

FIRST REGULAR SESSION

# SENATE BILL NO. 491

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR SCHNELTING.

1648S.01H

KRISTINA MARTIN, Secretary

## AN ACT

To repeal sections 386.600, 386.754, 386.756, and 386.760, RSMo, and to enact in lieu thereof five new sections relating to action against certain utilities for violations.

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

Section A. Sections 386.600, 386.754, 386.756, and  
2 386.760, RSMo, are repealed and five new sections enacted in  
3 lieu thereof, to be known as sections 386.600, 386.752, 386.754,  
4 386.756, and 386.760, to read as follows:

386.600. An action to recover a penalty or a  
2 forfeiture under this chapter or to enforce the powers of  
3 the commission under this or any other law may be brought in  
4 any circuit court in this state in the name of the state of  
5 Missouri and shall be commenced and prosecuted to final  
6 judgment by the general counsel to the commission **or the**  
7 **attorney general**. No filing or docket fee shall be required  
8 of the general counsel **or the attorney general**. In any such  
9 action all penalties and forfeitures incurred up to the time  
10 of commencing the same may be sued for and recovered  
11 therein, and the commencement of an action to recover a  
12 penalty or forfeiture shall not be, or be held to be, a  
13 waiver of the right to recover any other penalty or  
14 forfeiture; if the defendant in such action shall prove that  
15 during any portion of the time for which it is sought to  
16 recover penalties or forfeitures for a violation of an order  
17 or decision of the commission the defendant was actually and

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

18 in good faith prosecuting a suit to review such order or  
19 decision in the manner as provided in this chapter, the  
20 court shall remit the penalties or forfeitures incurred  
21 during the pendency of such proceeding. All moneys  
22 recovered as a penalty or forfeiture shall be paid to the  
23 public school fund of the state. Any such action may be  
24 compromised or discontinued on application of the commission  
25 upon such terms as the court shall approve and order.

**386.752. The provisions of sections 386.752 to 386.764  
2 shall be known as and may be cited to as the "Fair  
3 Competition Law".**

386.754. For the purposes of sections [386.754]  
2 **386.752** to 386.764, the following terms mean:

3 (1) "Affiliate", any entity not regulated by the  
4 public service commission which is owned, controlled by,  
5 [or] under common control, **or acting in concert** with a  
6 utility and is engaged in HVAC services;

7 (2) "HVAC services", the warranty, sale, lease,  
8 rental, installation, construction, modernization, retrofit,  
9 maintenance or repair of heating, ventilating and air  
10 conditioning equipment;

11 (3) "Utility", an electrical corporation, gas  
12 corporation or heating company, as defined in section  
13 386.020;

14 (4) "Utility contractor", a person, including an  
15 individual, corporation, firm, incorporated or  
16 unincorporated association or other business or legal  
17 entity, that contracts, whether in writing or not in  
18 writing, with a utility to engage in or assist any entity in  
19 engaging in HVAC services, but does not include employees of  
20 a utility.

386.756. 1. [Except by an affiliate,] A utility may  
2 not engage in HVAC services, unless otherwise provided in  
3 subsection [7 or] 8 of this section.

4 2. No affiliate or utility contractor may use any  
5 vehicles, service tools, instruments, employees, or any  
6 other utility assets, the cost of which are recoverable in  
7 the regulated rates for utility service, to engage in HVAC  
8 services unless the utility is compensated for the use of  
9 such assets at cost to the utility.

10 3. A utility may not use or allow any affiliate or  
11 utility contractor to use the name of such utility to engage  
12 in HVAC services unless the utility, affiliate or utility  
13 contractor discloses, in plain view and in bold type on the  
14 same page as the name is used on all advertisements or in  
15 plain audible language during all solicitations of such  
16 services, a disclaimer that states the services provided are  
17 not regulated by the public service commission.

18 4. A utility may not engage in or assist any affiliate  
19 or utility contractor in engaging in HVAC services in a  
20 manner which subsidizes the activities of such utility,  
21 affiliate or utility contractor to the extent of changing  
22 the rates or charges for the utility's regulated services  
23 above or below the rates or charges that would be in effect  
24 if the utility were not engaged in or assisting any  
25 affiliate or utility contractor in engaging in such  
26 activities.

