

enforcement agency: PROVIDED FURTHER, That this section shall not apply to either the initial application for employment or continued employment of persons who manufacture, distribute, or dispense controlled substances as defined in chapter 69.50 RCW, or to persons in sensitive positions directly involving national security(~~(, or to persons in the field of public law enforcement who are seeking promotion to a rank of captain or higher)~~).

Nothing in this section shall be construed to prohibit the use of psychological tests as defined in RCW 18.83.010.

Sec. 2. Section 2, chapter 152, Laws of 1965 and RCW 49.44.130 are each amended to read as follows:

(1) Any person violating the provisions of RCW 49.44.120 shall be guilty of a ~~((gross))~~ misdemeanor.

(2) As used in this section, "person" includes any individual, firm, corporation, or agency or political subdivision of the state.

(3) Nothing in this section or RCW 49.44.120 may be construed as limiting any statutory or common law rights of any person illegally denied employment or continued employment under RCW 49.44.120 for purposes of any civil action or injunctive relief.

NEW SECTION. Sec. 3. A new section is added to chapter 49.44 RCW to read as follows:

In a civil action alleging a violation of RCW 49.44.120, the court may:

(1) Award a penalty in the amount of five hundred dollars to a prevailing employee or prospective employee in addition to any award of actual damages;

(2) Award reasonable attorneys' fees and costs to the prevailing employee or prospective employee; and

(3) Pursuant to RCW 4.84.185, award any prevailing party against whom an action has been brought for a violation of RCW 49.44.120 reasonable expenses and attorneys' fees upon final judgment and written findings by the trial judge that the action was frivolous and advanced without reasonable cause.

Passed the Senate April 24, 1985.

Passed the House April 18, 1985.

Approved by the Governor May 21, 1985.

Filed in Office of Secretary of State May 21, 1985.

CHAPTER 427

[Engrossed House Bill No. 758]

PUBLIC UTILITY METER TAMPERING OR CIRCUMVENTION

AN ACT Relating to public utilities; amending RCW 80.28.080; adding a new section to chapter 80.28 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

***NEW SECTION.** Sec. 1. A new section is added to chapter 80.28 RCW to read as follows:

(1) A utility may bring a civil action for damages against any person who commits, authorizes, solicits, aids, abets, or attempts to:

(a) Divert, or cause to be diverted, utility services by any means whatsoever;

(b) Make, or cause to be made, any connection or reconnection with property owned or used by the utility to provide utility service without the authorization or consent of the utility;

(c) Prevent any utility meter or other device used in determining the charge for utility services from accurately performing its measuring function by tampering or by any other means;

(d) Tamper with any property owned or used by the utility to provide utility services; or

(e) Use or receive the direct benefit of all or a portion of the utility service with knowledge of, or reason to believe that, the diversion, tampering, or unauthorized connection existed at the time of the use or that the use or receipt was without the authorization or consent of the utility.

(2) In any civil action brought under this section, the utility may recover from the defendant as damages three times the amount of actual damages, if any, plus the cost of the suit and reasonable attorney's fees, plus the costs incurred on account of the bypassing, tampering, or unauthorized reconnection, including but not limited to costs and expenses for investigation, disconnection, reconnection, service calls, and expert witnesses.

(3) *There is a rebuttable presumption that there is a violation of this section if, on premises controlled by the customer or by the person using or receiving the direct benefit of utility service, there is either, or both, of the following:*

(a) *Any instrument, apparatus, or device primarily designed to be used to obtain utility service without paying the full lawful charge therefor, or*

(b) *Any meter that has been altered, tampered with, or bypassed so as to cause no measurement or inaccurate measurement of utility services.*

(4) Any damages recovered under this section in excess of the actual damages sustained by the utility may be taken into account by the utilities and transportation commission or other applicable rate-making agency in establishing utility rates.

