

By: Fraser, Harris, West

S.B. No. 482

A BILL TO BE ENTITLED

AN ACT

relating to competition, customer choice, and customer protection  
in the retail electric market; providing an administrative penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 17.008, Utilities Code, is amended to  
read as follows:

Sec. 17.008. PROTECTION OF RESIDENTIAL ELECTRIC SERVICE  
APPLICANTS AND CUSTOMERS. (a) In this section and in Section  
17.009:

(1) "Credit history":

(A) means information regarding an individual's  
past history of:

(i) financial responsibility;

(ii) payment habits; or

(iii) creditworthiness; and

(B) does not include an individual's outstanding  
balance for retail electric or telecommunications service.

(2) "Credit score" means a score, grade, or value that  
is derived by a consumer reporting agency, as defined under Section  
603(f) of the Fair Credit Reporting Act (15 U.S.C. Section  
1681a(f)), using data from a credit history in any type of model,  
method, or program for the purpose of grading or ranking credit  
report data, whether derived electronically, from an algorithm,  
through a computer software application model or program, or

1 through any other analogous process.

2 (3) "Utility payment data" means a measure that is  
3 derived by a consumer reporting agency, as defined under Section  
4 603(f) of the Fair Credit Reporting Act (15 U.S.C. Section  
5 1681a(f)), from a model specifically designed to correlate to  
6 utility payment histories.

7 (b) A retail electric provider may not deny an applicant's  
8 request to become a residential electric service customer on the  
9 basis of the applicant's credit history or credit score~~[, but may~~  
10 ~~use the applicant's utility payment data until the later of January~~  
11 ~~1, 2007, or the date on which the price to beat is no longer in~~  
12 ~~effect in the geographic area in which the customer is located].~~

13 (c) ~~[Notwithstanding Subsection (b), while a retail~~  
14 ~~electric provider is required to provide service to a geographic~~  
15 ~~area as the affiliated retail electric provider, the provider may~~  
16 ~~not deny an applicant's request to become a residential electric~~  
17 ~~service customer within that geographic area on the basis of the~~  
18 ~~applicant's credit history, credit score, or utility payment data.~~

19 ~~[(d) After the date described in Subsection (b), a retail~~  
20 ~~electric provider, including an affiliated retail electric~~  
21 ~~provider, may not deny an applicant's request to become a~~  
22 ~~residential electric service customer on the basis of the~~  
23 ~~applicant's credit history, credit score, or utility payment data~~  
24 ~~but may use the applicant's electric bill payment history.~~

25 ~~[(e)]~~ A retail electric provider may not use a credit score,  
26 a credit history, or utility payment data as the basis for  
27 determining the price for month-to-month electric service or

1 electric service that includes a fixed price commitment of 12  
2 months or less:

- 3 (1) for an existing residential customer; or
- 4 (2) in response to an applicant's request to become a  
5 residential electric service customer.

6 (d) On [~~(f) After the date described in Subsection (b), on~~]  
7 request by a customer or former customer in this state, a retail  
8 electric provider or electric utility shall timely provide to the  
9 customer or former customer bill payment history information with  
10 the retail electric provider or electric utility during the  
11 preceding 12-month period. Bill payment history information may be  
12 obtained by the customer or former customer once during each  
13 12-month period without charge. If additional copies of bill  
14 payment history information are requested during a 12-month period,  
15 the electric service provider may charge the customer or former  
16 customer a reasonable fee for each copy.

17 (e) [~~(g)~~] On request by a retail electric provider, another  
18 retail electric provider or electric utility shall timely verify  
19 information that purports to show a customer's service and bill  
20 payment history with the retail electric provider or electric  
21 utility.

22 (f) A retail electric provider may not require a person  
23 applying for residential electric service to provide a security  
24 deposit or advance payment as a condition of service if:

- 25 (1) it can be shown that the person was a customer of  
26 one or more retail electric providers or electric utilities in this  
27 state during the entire 12-month period preceding the request for

1 electric service; and

2 (2) during the preceding 12-month period, the person  
3 was not late in paying an electric service bill.

4 (g) If a person applying for residential electric service  
5 does not provide the documentation described in Subsection (f),  
6 nothing in this section limits [~~(h) This section does not limit~~] a  
7 retail electric provider's authority to require a deposit or  
8 advance payment as a condition of service.

