HOUSE RESEARCH ORGANIZATION bill analysis 4/21/2005

HB 412
Turner, et al.
(CSHB 412 by R. Cook)

SUBJECT: Prohibiting credit scoring by electric and telecommunications providers

COMMITTEE: Regulated Industries — committee substitute recommended

VOTE: 5 ayes — P. King, Hunter, Turner, Baxter, R. Cook

0 nays

2 absent — Crabb, Hartnett

WITNESSES: (*On original version:*)
For — Carol Biedrzycki, Texas Ratepayers Organization to Save Energy; Antonie Rodriguez, National Consumer Law Center; Birny Birnbaum (*Registered, but did not testify*: George Berasley, AARP; David Huntley, SBC; Tim Morstad, Consumers Union; Tom Smith, Public Citizen)

Against — Nicholas Enthoven, Retail Energy Credit Control; John Fainter, Association of Electric Companies of Texas, Inc.; Michael Jewell, Direct Energy, LP/CPL Retail Energy, LP/WTU Retail Energy, LP/Alliance for Retail Markets; Richard Lawson, Verizon Southwest; Paul O'Malley, TXU Energy

On — Randall Chapman, Texas Legal Services Center; Henry Flores, Sprint Corp.; Suzi McClellan, Office of Public Utility Counsel

DIGEST: **Denial of electric service.** CSHB 412 would prohibit a retail electric provider from denying, on the basis of the applicant's credit history or credit score, an applicant's request to become a residential customer. The provider could use an applicant's utility payment data until either January 1, 2007, or the date on which "price to beat" was no longer in effect in the region where the customer was located.

A retail electric provider required to provide electric service in an area as the affiliated retail electric provider (an incumbent) could not deny an applicant's request to become a residential customer based on credit history, credit score, or utility payment data within a geographic area in which the provider was required to provide service.

After January 1, 2007, a retail electric provider, including an incumbent, could not deny an applicant's request to become a residential electric service customer based on the applicant's credit history, credit score, or utility payment data. The provider could deny service based on the applicant's electric bill payment history.

Pricing of electric service. A retail electric utility could not use a credit score, credit history, or utility payment data to determine the price of month-to-month electric service if the price agreement were for 12 months or less. A provider would not be restricted from providing rewards, benefits, or credits to a customer on the basis of that customer's history with that provider.

Bill payment history. After September 1, 2007, upon request of a customer or former customer, a retail electric provider or electric utility would provide to the customer in a timely manner the customer's bill payment history for the preceding 12 months. Bill payment history could be obtained once in a 12-month period without charge. The customer could be charged if additional copies were requested in that 12-month period.

Upon request of a retail electric provider, another retail electric provider would have to verify in a timely manner information showing a customer's service and bill payment history.

Deposits and Advanced payments. The bill would not limit a provider's authority to require a deposit or advanced payment as a condition of service.

Telecommunications providers. A local phone service provider could not deny an applicant's request to become a customer on the basis of the applicant's credit history or credit score. A local phone provider could not use a credit score or credit history as the basis for determining the price for service. The bill would not limit a provider's authority to require a deposit, advance payment, or credit limit as a condition of service.

The bill would take effect September 1, 2005.

SUPPORTERS SAY:

By prohibiting the use of credit scores and credit history in the denial or pricing of electric and local phone service, CSHB 412 would protect Texas consumers from this discriminatory and unfair practice.

Credit scoring disproportionately harms minorities and low-income Texans because individuals in those groups are more likely to have unfavorable credit scores, potentially through no fault of their own. Credit scoring is an inaccurate practice that relies upon data with little relation to customers' ability to or likelihood of paying their electric or telephone bills. An individual with no outstanding debt or with a history of large insurance claims or health care costs could have a very high credit score. These factors have little bearing on an individual's risk to an electric or telecommunications provider.

Credit scoring is an inaccurate industry tool that unfairly can discriminate against individual consumers. Even though, on average, credit scoring may be a relatively accurate predictor of a person's probability of missing or defaulting on payments, it can be quite inaccurate in specific cases. Denial of service and pricing should be more directly linked to a person's payment history, as would be provided for in this bill.

CSHB 412 effectively would balance the interests of the electric industry with protections for Texas consumers. Before January 1, 2007 or when "price to beat" expired, competitive electric providers and affiliated providers operating outside their traditional service territory could use data on an individual's history of utility payments in determining whether to deny service to that person. After that date, only an individual's electric bill payment history could be used to deny service, a much narrower and more accurate predictor by which to determine whether an individual will pay his or her bills. Affiliated electric providers would not be allowed to deny service based on credit history, credit score, or utility payment data, only on electric bill payment history.

Payment history is an accurate predictor of an individual's probability of paying his or her bills, and it avoids many of the discriminatory pitfalls of credit scoring. In addition, providers still could collect deposits or advance payments that they need to protect themselves from bad actors attempting to abuse the system.

Allowing providers to give credits or other rewards to customers with good payment history is a common sense strategy that would serve the interests of both providers and consumers. It is in a provider's interest to retain customers who promptly and regularly pay their bills, and CSHB 412 would allow a provider to provide rewards to a customer who had good history with that provider. This provision also would benefit consumers by rewarding those who consistently pay their bills on time with rate discounts or other benefits. It also would allow individuals with low credit scores to demonstrate their good standing and see their rates decrease as well.

OPPONENTS SAY:

The Legislature should not ban credit scoring because it is an effective strategy for electric service providers in mitigating their risk. Unlike most other industries, electric companies must extend service and provide electricity first, and only receive payment after the service has been rendered. Credit scoring allows providers to minimize risk against those who would take advantage of companies' trust. Credit agencies are developing newer, more targeted models to isolate high-risk customers, and these innovations likely will address most current concerns regarding credit scoring.

OTHER OPPONENTS SAY:

Credit scoring of electric and telecommunications customers is a significant problem, but CSHB 412 would not go far enough toward protecting customers or preventing electric companies from denying a service that is a vital commodity for residential consumers. The bill would allow providers to deny electric service based on utility or electric bill payment data without establishing any standards by which a provider could use that data. As little as one late bill payment could result in denial of electric service.

The bill also would allow a provider to discriminate in favor of certain customers by providing them with rewards for their history with a company. Again, no guidelines would govern the nature of these rewards or the manner in which they were dispersed. This provision could have the same effect as credit scoring – allowing higher-income consumers who tend to have good payment histories to receive benefits and lower rates than consumers who have had trouble meeting their obligations in the past.

Many low-income individuals tend to pay their bills late as a cash management strategy, even though they do pay their bills consistently. The Legislature should differentiate between those who pay their bills late and those who skip out on their obligations.

NOTES:

As introduced, HB 412 would have entitled all buyers of retail electric service and local phone service to protection from discrimination on the basis of credit history or credit score in denial or pricing of service. It also would have prohibited use of credit history and credit scoring in limiting a buyer's ability to switch service providers.

The companion bill, SB 412 by Van de Putte, has been referred to the Senate Business and Commerce Committee.