

1-1 By: Schwertner, Menéndez S.B. No. 2194  
1-2 (In the Senate - Filed April 12, 2021; April 12, 2021, read  
1-3 first time and referred to Committee on Jurisprudence;  
1-4 April 19, 2021, reported favorably by the following vote: Yeas 5,  
1-5 Nays 0; April 19, 2021, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			

1-13 A BILL TO BE ENTITLED  
1-14 AN ACT

1-15 relating to the regulation of certain retail electric products.  
1-16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-17 SECTION 1. Subchapter C, Chapter 39, Utilities Code, is  
1-18 amended by adding Section 39.110 to read as follows:  
1-19 Sec. 39.110. WHOLESALE INDEXED PRODUCTS PROHIBITED. (a)  
1-20 In this section, "wholesale indexed product" means a retail  
1-21 electric product in which the price a customer pays for electricity  
1-22 includes a direct pass-through of real-time settlement point prices  
1-23 determined by the independent organization certified under Section  
1-24 39.151 for the ERCOT power region.  
1-25 (b) A retail electric provider may not offer a wholesale  
1-26 indexed product to a residential or small commercial customer.  
1-27 (c) A retail electric provider may enroll a customer other  
1-28 than a residential and small commercial customer in a wholesale  
1-29 indexed product if the provider obtains before the customer's  
1-30 enrollment the customer's written and signed acknowledgment that  
1-31 the customer accepts the potential price risks associated with a  
1-32 wholesale indexed product.  
1-33 (d) An acknowledgment described by Subsection (c) must  
1-34 include the following statements, in clear, boldfaced text,  
1-35 accompanied by the signature of the customer:  
1-36 (1) "I understand the volatility and fluctuation of  
1-37 wholesale energy pricing. I understand that I will be responsible  
1-38 for the fluctuations in wholesale energy prices and that my energy  
1-39 bill can be multiple times higher in a month with high wholesale  
1-40 energy prices.";  
1-41 (2) "I understand that the maximum wholesale energy  
1-42 rate in the wholesale energy market is much higher than the average  
1-43 wholesale energy rate and that energy prices can remain at the  
1-44 maximum wholesale energy rate for many hours."; and  
1-45 (3) "I acknowledge that management of energy use  
1-46 during periods of high energy prices times is critical to  
1-47 maintaining financial solvency.".  
1-48 (e) A retail electric provider must keep on file an  
1-49 acknowledgment described by Subsection (c) for each customer while  
1-50 the customer is enrolled with the provider in a wholesale indexed  
1-51 product.  
1-52 SECTION 2. Section 39.112, Utilities Code, is amended to  
1-53 read as follows:  
1-54 Sec. 39.112. NOTICE OF EXPIRATION AND PRICE CHANGE. (a) In  
1-55 this section, "fixed rate product" means a retail electric product  
1-56 with a term of at least three months for which the price for each  
1-57 billing period, including recurring charges, does not change  
1-58 throughout the term of the contract, except that the price may vary  
1-59 to reflect actual changes in transmission and distribution utility  
1-60 charges, changes to ERCOT or Texas Regional Entity administrative  
1-61 fees charged to loads, or changes to federal, state, or local laws

2-1 that result in new or modified fees or costs that are not within the  
2-2 retail electric provider's control.

2-3 (b) A retail electric provider shall provide a residential  
2-4 customer who has a fixed rate product with at least three ~~[one]~~  
2-5 written notices ~~[notice]~~ of the date the fixed rate product will  
2-6 expire. The notices ~~[notice]~~ must be provided:

2-7 (1) not less than 90 days and not more than 119 days  
2-8 before the date the contract will expire, for the first notice;

2-9 (2) not less than 60 days and not more than 89 days  
2-10 before the date that the contract will expire, for the second  
2-11 notice; and

2-12 (3) not less than 30 days and not more than 59 days  
2-13 before the date that the contract will expire, for the third notice.