9 (h) [~~(i)~~] Notwithstanding Subsection (c) [~~(e)~~], a retail  
10 electric provider may provide rewards, benefits, or credits to  
11 residential electric service customers on the basis of the  
12 customer's payment history for retail electric service to that  
13 provider.

14 SECTION 2. Section 39.051, Utilities Code, is amended by  
15 adding Subsection (h) to read as follows:

16 (h) On or before January 1, 2008, an electric utility that  
17 is affiliated with power generation companies that own 5,000  
18 megawatts or more of generating capacity in this state or with  
19 retail electric providers that have annual sales of 10,000,000  
20 megawatt hours or more of electricity in this state shall file with  
21 the commission an unbundling plan for discontinuing, within a  
22 reasonable time determined by the commission, the utility's  
23 affiliation with power generation companies or retail electric  
24 providers.

25 SECTION 3. Section 39.101, Utilities Code, is amended by  
26 amending Subsections (a) and (h) and adding Subsection (i) to read  
27 as follows:

1 (a) Before customer choice begins on January 1, 2002, the  
2 commission shall ensure that retail customer protections are  
3 established that entitle a customer:

4 (1) to safe, reliable, and reasonably priced  
5 electricity, including protection against service disconnections  
6 in an extreme weather emergency as provided by Subsection (h) or in  
7 cases of medical emergency or nonpayment for unrelated services;

8 (2) to privacy of customer consumption and credit  
9 information; provided, however, that the release to competitive  
10 retail electric providers of the names and addresses of residential  
11 customers that were served by the affiliated retail electric  
12 provider at the end of the price to beat period shall not be  
13 considered a violation of customer privacy;

14 (3) to bills presented in a clear format and in  
15 language readily understandable by customers;

16 (4) to the option to have all electric services on a  
17 single bill, except in those instances where multiple bills are  
18 allowed under Chapters 40 and 41;

19 (5) to protection from discrimination on the basis of  
20 race, color, sex, nationality, religion, or marital status;

21 (6) to accuracy of metering and billing;

22 (7) to information in English and Spanish and any  
23 other language as necessary concerning rates, key terms and  
24 conditions, in a standard format that will permit comparisons  
25 between price and service offerings, and the environmental impact  
26 of certain production facilities;

27 (8) to information in English and Spanish and any

1 other language as necessary concerning low-income assistance  
2 programs and deferred payment plans; and

3 (9) to other information or protections necessary to  
4 ensure high-quality service to customers.

5 (h) A retail electric provider, power generation company,  
6 aggregator, or other entity that provides retail electric service  
7 may not disconnect service to a residential customer during an  
8 extreme weather emergency or on a weekend day. The entity providing  
9 service shall defer collection of the full payment of bills that are  
10 due during an extreme weather emergency until after the emergency  
11 is over and shall offer ~~[work with]~~ customers a deferred payment  
12 plan providing for a period of not less than five months for a  
13 customer to pay deferred amounts ~~[to establish a pay schedule for~~  
14 ~~deferred bills]~~. For purposes of this subsection, "extreme weather  
15 emergency" means ~~[a period when]~~:

16 (1) a day for which the National Weather Service  
17 forecasts that the ~~[previous day's highest]~~ temperature will reach  
18 or fall below ~~[did not exceed]~~ 32 degrees Fahrenheit in any part of  
19 a county in the relevant service territory ~~[and the temperature is~~  
20 ~~predicted to remain at or below that level for the next 24 hours~~  
21 ~~according to the nearest National Weather Service reports]~~; ~~[or]~~

22 (2) a day for which the National Weather Service  
23 forecasts that the heat index will reach or exceed 100 degrees  
24 Fahrenheit in any part of a county in the relevant service  
25 territory; or

26 (3) a period when, ~~[issues a heat advisory for any~~  
27 ~~county in the relevant service territory, or when such an advisory~~

1 ~~has been issued]~~ on any one of the previous two calendar days, the  
2 National Weather Service observes a heat index of 100 degrees  
3 Fahrenheit or more in any part of a county in the relevant service  
4 territory.

5 (i) A retail electric provider may not state or imply that  
6 it can provide a greater level of reliability of electric service or  
7 preferential treatment in the restoration of service following an  
8 outage; provided, however, that a retail electric provider may make  
9 claims regarding aspects of reliability related to customer  
10 service. The commission may impose an administrative penalty for a  
11 violation of this subsection in accordance with Section 15.024. A  
12 violation of this subsection shall be included in the highest class  
13 of violations in the classification system established by the  
14 commission under Section 15.023.

