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H.B. No. 2532

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of propane distribution system
retailers; authorizing a fee.

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

SECTION 1. Title 3, Utilities Code, is amended by adding
Subtitle C to read as follows:

SUBTITLE C. PROPANE GAS DISTRIBUTION SYSTEMS

CHAPTER 141. STANDARDS FOR DISTRIBUTION SYSTEM RETAILERS

Sec. 141.001. DEFINITIONS. In this chapter:

(1) "Allowable markup" means the two-calendar-year
rolling average of the differences between the monthly reported
E.I.A. retail prices per gallon during those two calendar years and
the corresponding spot prices per gallon reported for the same two
calendar years. The allowable markup for 2013 is \$1.48 per gallon.

(2) "Allowable spot price" means the average of the
spot prices for the two months preceding the billing month. For the
billing month of January 2013, the allowable spot price was \$0.844
per gallon. The commission shall identify the allowable spot price
each month and publish that price on the commission's website.

(3) "Commission" means the Railroad Commission of
Texas or its successor agency.

(4) "Customer" means a retail customer of propane gas
purchased from and delivered by a distribution system retailer
through a propane gas system.

1 (5) "Distribution system retailer":

2 (A) means a retail propane dealer that:

3 (i) owns or operates for compensation in
4 this state a propane gas system; and

5 (ii) has a Category E or K license issued by
6 the applicable license and permit section of the commission; and

7 (B) does not include a person that furnishes
8 propane gas only to the person, to the person's employees, or to the
9 person's tenants as an incident of employment or tenancy, if the
10 service is not resold to customers.

11 (6) "E.I.A. retail price" means the monthly U.S.
12 Propane Residential Price as reported by the United States Energy
13 Information Administration in dollars per gallon. In January 2013,
14 the E.I.A. retail price was \$2.449 per gallon.

15 (7) "Propane gas" means a normally gaseous hydrocarbon
16 defined as propane by the United States Energy Information
17 Administration.

18 (8) "Propane gas system" means one or more propane
19 storage containers, equipment, and facilities connected to a
20 contiguous piping system through which propane gas is supplied by a
21 distribution system retailer to at least 10 customers.

22 (9) "Rate" means the price per cubic foot of gas
23 passing through the meter levied, charged, or collected by a
24 distribution system retailer from a customer for propane gas
25 provided through a propane gas system to the customer exclusive of
26 any fees, taxes, or other charges. A conversion factor of 36.4
27 cubic feet of propane gas per gallon shall be used for purposes of

1 determining a rate.

2 (10) "Spot price" means the Mont Belvieu, TX monthly
3 Propane Spot Price FOB per gallon as reported by the United States
4 Energy Information Administration in dollars per gallon. In
5 January 2013, the spot price was \$0.838 per gallon.

6 Sec. 141.002. APPLICABILITY. This chapter applies only to
7 a retail sale of propane gas made by a distribution system retailer
8 through a propane gas system. This chapter does not apply to any
9 other retail or wholesale sale of propane gas.

10 Sec. 141.003. RATE AND FEE CEILINGS. (a) In each billing
11 month, a distribution system retailer shall charge a customer a
12 just and reasonable rate for propane gas provided through a propane
13 gas system to the customer. The just and reasonable rate may not
14 exceed the allowable spot price plus the allowable markup. For a
15 customer's bill that contains days in more than one month, the month
16 with the most days covered by the bill shall be considered the
17 billing month. The price per gallon shall be converted to the cubic
18 foot rate by dividing the price per gallon by 36.4.

19 (b) In addition to the rate authorized by Subsection (a), a
20 distribution system retailer may charge customers special fees for
21 services, including connection, disconnection, account
22 maintenance, late fees, and reconnection fees, if the fees are
23 reasonable and customary. If a distribution system retailer
24 charges a customer a fee for a service or occurrence described by
25 this subsection that does not exceed the fees allowed for the
26 services and occurrences described in Subdivisions (1)-(9), the
27 amount of the fees shall qualify as reasonable and customary for the

purposes of this section. The services and occurrences and related allowable fees are as follows:

(1) a recurring monthly fee of \$12.50 to maintain an active gas service account with the distribution system retailer to be charged to a customer at a service address where the propane gas usage history during the preceding 12-month period exceeded 99 gallons;

(2) a recurring monthly fee of \$17.50 to maintain an active gas service account with the distribution system retailer to be charged to a customer at a service address where the propane gas usage history during the preceding 12-month period did not exceed 99 gallons;

