

By: Workman

H.B. No. 2532

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of propane distribution retailers.

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

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

(3) "Distribution system retailer":

(A) means a retail propane dealer that:

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

(ii) has a Class E license issued by the Gas Services Division of the license and permit section of the commission or is an active company representative or operations supervisor on file with the section; and

(B) does not include a person that furnishes propane gas only to the person, to the person's employees, or to the person's tenants as an incident of employment or tenancy, if the

1 service is not resold to customers.

2 (4) "Markup" means the retail price for a period
3 divided by the spot price for that period.

4 (5) "Propane gas" means propane gas vapor, but does
5 not include liquefied petroleum gas as described by Chapter 113,
6 Natural Resources Code.

7 (6) "Propane gas system" means a system that supplies
8 propane gas and includes equipment and facilities connected to a
9 contiguous piping system through which propane gas is supplied by a
10 distribution system retailer to at least 10 customers.

11 (7) "Rate" means the price per cubic foot of gas
12 passing through the meter levied, charged, or collected by a
13 distribution system retailer from a customer for propane gas
14 provided through a propane gas system to the customer exclusive of
15 any fees, taxes, or other charges. A conversion factor of 36.4
16 cubic feet of propane gas per gallon shall be used for purposes of
17 determining a rate.

18 (8) "Retail price" means the U.S. Propane Residential
19 Price as reported by the United States Energy Information
20 Administration.

21 (9) "Spot price" means the Mont Belvieu, TX Propane
22 Spot Price FOB as reported by the United States Energy Information
23 Administration.

24 Sec. 141.002. APPLICABILITY. This chapter applies only to
25 a retail sale of propane gas made by a distribution system retailer
26 through a propane gas system. This chapter does not apply to any
27 other retail or wholesale sale of propane gas.

1 Sec. 141.003. RATE AND FEE CEILINGS. (a) A distribution
2 system retailer may not charge a customer for propane gas provided
3 through a propane gas system to the customer a rate that exceeds the
4 three-month rolling average of the spot price per gallon at the Mont
5 Belvieu supply point multiplied by the rolling three-year average
6 markup of retail price to spot price as reported by the United
7 States Energy Information Administration. The allowable markup
8 (three-year average) as of January 2013 is 2.1780 times spot. The
9 commission shall change the markup in January of each year by adding
10 the average annual markup, as determined by the average of the six
11 monthly reporting periods of a calendar year from the United States
12 Energy Information Administration, of the three preceding years and
13 dividing by three. The price per gallon shall be converted to cubic
14 foot rate by dividing the price per gallon by 36.4.

15 (b) A distribution system retailer may charge customers
16 special fees for services, including connection, disconnection,
17 account maintenance, late fees, and reconnection fees, if the fees
18 are reasonable and customary.

19 (c) Nothing in this section limits a distribution system
20 retailer's ability to pass through to a customer on a pro-rata
21 actual-cost basis:

22 (1) a fee, including the actual cost of the
23 performance guarantee;

24 (2) a fee increase; or

25 (3) a tax, other than taxes assessed on the basis of
26 income, gross income, property or margins, assessment, surcharge,
27 levy, or other charge imposed by a governmental entity either:

1 (A) directly on a propane gas system or any
2 portion; or

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

5 (d) A fee passed through to a customer shall be:

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

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

8 Sec. 141.004. DISCONNECTION OF PROPANE GAS SERVICE. (a) A
9 distribution system retailer may not disconnect propane gas service
10 to a residential customer on a weekend day or holiday officially
11 observed by the State of Texas unless personnel of the distribution
12 system retailer are available on that day to receive payments and
13 reconnect service.

14 (b) A distribution system retailer may not disconnect
15 propane gas service to a residential customer during an extreme
16 weather emergency, as defined by Section 104.258. The distribution
17 system retailer shall defer collection of the full payment of bills
18 that are due during an extreme weather emergency, as defined by
19 Section 104.258, until after the emergency is over.

20 Sec. 141.005. CONTINUITY OF SERVICE. (a) A distribution
21 system retailer shall make all reasonable efforts to prevent
22 interruptions of service. When an interruption occurs, the
23 distribution system retailer shall reestablish service within the
24 shortest possible time consistent with prudent operating
25 principles so that the smallest number of customers is affected.

26 (b) Excluding service interruptions under Section 141.006,
27 a distribution system retailer shall keep complete records of all

1 emergency and scheduled service interruptions lasting more than six
2 hours and affecting more than two customers. The records must
3 describe the cause, date, length, and location of each
4 interruption, the approximate number of customers affected by the
5 interruption, and, in the case of an emergency interruption, the
6 remedy and steps taken to prevent a recurrence, if applicable. The
7 distribution system retailer shall submit copies of the service
8 interruption records to the commission quarterly.

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

19 (d) The commission shall establish a toll-free number to
20 enable a customer to notify the commission of a service
21 interruption that does not involve a refusal to serve under Section
22 141.006 and to notify the commission that the customer believes the
23 distribution system retailer is charging an amount greater than
24 allowed by law. The commission shall immediately investigate the
25 notification.

