

STATE OF OKLAHOMA

2nd Session of the 56th Legislature (2018)

HOUSE BILL 2872

By: Derby

AS INTRODUCED

An Act relating to public utilities; making legislative findings; defining terms; imposing duty on Oklahoma Corporation Commission; requiring information to be provided to certain ratepayers; requiring utility companies to obtain written consent with respect to certain devices; requiring written notice; providing for removal of devices; imposing prohibitions on utility companies; requiring rules and regulations to be adopted by the Corporation Commission; requiring certain actions by Corporation Commission, the Attorney General and the Oklahoma State Department of Health; imposing duty on Oklahoma Corporation Commission with respect to Electric Usage Data Protection Act; prescribing procedures; providing for codification; providing for noncodification; and declaring an emergency.

BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

SECTION 1. NEW LAW A new section of law not to be codified in the Oklahoma Statutes reads as follows:

The Legislature makes the following findings:

1. The ten-year twenty-five-million-dollar National Institute of Environmental Health Sciences (NIEHS) National Toxicology Program's (NTP) Studies of the Toxicology and Carcinogenicity of Cell Phone Radiation and the 2012

BioInitiative Reports state that non-ionizing radiation from radio frequencies shared by cell phones and smart meters produced increased rates of highly malignant very rare tumors: gliomas of the brain and schwannomas of the heart;

2. These experimental findings are consistent with human studies showing increased rates of gliomas and acoustic neuromas (schwann cells) among humans exposed to cell-phone and smart-meter radiation;

3. In addition to increased cancers, the NTP study also reported that prenatally exposed animals produced offspring with lower birth weights and evidence of direct genetic damage;

4. The State of Oklahoma and its agencies have a primary state constitutional duty to protect the health and welfare of its citizens;

5. Non-ionizing radiation from cell phones and smart meters has been scientifically proven in independent studies to cause harm to biological life; and

6. The State of Oklahoma to this date has done nothing to protect its citizens from this radiation.

SECTION 2. NEW LAW A new section of law to be codified in the Oklahoma Statutes as Section 710.15 of Title 17, unless there is created a duplication in numbering, reads as follows:

A. As used in this section, the following terms shall have the following meanings:

1. "Electromechanical analog meter" means a purely electric and mechanical device, using no switch-mode power supply, no transmitter, no antenna and no radio frequency emissions;

2. "Utility company" means an electric, gas or water company, or town or city-owned utility or other utility provider that holds a protected monopoly to operate in the State of Oklahoma;

3. "Wireless meter" means any transmitting metering device with electronic components and/or any electric- or battery-operated meter that is capable of measuring, recording and sending utility data (such as water, gas, electricity, cell phone, cable TV or Internet) by means of a wireless signal from a utility consumer or member to a utility company, municipality or cooperative association in a manner utilizing one-way communication, two-way communication, or a combination of one-way and two-way communication either through the meter itself or through a device ancillary to the meter or through cell towers/phones or ISPs. Common names include, but are not limited to, AMR, ERT, smart, AMI and Comprehensive Advanced Metering Plan (CAMP);

4. "Equivalent technology" means utility infrastructure, or Internet Service Providers (ISP), that communicate data using wireless frequencies, but which may be undisclosed due to

proprietary rights. This also includes devices that communicate wirelessly with any home appliance or computer;

5. "Cell phone" means or indicate any part of a cellular phone system that operates wirelessly for the consumer and carries phone or data wirelessly;

6. "WiFi" means any wireless communication device or appliance used in any wireless communication system based on the Institute of Electrical and Electronic Engineers (IEEE) 802.11 Standard;

7. "Ratepayer" or "consumer" means a person who pays or consumes the product of any utility operating within the State of Oklahoma; and

8. "Opt-in" or "opt-out" means the desire of the ratepayer or consumer of a product from a utility as to whether or not they wish to participate with the utility in wireless metering which may cause health problems for the ratepayer or consumer. An opt-in position is a desire to participate and an opt-out is a desire not to participate in wireless metering with the utility.