(3) a fee of \$15 for a late payment received by the distribution system retailer, provided the bill was mailed or electronically transmitted 15 days before the date payment is due;

(4) a fee of \$25 to disconnect or terminate service from an active or delinquent account;

(5) a fee of \$65 for standard next available reconnect service for an active or delinquent account;

(6) a fee of \$125 for accelerated reconnect service;

(7) a fee of \$30 for a dishonored or canceled payment received;

(8) a fee of \$75 to initiate service to a new customer; and

(9) a fee of \$225 plus charges for the estimated amount of gas consumed and damages for attempted unauthorized gas consumption or diversion.

1 (c) The distribution system retailer may adjust the fee
2 limits described by Subsection (b) up or down based on the 12-month
3 changes in the Consumer Price Index for All Urban Consumers, U.S.
4 City Average, All Items, CPI-U, Not Seasonally Adjusted, published
5 by the Bureau of Labor Statistics of the United States Department of
6 Labor or a similar index if that index is unavailable. For
7 calculation purposes, the beginning base month is December 2012.

8 (d) Nothing in this section limits a distribution system
9 retailer's ability to pass through to a customer as a separate
10 charge on a pro rata actual-cost basis:

11 (1) a tax, other than taxes assessed on the basis of
12 income, gross income, property, or margins; or

13 (2) an assessment, surcharge, levy, fee, or other
14 charge imposed by a governmental entity, any one of which begins or
15 is increased on or after January 1, 2013, either:

16 (A) directly on a propane gas system or any
17 portion; or

18 (B) on a distribution system retailer by virtue
19 of its ownership or operation of a propane gas system.

20 (e) A fee passed through to a customer under Subsection (d)
21 shall be:

22 (1) passed through without any additional markup; and

23 (2) identified as a separate item on a customer's bill.

24 (f) Notwithstanding any other provision in this section,
25 this subtitle does not apply to a new construction charge or an
26 appliance repair charge.

27 Sec. 141.004. DISCONNECTION OF PROPANE GAS SERVICE. (a) A

1 distribution system retailer may not disconnect propane gas service
2 to a residential customer on a weekend day or holiday officially
3 observed by the State of Texas unless personnel of the distribution
4 system retailer are available on that day to receive payments and
5 reconnect service.

6 (b) A distribution system retailer may not disconnect
7 propane gas service to a residential customer during an extreme
8 weather emergency, as defined by Section 104.258. The distribution
9 system retailer shall defer collection of the full payment of bills
10 that are due during an extreme weather emergency, as defined by
11 Section 104.258, until after the emergency is over.

12 Sec. 141.005. CONTINUITY OF SERVICE. (a) A distribution
13 system retailer shall make all reasonable efforts to prevent
14 interruptions of service. When an interruption occurs, the
15 distribution system retailer shall reestablish service within the
16 shortest possible time consistent with prudent operating
17 principles so that the smallest number of customers are affected.

18 (b) Excluding service interruptions under Section 141.006,
19 a distribution system retailer shall keep complete records of all
20 emergency and scheduled service interruptions lasting more than six
21 hours and affecting more than two customers. The records must
22 describe the cause, date, length, and location of each
23 interruption, the approximate number of customers affected by the
24 interruption, and, in the case of an emergency interruption, the
25 remedy and steps taken to prevent a recurrence, if applicable. The
26 distribution system retailer shall submit copies of the service
27 interruption records to the commission quarterly.

1 (c) The distribution system retailer shall notify the
2 commission in writing not later than 48 hours after an interruption
3 in service that affects the entire propane gas system, lasts more
4 than four hours, represents an existing or probable hazard to
5 persons or property, and requires immediate repair or continuous
6 action until the conditions are no longer hazardous. The notice
7 shall include the distribution system report of a service
8 interruption. A written report of a service interruption in another
9 form, including a part of a safety report, is sufficient to comply
10 with this subsection.

11 (d) The commission shall establish and maintain a toll-free
12 telephone number to enable a customer to notify the commission of a
13 service interruption that does not involve a refusal to serve under
14 Section 141.006 and to notify the commission that the customer
15 believes the distribution system retailer is charging an amount
16 greater than allowed by law. The commission shall immediately
17 investigate the notification. A distribution system retailer shall
18 notify the customer of the commission phone number on each billing
19 statement.