15 SECTION 4. (a) Subchapter C, Chapter 39, Utilities Code,  
16 is amended by adding Section 39.1015 to read as follows:

17 Sec. 39.1015. SUSPENSION OF DISCONNECTION FOR CERTAIN  
18 CUSTOMERS. (a) In this section:

19 (1) "Critical care residential customer" means a  
20 residential electric customer for whom an interruption or  
21 suspension of electric service will create a dangerous or  
22 life-threatening condition.

23 (2) "Elderly low-income customer" means a low-income  
24 customer who is 65 years old or older.

25 (3) "Low-income customer" means an electric customer:  
26 (A) whose household income is not more than 125  
27 percent of the federal poverty guidelines;

1           (B) who receives food stamps from the Health and  
2 Human Services Commission; or

3           (C) who receives medical assistance from a state  
4 agency that administers a part of the medical assistance program.

5           (4) "Service provider" means a retail electric  
6 provider, power generation company, aggregator, or other entity  
7 that provides retail electric service.

8           (b) During the period beginning July 1 and ending September  
9 30 of each year a service provider:

10           (1) may not disconnect service or authorize the  
11 disconnection of service to a critical care residential customer or  
12 elderly low-income customer who contacts the service provider  
13 regarding bill payment or in response to a disconnection notice;

14           (2) may not disconnect service or authorize the  
15 disconnection of service to a low-income customer other than an  
16 elderly low-income customer if the customer:

17           (A) contacts the service provider regarding bill  
18 payment or in response to a disconnection notice; and

19           (B) enters into a deferred payment plan with the  
20 service provider for the current month's electric charges and meets  
21 the terms of any then current deferred payment plan;

22           (3) shall request reconnection of service or reconnect  
23 service to a critical care residential customer or an elderly  
24 low-income customer whose service is disconnected before or during  
25 the period if:

26           (A) the customer contacts the service provider  
27 regarding bill payment or in response to a disconnection notice; or



1           (B) the service provider has previously been  
2 notified that the customer is a critical care residential customer;

3           (4) shall request reconnection of service or reconnect  
4 service to a low-income customer whose service is disconnected  
5 before or during the period if the customer enters into a deferred  
6 payment plan with the service provider; and

7           (5) shall rescind a request for disconnection of  
8 service to a critical care residential customer, elderly low-income  
9 customer, or low-income customer made before the period begins if  
10 the service provider is prohibited under this subsection from  
11 disconnecting or authorizing the disconnection of the customer's  
12 service during the period.

13           (c) A service provider may not disconnect service or  
14 authorize the disconnection of a critical care residential  
15 customer's service during the period provided by Subsection (b)  
16 regardless of whether the customer contacts the service provider as  
17 provided by Subsection (b) if the service provider has previously  
18 been notified that the customer is a critical care residential  
19 customer.

20           (d) A service provider shall allow a critical care  
21 residential customer, elderly low-income customer, or low-income  
22 customer to establish with the provider a deferred payment plan in  
23 person or by telephone. The service provider shall confirm the  
24 payment plan with the customer in writing. The deferred payment  
25 plan may not include a penalty for late payments accrued during the  
26 period provided by Subsection (b). The service provider shall  
27 allow a critical care residential customer, elderly low-income

1 customer, or low-income customer to renegotiate the terms of the  
2 deferred payment plan at least one time, regardless of whether the  
3 customer's economic or financial circumstances have changed. For a  
4 low-income customer other than an elderly low-income customer,  
5 during the period provided by Subsection (b), the payment plan may  
6 require the payment of not more than 25 percent of the then current  
7 month's charges plus any due installments of a previous deferred  
8 payment plan. For a low-income customer other than an elderly  
9 low-income customer, the service provider is not required to extend  
10 a deferred payment plan entered into under this subsection beyond  
11 the March billing cycle following the period provided by Subsection  
12 (b).

13 (e) A deferred payment plan established under Subsection  
14 (d) for one or more electric bills that come due during the period  
15 provided by Subsection (b) must provide:

16 (1) for a critical care residential customer or  
17 elderly low-income customer, that the customer is not required to  
18 pay more than 25 percent of the deferred electric bills as part of  
19 the first electric bill issued after the end of the period and that  
20 the remaining balance is to be paid in equal installments over the  
21 next five billing cycles, unless the customer requests a lesser  
22 number of installments; and

23 (2) for a low-income customer other than an elderly  
24 low-income customer, that the customer is required to pay not more  
25 than 25 percent of the deferred bills to initiate the agreement and  
26 that the remaining balance is to be paid in equal installments over  
27 the next five billing cycles, unless the customer requests a lesser

1 number of installments.