26 (e) To restore and maintain service, the commission may
27 assume temporary receivership of a propane gas system that

1 experiences a service interruption that affects the entire propane
2 gas system and that:

3 (1) lasts more than 48 hours;
4 (2) occurs more than three times in one month; or
5 (3) is the result of the distribution system
6 retailer's failure to replenish the primary propane tank for a
7 reason other than a general local market disruption, a restriction
8 on wholesale propane supplies, or criminal activity.

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

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

19 (h) If a distribution system retailer's inability to
20 fulfill its financial obligations is the cause of a service
21 interruption described by Subsection (e), the commission may
22 delegate the operation of the propane gas system to a qualified
23 homeowners' association or municipal utility district until
24 another distribution system retailer can assume control over the
25 propane gas system or until a court in bankruptcy proceedings
26 instructs otherwise.

27 (i) If the commission determines that the distribution

1 system retailer is able to resume operations of the system, the
2 commission shall notify the distribution system retailer of its
3 determination and allow the resumption of operation after the
4 distribution system retailer replaces the amount of the financial
5 surety that was used in receivership. The distribution system
6 retailer shall reimburse the commission for direct costs the
7 commission may have incurred as a result of receivership.

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

12 (1) an applicant or customer fails to pay fees,
13 advances, contributions, or deposits required for service under the
14 distribution system retailer's policies;

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

18 (3) the existence or repeated creation of an unsafe
19 condition, such as impaired meter access or a leak in the
20 applicant's piping system, may potentially create bodily harm or
21 endanger life or property in the distribution system retailer's
22 opinion;

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

26 (5) a current resident or occupant of the premises to
27 receive service is delinquent in payment for services provided by a

1 distribution system retailer.

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

4 Sec. 141.007. REASONABLE TIME TO BEGIN SERVICE. A
5 distribution system retailer may delay providing service following
6 an application or execution of an agreement for service for a
7 reasonable amount of time considering required approvals,
8 inspections, or permits, the extent of the facilities to be built,
9 and the distribution system retailer's workload at the time.

10 Sec. 141.008. CUSTOMER COMPLAINTS. (a) A distribution
11 system retailer that receives a written complaint promptly and
12 suitably shall investigate the complaint and advise the complainant
13 of the results of the investigation. A distribution system
14 retailer shall keep for at least three years after the final
15 disposition of each complaint a record that includes each
16 complainant's name and address, the date and nature of the
17 complaint, and the adjustment or disposition of the complaint. A
18 distribution system retailer is not required to keep a record of a
19 complaint that does not require the distribution system retailer to
20 take specific further action. A distribution system retailer shall
21 notify each complainant of the right to file a complaint with the
22 commission if the complainant is not satisfied by the distribution
23 system retailer's resolution of the matter.

24 (b) On receipt of a written complaint from the commission on
25 behalf of a customer, a distribution system retailer promptly and
26 suitably shall investigate and notify the commission and
27 complainant of the results of the investigation. An initial

1 response must be made not later than the third business day after
2 the date the distribution system retailer receives the complaint
3 electronically delivered to a minimum of two electronic addresses
4 designated by the distribution system retailer. A distribution
5 system retailer shall send a final and complete response to the
6 commission and complainant not later than the 15th day after the
7 date the complaint was received, unless the commission grants
8 additional time before the expiration of the 15-day period.

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

13 (1) ordering a distribution system retailer to refund
14 the amounts of any overcharges to the distribution system
15 retailer's customers; or

16 (2) drawing all or a portion of the financial surety
17 for the purpose of refunding the amounts of any overcharges to the
18 distribution system retailer's customers not refunded before the
19 61st day after the date the commission orders a refund.

20 Sec. 141.009. PERFORMANCE GUARANTEE. A distribution system
21 retailer shall post, in favor of the commission, financial surety
22 in the form of a letter of credit or cash deposited with the
23 commission in an amount equal to the lesser of \$3 multiplied by the
24 number of gallons of aggregate storage capacity in all of the
25 propane gas systems operated by the distribution system retailer or
26 \$250,000. The issuer of a letter of credit used to meet this
27 requirement shall honor the letter of credit if the issuer receives

1 from the commission notice that the letter of credit is due and
2 payable. The commission may draw all or a portion of the financial
3 surety. The commission shall verify and adjust the amount of the
4 financial surety annually.

5 Sec. 141.010. RULES. The commission shall adopt rules
6 necessary to implement this chapter.

7 Sec. 141.011. DISCLOSURE TO HOMEOWNERS. (a) A distribution
8 system retailer shall provide to a homeowners' association or
9 municipal utility district with jurisdiction over property that
10 receives service from a distribution system retailer, or to the
11 distribution system retailer's customers if there is no homeowners'
12 association or municipal utility district, a disclosure that
13 includes a physical or digital copy or website posting of:

14 (1) a copy of this chapter or a summary of the
15 customers rights under this chapter; and

16 (2) for development agreements entered into after
17 September 1, 2013, a statement disclosing the existence of a
18 financial interest that a homeowners' association, municipal
19 utility district, or developer holds in the propane gas system.

20 (b) A homeowners' association or municipal utility district
21 that has jurisdiction over real property that receives service from
22 a distribution system retailer shall provide the disclosure
23 described by Subsection (a) to all homeowners along with a list of
24 the homeowners' covenants and deed restrictions. The homeowners'
25 association or municipal utility district shall post the
26 information required to be disclosed under this subsection on the
27 homeowners' association's or municipal utility district's website.

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