

LEGISLATIVE BILL 350

Approved by the Governor May 4, 1983

Introduced by Vickers, 38; L. Johnson, 15; Hoagland, 6

AN ACT relating to utilities; to define terms; to provide civil remedies for diversion of utility services; to provide severability; and to declare an emergency.

Be it enacted by the people of the State of Nebraska,

Section 1. As used in this act, unless the context otherwise requires:

(1) Bypassing shall mean the act of attaching, connecting, or in any manner affixing any wire, cord, socket, motor, pipe or other instrument, device, or contrivance to the utility supply system or any part of the system in such a manner as to transmit, supply, or use any utility service without passing through an authorized meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed. Bypassing shall also mean the act of employing any means to obtain the use or benefit of electricity, gas, or water without paying for the use at the rate established by the supplier of such utilities;

(2) Customer shall mean the person responsible for payment for utility services for the premises, and shall include employees and agents of the customer;

(3) Person shall mean any individual, firm, partnership, corporation, company, association, joint stock association, and other legal entity;

(4) Tampering shall mean the act of damaging, altering, adjusting, or in any manner interfering with or obstructing the action or operation of any meter or other device provided for measuring, registering, determining, or limiting the amount of electricity, gas, or water consumed;

(5) Unauthorized metering shall mean the act of removing, moving, installing, connecting, reconnecting, or disconnecting any meter or metering device for utility service by a person other than an authorized employee or agent of such utility;

(6) Utility shall mean any person or entity lawfully operating in whole or in part for the purpose

of supplying electricity, gas, water, including steam, or any combination thereof, to the public or to any person;

(7) Utility service shall mean the provision of electricity, gas, steam, water, or any other service or commodity furnished by the utility for compensation; and

(8) Utility supply system shall mean and include all wires, conduits, pipes, cords, sockets, motors, meters, instruments, load control equipment, and all other devices used by the utility for the purpose of providing utility services.

Sec. 2. (1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts (a) bypassing, (b) tampering, or (c) unauthorized metering when such act results in damages to the utility. A utility may bring a civil action for damages pursuant to this section against any person receiving the benefit of utility service through means of bypassing, tampering, or unauthorized metering.

(2) In any civil action brought pursuant to this section, the utility shall be entitled, upon proof of willful or intentional bypassing, tampering, or unauthorized metering, to recover as damages:

(a) The amount of actual damage or loss if the amount of the damage or loss is susceptible of reasonable calculation; or

(b) Liquidated damages of (i) until July 1, 1985, five hundred dollars and (ii) on July 1, 1985, and thereafter, seven hundred fifty dollars if the amount of actual damage or loss is not susceptible of reasonable calculation.

In addition to damage or loss under subdivision (a) or (b) of this subsection the utility may recover all reasonable expenses and costs incurred on account of the bypassing, tampering, or unauthorized metering including, but not limited to, disconnection, reconnection, service calls, equipment, costs of the suit, and reasonable attorneys' fees in cases within the scope of section 25-1801.

Sec. 3. (1) There shall be a rebuttable presumption that a tenant or occupant at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the tenant or occupant (a) had access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering is proven to exist and (b) was responsible or partially responsible for payment, either directly or indirectly, to the utility or to any other person for utility services to the premises.

(2) There shall be a rebuttable presumption that a customer at any premises where bypassing, tampering, or unauthorized metering is proven to exist caused or had knowledge of such bypassing, tampering, or unauthorized metering if the customer controlled access to the part of the utility supply system on the premises where the bypassing, tampering, or unauthorized metering was proven to exist.

Sec. 4. The remedies provided by this act shall be deemed to be supplemental and additional to powers conferred by existing laws and the remedies provided in this act are in addition to and not in limitation of any other civil or criminal statutory or common law remedies.

Sec. 5. If any section in this act or any part of any section shall be declared invalid or unconstitutional, such declaration shall not affect the validity or constitutionality of the remaining portions thereof.

Sec. 6. Since an emergency exists, this act shall be in full force and take effect, from and after its passage and approval, according to law.