2 (f) A service provider may pursue disconnection of  
3 electrical service for a critical care residential customer or an  
4 elderly low-income customer only after the period provided by  
5 Subsection (b) and only if the customer does not meet the terms of  
6 the deferred payment plan, unless the disconnection is otherwise  
7 prohibited. A service provider may pursue disconnection of service  
8 for a low-income customer other than an elderly low-income customer  
9 if the customer does not meet the terms of the deferred payment  
10 plan, unless the disconnection is otherwise prohibited. The  
11 service provider shall give the customer appropriate notice that  
12 the customer has not met the terms of the plan before the service  
13 provider disconnects or authorizes the disconnection of service.

14 (g) A service provider may encourage a critical care  
15 residential customer or elderly low-income customer to make partial  
16 payment of a deferred electric bill during the period provided by  
17 Subsection (b), but the service provider shall clearly inform the  
18 customer that the customer may not be disconnected for nonpayment  
19 before October 1 following the period provided by Subsection (b).

20 (b) This section takes effect June 1, 2007, if this Act  
21 receives a vote of two-thirds of all the members elected to each  
22 house, as provided by Section 39, Article III, Texas Constitution.  
23 If this Act does not receive the vote necessary for this section to  
24 take effect on that date, this section takes effect September 30,  
25 2007.

26 SECTION 5. Subchapter C, Chapter 39, Utilities Code, is  
27 amended by adding Section 39.1016 to read as follows:

1       Sec. 39.1016. CANCELLATION OR TERMINATION FEES. A retail  
2 electric provider may not charge a residential customer who  
3 requests cancellation or termination of retail electric service  
4 provided on a month-to-month basis a fee relating to the  
5 cancellation or termination.

6       SECTION 6. Subchapter C, Chapter 39, Utilities Code, is  
7 amended by adding Section 39.110 to read as follows:

8       Sec. 39.110. PROMOTION OF RESIDENTIAL CUSTOMER CHOICE.

9       (a) The purpose of this section is to promote customer choice for  
10 residential customers by imposing a charge on certain retail  
11 electric providers to provide an additional incentive for them to  
12 compete for residential customers.

13       (b) This section applies to a retail electric provider that,  
14 as of December 31, 2006, had more than 250,000 residential  
15 customers and was required to offer service to residential  
16 customers at the price to beat in accordance with Section 39.202,  
17 and to any successor in interest of the retail electric provider,  
18 and any reference in this section to a retail service provider  
19 includes a successor in interest to such provider. This section no  
20 longer applies to a retail electric provider if the retail electric  
21 provider is not assessed a charge under Subsection (c) for two  
22 consecutive years.

23       (c) The commission shall impose an annual charge on a retail  
24 electric provider that is subject to this section if at the end of a  
25 calendar year the number of residential customers served by the  
26 retail electric provider in areas where customer choice is  
27 available outside the transmission and distribution utility

1 service territory in which it was required to offer the price to  
2 beat is less than 35 percent of the total number of residential  
3 customers served by the retail electric provider in all areas open  
4 to competition in this state. As used in this subsection, the term  
5 "retail electric provider" includes providers that were affiliates  
6 as of December 31, 2006.

7 (d) The annual charge under this section shall equal the  
8 difference between the number of residential customers that the  
9 retail electric provider served on the last day of the relevant  
10 calendar year in the transmission and distribution utility service  
11 territory in which it was required to offer the price to beat and  
12 the number of residential customers that the retail electric  
13 provider, or other retail electric providers that as of December  
14 31, 2006, were affiliated with the retail electric provider, served  
15 on the last day of the relevant calendar year outside the  
16 transmission and distribution utility service territory in which  
17 the retail electric provider was required to offer the price to beat  
18 multiplied by:

- 19 (1) \$100 at the end of 2007;  
20 (2) \$200 at the end of 2008; and  
21 (3) \$300 at the end of 2009.

22 (e) Funds collected from the charge assessed under this  
23 section shall be held in a segregated account by the retail electric  
24 provider and allocated for programs devised and directed by the  
25 commission as follows:

26 (1) a fund for a customer education program in the  
27 transmission and distribution utility service territory in which

1 the retail electric provider was required to offer the price to beat  
2 and a low-income discount program; and

3 (2) a fund to be paid to residential customers served  
4 by the retail electric provider in the transmission and  
5 distribution utility service territory in which the retail electric  
6 provider was required to offer the price to beat.