20 (e) To restore and maintain service, the commission may
21 assume temporary receivership of a propane gas system that
22 experiences a service interruption that affects the entire propane
23 gas system and that:

24 (1) continues to affect the entire propane gas system
25 after the distribution system retailer has had direct access to and
26 control of the system for more than 48 hours after the service
27 interruption began;

1 (2) occurs more than three times in one month; or

2 (3) is the result of the distribution system
3 retailer's failure or refusal to replenish the primary propane tank
4 for a reason other than a general local market disruption, a
5 restriction on wholesale propane supplies, mechanical failure,
6 criminal activity, or an act of God.

7 (f) The commission may draw down all or part of the
8 financial surety posted under Section 141.009, as required, to
9 restore and maintain service under Subsection (e).

10 (g) If the commission assumes temporary receivership of a
11 propane gas system under Subsection (e), it shall notify the
12 distribution system retailer and shall take whatever action is
13 necessary and appropriate to reestablish service to affected
14 customers. The commission shall provide the distribution system
15 retailer 72 hours to prepare and submit a plan to avoid continuing
16 receivership.

17 (h) If a distribution system retailer's inability to
18 fulfill its financial obligations is the cause of a service
19 interruption described by Subsection (e), the commission may
20 delegate the operation of the propane gas system to a receiver who
21 agrees to operate the system. The receiver shall operate the system
22 until relieved by order of the commission. A receiver ordered by the
23 commission to assume operational control over a system shall
24 operate the system in accordance with law. The commission shall,
25 from the proceeds of the financial surety and no other source, and
26 to the extent available, pay the receiver all reasonable costs,
27 including reasonable legal fees, associated with accepting the

assignment and the resumption and stabilization of system operations plus a markup of 50 percent. Upon assuming operational control of the system, the receiver shall earn, accrue, and receive all gas system revenues pertaining to propane gas service provided to system customers accruing from that date until the date it relinquishes operational control of the system. The receiver is not liable for debt associated with the propane gas system that was incurred before the date the receiver assumed operational control of the system or debt the relieved distribution system retailer incurred before the date the receiver assumed operational control of the system.

(i) If the commission determines that the distribution system retailer is able to resume operation of the system, the commission shall notify the distribution system retailer of its determination and allow the resumption of operation after the distribution system retailer replaces the amount of the financial surety that was used in receivership. The distribution system retailer, or a party claiming title to the system by, through, or under the retailer, shall reimburse the commission for direct costs the commission may have incurred as a result of receivership and all unpaid money accrued or owed to the receiver under this section.

Sec. 141.006. GROUNDS FOR REFUSAL TO SERVE. (a) A distribution system retailer may refuse service to an applicant for new service or to an existing customer for continued service or reconnection if:

(1) an applicant or customer fails to pay fees, advances, contributions, or deposits required for service under the

1 distribution system retailer's policies;

2 (2) an applicant or customer fails to furnish a
3 service or meter location specified for service by the distribution
4 system retailer;

5 (3) the existence or repeated creation of an unsafe
6 condition, such as impaired meter access or a leak in the
7 applicant's piping system, may potentially create bodily harm or
8 endanger life or property in the distribution system retailer's
9 opinion;

10 (4) an applicant, customer, or service location owner
11 is delinquent in payment for services provided by a distribution
12 system retailer service location owner; or

13 (5) a current resident or occupant of the premises to
14 receive service is delinquent in payment for services provided by a
15 distribution system retailer.

16 (b) The right to refuse service ends when the cause for the
17 refusal to serve is corrected.

18 Sec. 141.007. REASONABLE TIME TO BEGIN SERVICE. A
19 distribution system retailer may delay providing service following
20 an application or execution of an agreement for service for a
21 reasonable amount of time considering required approvals,
22 inspections, or permits, the extent of the facilities to be built,
23 and the distribution system retailer's workload at the time.

24 Sec. 141.008. CUSTOMER COMPLAINTS. (a) A distribution
25 system retailer that receives a written complaint shall promptly
26 and suitably investigate the complaint and advise the complainant
27 of the results of the investigation. A distribution system

retailer shall keep for at least three years after the final disposition of each complaint a record that includes each complainant's name and address, the date and nature of the complaint, and the adjustment or disposition of the complaint. A distribution system retailer is not required to keep a record of a complaint that does not require the distribution system retailer to take specific further action. A distribution system retailer shall notify each complainant of the right to file a complaint with the commission if the complainant is not satisfied by the distribution system retailer's resolution of the matter.