27 5. Any affiliates or utility contractors engaged in  
28 HVAC services shall maintain accounts, books and records  
29 separate and distinct from the utility.

30 6. The provisions of this section shall apply to any  
31 affiliate or utility contractor engaged in HVAC services  
32 that is owned, controlled or under common control with a

33 utility providing regulated utility service in this state or  
34 any other state.

35 7. A utility engaging in HVAC services in this state  
36 five years prior to August 28, 1998, may continue providing,  
37 to existing as well as new customers, the same type of  
38 services as those provided by the utility five years prior  
39 to August 28, 1998. The provisions of this section only  
40 apply to the area of service which the utility was actually  
41 supplying service to on a regular basis prior to August 28,  
42 1993. The provisions of this section shall not apply to any  
43 subsequently expanded areas of service made by a utility  
44 through either existing affiliates or subsidiaries or  
45 through affiliates or subsidiaries purchased after August  
46 28, 1993, unless such services were being provided in the  
47 expanded area prior to August 28, 1993.

48 8. The provisions of this section shall not be  
49 construed to prohibit a utility from providing emergency  
50 service, providing any service required by law or providing  
51 a program pursuant to an existing tariff, rule or order of  
52 the public service commission **that is consistent with the**  
53 **provisions of this section.**

54 9. A utility that violates any provision of this  
55 section is guilty of a civil offense and may be subject to a  
56 civil penalty of up to twelve thousand five hundred dollars  
57 for each violation. The attorney general may enforce the  
58 provisions of this section pursuant to any powers granted to  
59 him or her pursuant to any relevant provisions provided by  
60 Missouri statutes or the Missouri Constitution.

61 **10. If the commission receives information that**  
62 **provisions of sections 386.752 to 386.764 have been**  
63 **violated, the commission shall conduct an investigation.**  
64 **Upon a finding that a violation occurred, the commission**

65 shall ask the attorney general to file a civil action in a  
66 court of competent jurisdiction. If the court finds that a  
67 violation of sections 386.752 to 386.764 occurred, the court  
68 may grant damages, injunctive relief, attorney fees, and any  
69 such other relief the court deems appropriate.

70 11. Any person informing the commission of any  
71 violation under subsection 10 of this section shall not be  
72 made a party in an action by the attorney general but may be  
73 allowed to intervene without being subject to any burden of  
74 proof on the initial filing of the intervention. Any person  
75 informing the commission of any violation of the provisions  
76 of sections 386.752 to 386.764, or any other interested  
77 person, shall be provided a copy of any investigation,  
78 settlement, order, or other disposition of the complaint  
79 upon a request, but not the work-product of the attorney  
80 general.

81 [10.] 12. Any utility claiming an exemption as  
82 provided in subsection 7 of this section shall comply with  
83 all applicable state and local laws, ordinances or  
84 regulations relating to the installation or maintenance of  
85 HVAC systems including all permit requirements. A  
86 continuing pattern of failure to comply with said  
87 requirements shall provide the basis for a finding by any  
88 court of competent jurisdiction or the public service  
89 commission that the utility has waived its claim of  
90 exemption pursuant to subsection 7 of this section.

386.760. 1. The public service commission shall have  
2 full authority to administer and ensure compliance with  
3 sections 386.754 to 386.764, provided that the commission  
4 shall not impose, by rule or otherwise, requirements  
5 regarding HVAC services that are inconsistent with or in

6 addition to those set forth in sections 386.754 to 386.764  
7 or with requirements set forth in section 386.315.

8 **2. The public service commission shall not adopt any**  
9 **rule, tariff, order, or any other action that purports to**  
10 **allow a violation of sections 386.754 to 386.764.**

11 [2.] 3. No rule or portion of a rule promulgated  
12 pursuant to the provisions of sections 386.754 to 386.764  
13 shall become effective unless it has been promulgated  
14 pursuant to the provisions of chapter 536.

✓