7 (f) The commission may adopt and enforce rules as necessary  
8 or appropriate to carry out this section.

9 SECTION 7. Section 39.202, Utilities Code, is amended by  
10 adding Subsections (q) and (r) to read as follows:

11 (q) On a schedule to be determined by the commission, the  
12 commission shall require affiliated retail electric providers to  
13 provide the commission with the names and addresses of residential  
14 customers who have not affirmatively chosen a retail electric  
15 provider or electric service plan. The commission shall release  
16 the names and addresses of those customers to retail electric  
17 providers licensed by the commission and currently offering  
18 residential service. The commission shall provide updated  
19 information on the list of names and addresses to remove the  
20 customers who have affirmatively made a choice in relation to  
21 providers or plans.

22 (r) The commission may conduct a program to assist  
23 residential customers receiving service from an affiliated retail  
24 electric provider under a month-to-month service plan to select a  
25 competitive retail electric provider or plan.

26 SECTION 8. Subchapter E, Chapter 39, Utilities Code, is  
27 amended by adding Section 39.2025 to read as follows:

1       Sec. 39.2025. MARKET REVIEW BASED ON PRICE OF ELECTRICITY.

2       (a) The commission may review, as described in Subsection (b), the  
3 price of the electric service plan under which customers who took  
4 service under a price to beat tariff on December 31, 2006, who have  
5 not subsequently chosen an alternate retail electric service plan  
6 are served in a transmission and distribution utility service  
7 territory if:

8               (1) at the end of calendar year 2007 the number of such  
9 customers exceeds 25 percent of the number of residential customers  
10 in the transmission and distribution utility service territory in  
11 which such customers take service; or

12               (2) at the end of calendar year 2008 the number of such  
13 customers exceeds 15 percent of the number of residential customers  
14 in the transmission and distribution utility service territory in  
15 which such customers take service.

16       (b) If the price charged by a retail electric provider to  
17 applicable residential customers is more than two cents per  
18 kilowatt hour higher for more than six consecutive months than the  
19 simple average of the prices charged for other similar electric  
20 service plans in the relevant transmission and distribution utility  
21 service territory, the commission may initiate a review of the  
22 retail electric provider's price charged to such residential  
23 customers. If the commission determines that the retail electric  
24 provider's price charged to such customers is not reasonable based  
25 on its review, the commission may reduce the retail electric  
26 provider's residential price charged to such customers, but not to  
27 less than one cent per kilowatt hour higher than the simple average

1 of the prices charged for other similar electric service plans in  
2 the relevant transmission and distribution utility service  
3 territory at the time the downward adjustment is required.

4 (c) The commission may adopt and enforce rules as necessary  
5 or appropriate to carry out this section.

6 (d) This section expires on September 1, 2009.

7 SECTION 9. Section 39.902, Utilities Code, is amended by  
8 amending Subsection (c) and adding Subsections (d) and (e) to read  
9 as follows:

10 (c) After the opening of the retail electric market, the  
11 commission shall conduct ongoing customer education designed to  
12 help customers make informed choices of electric services and  
13 retail electric providers. As part of ongoing education, the  
14 commission may provide customers information concerning prices  
15 available in the marketplace, savings available to customers by  
16 switching retail electric providers, plans, and information  
17 concerning specific retail electric providers, including instances  
18 of complaints against them and records relating to quality of  
19 customer service.

20 (d) The commission may require an affiliated retail  
21 electric provider to provide information to customers regarding  
22 savings available to the customer from switching to another retail  
23 electric provider or product in a manner specified by the  
24 commission, including through bill inserts or statements on  
25 customer bills.

26 (e) The commission may require a transmission and  
27 distribution utility to issue public service announcements that



1 inform customers that service reliability and the restoration of  
2 electric service following an outage is not contingent upon the  
3 customer's receiving service from a particular retail electric  
4 provider.

5         SECTION 10. Except as otherwise provided by this Act, this  
6 Act takes effect immediately if it receives a vote of two-thirds of  
7 all the members elected to each house, as provided by Section 39,  
8 Article III, Texas Constitution. If this Act does not receive the  
9 vote necessary for immediate effect, except as otherwise provided  
10 by this Act, this Act takes effect September 1, 2007.