By:  Schwertner, Menéndez S.B. No. 2194

(In the Senate - Filed April 12, 2021; April 12, 2021, read first time and referred to Committee on Jurisprudence; April 19, 2021, reported favorably by the following vote: Yeas 5, Nays 0; April 19, 2021, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Huffman           X

Hinojosa             X

Creighton            X

Hughes               X

Johnson              X

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain retail electric products.

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

SECTION 1.  Subchapter C, Chapter 39, Utilities Code, is amended by adding Section 39.110 to read as follows:

Sec. 39.110.  WHOLESALE INDEXED PRODUCTS PROHIBITED. (a) In this section, "wholesale indexed product" means a retail electric product in which the price a customer pays for electricity includes a direct pass-through of real-time settlement point prices determined by the independent organization certified under Section 39.151 for the ERCOT power region.

(b)  A retail electric provider may not offer a wholesale indexed product to a residential or small commercial customer.

(c)  A retail electric provider may enroll a customer other than a residential and small commercial customer in a wholesale indexed product if the provider obtains before the customer's enrollment the customer's written and signed acknowledgment that the customer accepts the potential price risks associated with a wholesale indexed product.

(d)  An acknowledgment described by Subsection (c) must include the following statements, in clear, boldfaced text, accompanied by the signature of the customer:

(1)  "I understand the volatility and fluctuation of wholesale energy pricing. I understand that I will be responsible for the fluctuations in wholesale energy prices and that my energy bill can be multiple times higher in a month with high wholesale energy prices.";

(2)  "I understand that the maximum wholesale energy rate in the wholesale energy market is much higher than the average wholesale energy rate and that energy prices can remain at the maximum wholesale energy rate for many hours."; and

(3)  "I acknowledge that management of energy use during periods of high energy prices times is critical to maintaining financial solvency.".

(e)  A retail electric provider must keep on file an acknowledgment described by Subsection (c) for each customer while the customer is enrolled with the provider in a wholesale indexed product.

SECTION 2.  Section 39.112, Utilities Code, is amended to read as follows:

Sec. 39.112.  NOTICE OF EXPIRATION AND PRICE CHANGE. (a) In this section, "fixed rate product" means a retail electric product with a term of at least three months for which the price for each billing period, including recurring charges, does not change throughout the term of the contract, except that the price may vary to reflect actual changes in transmission and distribution utility charges, changes to ERCOT or Texas Regional Entity administrative fees charged to loads, or changes to federal, state, or local laws that result in new or modified fees or costs that are not within the retail electric provider's control.

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

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

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

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

(c)  Each notice under Subsection (b) must be provided to the customer:

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

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

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

(d)  A notice provided under Subsection (b) must:

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

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

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

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

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

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

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

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

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

(1)  a fixed rate product; or

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

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

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

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

(2)  the customer selects another retail electric product.

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

SECTION 3.  The changes in law made by this Act apply only to an enrollment or re-enrollment of a customer in a retail electric product that is executed on or after the effective date of this Act. An enrollment or re-enrollment of a customer in a retail electric product that is executed before the effective date of this Act is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 4.  This Act takes effect September 1, 2021.

\* \* \* \* \*