(5) As used in this section:

(a) "Customer" means the person in whose name a utility service is provided;

(b) "Divert" means to change the intended course or path of electricity, gas, or water without the authorization or consent of the utility;

(c) "Person" means any individual, partnership, firm, association, or corporation or government agency;

(d) "Reconnection" means the commencement of utility service to a customer or other person after service has been lawfully disconnected by the utility;

(e) "Tamper" means to rearrange, injure, alter, interfere with, or otherwise prevent from performing the normal or customary function;

(f) "Utility" means any electrical company, gas company, or water company as those terms are defined in RCW 80.04.010, and includes any electrical, gas, or water system operated by any public agency; and

(g) "Utility service" means the provision of electricity, gas, water, or any other service or commodity furnished by the utility for compensation.

*Sec. 1 was partially vetoed, see message at end of chapter.

Sec. 2. Section 80.28.080, chapter 14, Laws of 1961 as amended by section 116, chapter 154, Laws of 1973 1st ex. sess. and RCW 80.28.080 are each amended to read as follows:

No gas company, electrical company or water company shall charge, demand, collect or receive a greater or less or different compensation for any service rendered or to be rendered than the rates and charges applicable to such service as specified in its schedule filed and in effect at the time, nor shall any such company directly or indirectly refund or remit in any manner or by any device any portion of the rates or charges so specified, or furnish its product at free or reduced rates except to its employees and their families, and its officers, attorneys, and agents; to hospitals, charitable and eleemosynary institutions and persons engaged in charitable and eleemosynary work; to indigent and destitute persons; to national homes or state homes for disabled volunteer soldiers and soldiers' and sailors' homes: PROVIDED, That the term "employees" as used in this paragraph shall include furloughed, pensioned and superannuated employees, persons who have become disabled or infirm in the service of any such company; and the term "families," as used in this paragraph, shall include the families of those persons named in this proviso, the families of persons killed or dying in the service, also the families of persons killed, and the surviving spouse prior to remarriage, and the minor children during minority of persons who died while in the service of any of the companies named in this paragraph: (~~AND~~) PROVIDED(;) FURTHER, That water companies may furnish free or at reduced rates water for the use of the state, or for any project in which the state is interested: AND PROVIDED FURTHER, That gas companies, electrical companies, and water companies may charge the defendant for treble damages awarded in lawsuits successfully litigated under section 1 of this 1985 act.

No gas company, electrical company or water company shall extend to any person or corporation any form of contract or agreement or any rule or

regulation or any privilege or facility except such as are regularly and uniformly extended to all persons and corporations under like circumstances.

Passed the House March 21, 1985.

Passed the Senate April 18, 1985.

Approved by the Governor May 21, 1985, with the exception of certain items which are vetoed.

Filed in Office of Secretary of State May 21, 1985.

Note: Governor's explanation of partial veto is as follows:

"I am returning herewith, without my approval as to one section, Engrossed House Bill No. 758 entitled:

"AN ACT Related to public utilities."

This bill would provide that a utility customer is presumed liable for the costs and damages incurred by a utility if there is evidence of meter tampering or circumvention to avoid payment for utility services. Utilities would be able to recover triple damage in any civil action sought under this provision.

Section 1(3) creates a rebuttable presumption of a violation. Such statutory presumptions run counter to general law and should be reserved for use only where significant public harm is involved.

With the exception of Section 1(3), Engrossed House Bill No. 758 is approved."

CHAPTER 428

[Engrossed Substitute Senate Bill No. 3450]

FIREARMS REGULATION—STATE PREEMPTION OF LOCAL LAWS

AN ACT Relating to state preemption of local firearms laws; amending RCW 9.41.290, 9.41.070, and 9.41.090; adding new sections to chapter 9.41 RCW; and prescribing penalties.

Be it enacted by the Legislature of the State of Washington:

Sec. 1. Section 12, chapter 232, Laws of 1983 and RCW 9.41.290 are each amended to read as follows:

The state of Washington hereby fully occupies and preempts the entire field of firearms regulation within the boundaries of the state, including the registration, licensing, possession, purchase, sale, acquisition, transfer, discharge, and transportation of firearms, or any other element relating to firearms or parts thereof, including ammunition and reloader components. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to firearms that are specifically authorized by state law and are consistent with this chapter. Such local ordinances shall have the same or lesser penalty as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of such city, town, county, or municipality.

NEW SECTION. Sec. 2. A new section is added to chapter 9.41 RCW to read as follows: