the utility has a contract that is directly related to conduct of the utility's business, provided that the contract prohibits the third party from further disclosing any private or proprietary customer information.

A person may not capture, obtain, or disclose private or proprietary customer information for commercial purposes unless the following conditions apply:

- the person receives a retail electric customer's written or electronic permission to capture, obtain, or disclose private or proprietary customer information;
- the customer information is disclosed to an electric utility or third party as necessary to enforce or complete a financial transaction that the retail electric customer required or authorized, provided that the electric utility or third party maintains confidentiality of the customer information and does not further disclose it; or
- the disclosure is required or expressly permitted by a federal or state law.

"Person" means any individual, partnership, corporation, limited liability company, or other organization or commercial entity, other than an electric utility.

Consumer Protection Act.

The following acts are established as unfair or deceptive acts in trade or commerce and an unfair method of competition under the CPA:

- the disclosure or sale of private or proprietary retail electric customer information to an electric utility's affiliates, subsidiaries, or any other third party for the purposes of marketing services or product offerings, without the customer's written or electronic permission; and
- the capture or disclosure of private or proprietary customer information by a person for commercial purposes, without a retail electric customer's written or electronic permission.

Energy Benchmarking Programs.

Energy benchmarking programs authorized by federal, state, or local laws that are consistent with certain personally identifying information requirements are exempt from the requirements of the act.

Votes on Final Passage:

House 98 0
Senate 48 0 (Senate amended)
House 94 1 (House concurred)

Effective: July 24, 2015