(b) On receipt of a written complaint from the commission on behalf of a customer, a distribution system retailer promptly and suitably shall investigate and notify the commission and complainant of the results of the investigation. An initial response must be made not later than the third business day after the date the distribution system retailer receives the complaint electronically delivered to a minimum of two electronic addresses designated by the distribution system retailer. A distribution system retailer shall send a final and complete response to the commission and complainant not later than the 15th day after the date the complaint was received, unless the commission grants additional time before the expiration of the 15-day period.

(c) The commission may impose sanctions on a distribution system retailer if, after an investigation, the commission determines that the distribution system retailer has violated Section 141.003. Sanctions may include:

(1) ordering a distribution system retailer to refund

1 the amounts of any overcharges to the distribution system
2 retailer's customers; or

3 (2) drawing down all or a portion of the financial
4 surety for the purpose of refunding the amounts of any overcharges
5 to the distribution system retailer's customers not refunded before
6 the 61st day after the date the commission orders a refund.

7 Sec. 141.009. PERFORMANCE GUARANTEE. A distribution system
8 retailer shall post, in favor of the commission, financial surety
9 in the form of a letter of credit, bond, or other acceptable form of
10 financial surety with the commission in an amount equal to the
11 lesser of \$3 multiplied by the number of gallons of aggregate
12 storage capacity in all of the propane gas systems operated by the
13 distribution system retailer or \$50,000. The issuer of the
14 financial surety used to meet this requirement shall honor the
15 financial surety if the issuer receives from the commission notice
16 that the financial surety is due and payable. The commission may
17 draw down all or a portion of the financial surety. The distribution
18 system retailer shall provide the commission with verification of
19 the adequacy of the financial surety, and the commission may order
20 the distribution system retailer to adjust the amount of the
21 financial surety annually.

22 Sec. 141.010. RULES. The commission shall adopt rules
23 necessary to implement this chapter.

24 Sec. 141.011. DISCLOSURE TO HOMEOWNERS. (a) A
25 distribution system retailer shall record in the real property
26 records of each county in which the distribution system retailer
27 owns or operates a propane gas system a notice of disclosure of the

1 existence of the propane gas system and the service the retailer
2 provides. The notice shall include:

3 (1) a service map reflecting the location of the
4 subdivisions or areas the distribution system retailer serves in
5 the county;

6 (2) a copy of this chapter or a summary of the
7 customer's rights under this chapter; and

8 (3) for development agreements entered into after
9 September 1, 2013, a statement disclosing the existence of any
10 financial interest held by a homeowners' association, municipal
11 utility district, or developer in the propane gas system.

12 (b) If a person proposes to sell or convey real property
13 located in a propane gas system service area owned by a distribution
14 system retailer, the person must give to the purchaser written
15 notice as prescribed by this subsection. The notice must include a
16 copy of the notice recorded in the real property records as required
17 by Subsection (a), must be executed by the seller, and must read as
18 follows: "The real property, described below, that you are about to
19 purchase may be located in a propane gas system service area, which
20 is authorized by law to provide propane gas service to the
21 properties in the area pursuant to Chapter 141, Utilities Code. If
22 your property is located in a propane gas system service area, there
23 may be special costs or charges that you will be required to pay
24 before you can receive propane gas service. There may be a period
25 required to construct lines or other facilities necessary to
26 provide propane gas service to your property. You are advised to
27 determine if the property is in a propane gas system service area

1 and contact the distribution system retailer to determine the cost
2 that you will be required to pay and the period, if any, that is
3 required to provide propane gas service to your property.

4 "The undersigned purchaser hereby acknowledges receipt of
5 the foregoing notice at or before the execution of a binding
6 contract for the purchase of the real property described in the
7 notice or at closing of purchase of the real property.

8 _____
9 Date

10 _____
11 Signature of Purchaser"

12 (c) Each county shall accept and record in its real property
13 records a distribution system retailer's service map presented to
14 the county clerk under this section if the map meets filing
15 requirements, does not exceed 11 inches by 17 inches in size, and is
16 accompanied by the appropriate fee. The recording required by this
17 section must be completed not later than the later of January 1,
18 2014, or the 90th day after the date a distribution system retailer
19 completes construction of a new propane gas system in the county.

20 SECTION 2. This Act takes effect September 1, 2013.