2-14 (c) Each notice under Subsection (b) must be provided to the  
2-15 customer:

2-16 (1) by mail at the customer's billing address;

2-17 (2) by e-mail, if the customer's e-mail address is  
2-18 available to the provider and if the customer has agreed to receive  
2-19 notices by e-mail; and

2-20 (3) by text message, if the customer's text messaging  
2-21 contact information is available to the provider and if the  
2-22 customer has agreed to receive notices by text message.

2-23 (d) A notice provided under Subsection (b) must:

2-24 (1) ~~[be sent to the customer's billing address by mail~~  
2-25 ~~at least 30, but not more than 60, days preceding the date the~~  
2-26 ~~contract will expire;~~

2-27 ~~[(2) be sent to the customer's e-mail address, if~~  
2-28 ~~available to the provider and if the customer has agreed to receive~~  
2-29 ~~notices electronically, at least 30, but not more than 60, days~~  
2-30 ~~preceding the date the contract will expire;~~

2-31 ~~[(3)] for a notice provided by mail, include in a manner~~  
2-32 ~~visible from ~~[on]~~ the outside of the envelope in which the notice is~~  
2-33 ~~sent, a statement that reads: "Contract Expiration Notice. See~~  
2-34 ~~Enclosed."~~;

2-35 (2) ~~[(4)] if included with a customer's bill, be~~  
2-36 ~~printed on a separate page or included as a separate document; ~~[and]~~~~

2-37 (3) ~~[(5)] include a description of any fees or charges~~  
2-38 ~~associated with the early termination of the customer's fixed rate~~  
2-39 ~~product;~~

2-40 (4) describe any renewal offers the retail electric  
2-41 provider chooses to make available to the customer and identify  
2-42 methods by which the customer may obtain the contract documents for  
2-43 each of those products; and

2-44 (5) include the pricing terms for the default renewal  
2-45 product required under Subsection (f).

2-46 (e) ~~[(e)]~~ A retail electric provider shall include on each  
2-47 billing statement, in boldfaced and underlined text, the end date  
2-48 of the fixed rate product.

2-49 (f) Except as provided by Subsection (h), if a customer does  
2-50 not select another retail electric product before the expiration of  
2-51 the customer's contract term with a retail electric provider, the  
2-52 provider shall automatically serve the customer through a default  
2-53 renewal product. The default renewal product may be:

2-54 (1) a fixed rate product; or

2-55 (2) a month-to-month product in which the price the  
2-56 customer pays for electricity may vary between billing cycles.

2-57 (g) A default renewal product that is a month-to-month  
2-58 product must be based on clear and easily understood terms  
2-59 described in the customer's most recent contract with the retail  
2-60 electric provider.

2-61 (h) If a retail electric provider does not provide notice of  
2-62 the expiration of a customer's contract with the provider in  
2-63 accordance with this section and the customer does not select  
2-64 another retail electric product before the expiration of the  
2-65 customer's contract term with the provider, the customer's fixed  
2-66 rate product remains in effect until:

2-67 (1) the provider provides notice of the expiration of  
2-68 the contract in accordance with this section and enrolls the  
2-69 customer in a default renewal product; or

3-1 (2) the customer selects another retail electric  
3-2 product.

3-3 (i) [~~(d)~~] No provision in this section shall be construed to  
3-4 prohibit the commission from adopting rules that would provide a  
3-5 greater degree of customer protection.

3-6 SECTION 3. The changes in law made by this Act apply only to  
3-7 an enrollment or re-enrollment of a customer in a retail electric  
3-8 product that is executed on or after the effective date of this Act.

3-9 An enrollment or re-enrollment of a customer in a retail electric  
3-10 product that is executed before the effective date of this Act is  
3-11 governed by the law as it existed immediately before the effective  
3-12 date of this Act, and that law is continued in effect for that  
3-13 purpose.

3-14 SECTION 4. This Act takes effect September 1, 2021.

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