B. The Oklahoma Corporation Commission (OCC) shall direct utility companies, including natural gas providers, water providers and electric power providers, to provide ratepayers the following:

1. A choice of the type of utility meters to be installed and operated on their places of residence, property or business; among the choices offered shall be the installation or ongoing operation of a nontransmitting electromechanical analog meter;

2. The ability to retain and operate an electromechanical analog meter on an ongoing basis at no cost; and

3. The right to replacement of a wireless meter with a nontransmitting electromechanical meter at no cost.

C. The utility companies in Oklahoma shall be required to obtain the ratepayer's written consent, i.e. opt-in or opt-out:

1. Before installing wireless meters or equivalent technology on the ratepayer's property; and

2. Before altering the functionality of said meters.

D. The utility companies shall provide written notice to ratepayers within ninety (90) days of the effective date of this act for the purpose of informing said ratepayers if wireless meters have been installed on their properties. Ratepayers shall have the right to request that the utility companies remove said wireless meters and install in their place electromechanical analog meters that emit no radio frequency, electromagnetic, non-ionizing radiation. There shall be no cost or other periodic usage charges to the ratepayer for such removal, replacement installation and use of a nonwireless utility meter. The utility company shall promptly comply with such removal and replacement installation request made by the ratepayer to said company.

E. Utility companies by this section of law shall be:

1. Prohibited from shutting off service to a ratepayer based on the ratepayer's utility usage or on the ratepayer having electromechanical analog meters;

2. Prohibited from imposing any disincentive on a ratepayer for not consenting to the installation or use of wireless meters;

3. Required to notify ratepayers in writing that the installation and use of wireless meters are not mandated by state or federal law and are not permitted without the ratepayer's consent;

4. Prohibited from discriminating against ratepayers who may have medical conditions that are exacerbated by exposures to pulsed microwave radio frequencies; and

5. Prohibited from installing equivalent technology, such as direct wireless connection to devices in the home or business, placing devices on poles or in any other manner near the home or business of an individual requesting a nontransmitting meter, such that the utility is not exposing persons who opt-out to non-ionizing radiation.

F. The Oklahoma Corporation Commission shall establish terms, conditions and regulations to comply with the requirements of this section, said regulations to be submitted for approval to the Oklahoma Legislature not later than eighteen (18) months after adoption of this section of law.

G. Pursuant to the provisions of this section, the Oklahoma Corporation Commission shall operate in conjunction with the

Oklahoma Attorney General's Office and the State Health Department to protect the health and welfare of all Oklahoma citizens. Working jointly and immediately upon enactment of this act, the OCC, Oklahoma Attorney General's Office and State Health Department shall ensure that the above and foregoing as well as the following provisions of this legislation are fully carried out:

1. Shall establish an absolute state-wide moratorium on the deployment of smart meter AMI (advanced metering infrastructure), metering equipment that uses microwave technology to communicate information from the consumer to the utility, whether it is an electric utility or other. Such moratorium to remain in place until released by action of the State Legislature rescinding the requirements of this paragraph;

2. Shall ensure that all utility and phone service providers properly notice all customers of potential health hazards of any and all of their services and allow the customer to opt-out or modify services if desired by the customer;

3. The OCC shall exercise its constitutional duty to independently review the safety of devices, such as smart meters, used for transmitting information in a wireless environment and shall do so in a manner not relying upon information provided by industry (utility) sources, but shall, through independent experts and input from consumers, examine the entire universe of valid scientific information available to make a reasoned decision as to

whether it is likely or not that microwaves pose a threat to the citizens of Oklahoma at today's usage rates and the power levels currently used by equipment in service or requested by the utility to be put into use. To this end, the OCC shall conduct public hearings across the State of Oklahoma to assure that all Oklahomans, who have any kind of problem with smart meters, can be heard along with the requisite utilities and independent scientists;

4. During the interim, while OCC studies the safety of microwave radiation, the OCC shall promulgate rules that shall require all utilities to shut down present smart meter systems and have consumer meters read by either meter readers, consumer call-in or email of readings to the impacted utility for billing purposes. All utility providers shall maintain service as long as a ratepayer is paying for the services rendered, without regard to the type of meter specified by the utility;

5. The OCC shall also promulgate rules that shall make Oklahoma permanently an opt-in state for any kind of smart meter application. Unless the consumer requests the smart meter, it shall not be installed. Consumers that opt-in, until the Legislature determines differently, shall only have available a smart meter in configurations that do not require wireless deployment; such as deployment by telephone line or fiber optic. Persons who have had wireless smart meters installed may opt-out and the transmitting and receiving capability of their meters rendered inoperative or the



meter replaced with an analogue meter at no charge to the consumer based on the preference of the consumer, who shall bear no added costs. Additionally, OCC shall promulgate rules that protect consumers and ratepayers who do not have or claim, and those who have or claim, a sensitivity to electromagnetic radiation. This includes denial of requested smart meters to persons where the installation and deployment would necessarily cause microwave radiation exposure to innocent persons wanting to opt-out, if such meter is wireless in deployment;

6. The OCC is hereby directed to develop revisions to the Electric Usage Data Protection Act, Section 710.1 et seq. of Title 17 of the Oklahoma Statutes, to revise said legislation and remove the capability of the utility to have access to any information from the consumer except for what is necessary, in calculating gross consumption of the utilities services, to bill for the amount of the utility used by the consumer. The revised language is to make it clear that the consumer, not the utility, owns consumer information and any information that is unnecessary for billing may be released only for good and valuable consideration received by the consumer from the utility through a written agreement. Additionally, the utility may not sell the information, whether it identifies the consumer or not, nor may it aggregate the information to sell it, unless each individual consumer owner has given permission in writing to the utility. The OCC shall submit this new proposed

rewrite of this act to the Legislature for promulgation within its rules sixty (60) days after adequate public hearings on the measure and consumer input have been received and actually considered by OCC, but in no case shall OCC exceed eighteen (18) months to resubmit to the Legislature. It is the intent of the Legislature that OCC shall adopt a position of protecting the health, safety, welfare and financial resources of the ratepayer and citizens of Oklahoma and any provision for error should be on the side of the ratepayers of Oklahoma for this section and all other related sections of Oklahoma law;

7. The OCC shall promulgate new rules that shall prevent any utility from denying or suspending service to any consumer because of any disagreement with said utility as long as the consumer is paying for the amount of the utility used. Said rules shall make the utility responsible for any and all damages that may be sustained by the consumer, including attorney fees; and if the consumer can prove retaliation, willfulness, maliciousness, carelessness, indifference or negligence on the part of the utility, the Legislature hereby approves that a court of competent jurisdiction may apply triple damages in such cases along with automatic attorney fee awards. In addition, OCC shall adopt rules that allow consumers to make changes to the metering of their property if such changes are done in self-defense of health for themselves or other family members and the utility is advised

beforehand and has not responded to the consumer's need. OCC shall additionally incorporate into its present rules that the utility, in ignoring a ratepayer communication for any matter, denies the utility the use of any defenses it may have under current rules; and

8. The OCC shall develop new rules for ratepayers and consumers that have disputes with utility actions. Said disputes shall not be allowed to be dismissed by a motion to dismiss from the utility. Every such dispute shall be given full due process, including an opportunity to be heard en banc before a tribunal of all three elected Commissioners, before final resolution, and all presumptions, if any, shall be in favor of the ratepayer. The elected Corporation Commissioners and staff of OCC are to take each ratepayer or consumer complaint as an opportunity to review the adequacy of the agency's due process system, and there shall be no restraint on the right to be heard. If the rulings are not satisfactory to the ratepayer, they may be taken to district court for rehearing; however, appeal beyond the Commissioners shall remain to the Supreme Court, if appeal is desired instead of rehearing. The OCC is to understand by this legislation that they work for the consumers and citizens of the State of Oklahoma and not the utility. All district courts in Oklahoma shall have jurisdiction to hear such rehearings and the ratepayers shall qualify for damages and attorney fees with double damages from the OCC, and utility if warranted, should there be a due process violation involved.

SECTION 3. It being immediately necessary for the preservation of the public peace, health or safety, an emergency is hereby declared to exist, by reason whereof this act shall take effect and be in full force from and after its passage and approval.

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