

HOUSE BILL REPORT

SHB 1896

As Amended by the Senate

Title: An act relating to providing a statewide minimum privacy policy for disclosure of customer energy use information.

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).

Brief History:

Committee Activity:

Technology & Economic Development: 2/11/15, 2/18/15 [DPS].

Floor Activity:

Passed House: 3/5/15, 98-0.

Senate Amended.

Passed Senate: 4/13/15, 48-0.

Brief Summary of Substitute Bill

- Prohibits an electric utility, including a small utility, from disclosing or selling 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.
- Prohibits a person from capturing or disclosing private or proprietary customer information for commercial purposes without the retail electric customer's written or electronic permission.
- Makes 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, an unfair or deceptive act in trade or commerce and an unfair method of competition for the purposes of applying the Consumer Protection Act (CPA).

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.

- Makes 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, an unfair or deceptive act in trade or commerce under the CPA.

HOUSE COMMITTEE ON TECHNOLOGY & ECONOMIC DEVELOPMENT

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Morris, Chair; Tarleton, Vice Chair; Smith, Ranking Minority Member; DeBolt, Assistant Ranking Minority Member; Harmsworth, Magendanz, Nealey, Ryu, Santos, Wylie and Young.

Staff: Nikkole Hughes (786-7156).

Background:

Disclosures to Retail Electric Customers.

Except for small utilities, each electric utility must provide its retail electric customers with certain disclosures, including:

- a complete, itemized listing of all rates and charges for which the customer is responsible;
- an explanation of the metering or measurement policies and procedures; and
- 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.

Disclosure 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.

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.

Summary of Substitute Bill:

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.

Disclosures of Retail Electric Customers' Information.

An electric utility, including a small utility, may not disclose or sell 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.

A person may not capture or disclose private or proprietary customer information for commercial purposes unless the person receives a retail electric customer's written or electronic permission to capture or disclose private or proprietary customer information. "Person" means any individual, partnership, corporation, limited liability company, or other organization or commercial entity.

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.

EFFECT OF SENATE AMENDMENT(S):

The amendment adopted by the Senate:

- prohibits an electric utility from selling private or proprietary customer information under any circumstances;
- specifies that 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;
- prohibits a person from obtaining private or proprietary customer information for a commercial purpose, with certain exceptions;
- prohibits a person who legally possesses private or proprietary customer information that is obtained for a commercial purpose from selling, leasing, or disclosing the information to another person, with certain exceptions;
- clarifies that the prohibition against capturing, obtaining, or disclosing private or proprietary customer information for a commercial purpose does not apply to electric utilities; and
- clarifies that 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 chapter 19.29A RCW.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) The purpose of this bill is equity and consumer protection. The investor-owned utilities already operate under these rules in Washington Administrative Code. This bill would extend the minimum privacy policy to other electric utilities in order to protect the information of all Washington electric customers. The distribution grid is digitizing and there is a huge amount of customer information becoming available. Electricity usage data is valuable but potentially dangerous for the customer.

(Opposed) None.

Persons Testifying: Representative Smith, prime sponsor; and Dave Warren, Washington Public Utility District Association.

Persons Signed In To Testify But Not Testifying: None.