

National Consumer Law Center (on behalf of its low-income clients)
National Association of State Utility Consumer Advocates
Center for Digital Democracy
Center for Economic Justice
Consumer Action
Consumers Union
The Greenlining Institute
U.S. PIRG
The Utility Reform Network - California
Woodstock Institute
Indiana Citizens Action Coalition
Massachusetts Low Income Energy Affordability Network
Baltimore Neighborhoods, Inc.
Empire Justice Center
Public Utility Law Project Of New York, Inc.
Ohio Partners for Affordable Energy
Pennsylvania Utility Law Project (on behalf of its low-income clients)
Texas Legal Services Center

July 15, 2016

Re: S. 2355, Credit Access and Inclusion Act (oppose)

Dear Senator:

The undersigned associations, consumer, civil rights and advocacy groups write to you to express opposition to S. 2355. This legislation, if enacted, would *preempt state utility regulatory and legislative authority, damage the credit scores of millions of consumers with a disproportionate impact on African Americans, and conflict with long-standing state utility regulatory consumer protections.*

Preemption

S. 2355 would preempt federal and state privacy protections for utility consumers. The bill amends Section 623 of the Fair Credit Reporting Act to permit utilities to furnish payment information to a credit bureau or other consumer reporting agency “notwithstanding any other provision of law.” Not only is the latter phrase preemptive, but also state legislators and regulators are prohibited from regulating the subject matter of Section 623.

Thus, S. 2355 would preempt state privacy protections in California,¹ New Jersey,² Wisconsin,³ and potentially other state laws that prohibit utilities from sharing a customer’s

¹ Cal. Pub. Util. Code § 2891 (prohibiting telephone company from sharing customer’s financial information without customer’s consent).

financial information without their consent.⁴ Further, the bill would establish a dangerous precedent by encroaching on long-standing state jurisdictional authority over gas and electric utilities. States appropriately retain full ratemaking and customer service authority over franchised, monopoly companies that deliver necessary services within their boundaries.

Harmful Impact on Credit Scores

Proponents claim that “full file” reporting of utility payments will help improve credit reports and have a negative impact on very few. But their claims are based on a very limited data set from a small number of electric and natural gas utilities that engage in this practice. Using this limited data set, proponents claim that fewer than 3% of consumers earning \$50,000 or less annually have a single 60-day late utility payment during a one-year period. However, this 3% figure simply cannot be reconciled with current arrearage data reported by utility companies in states throughout the U.S. For example, Southern California Edison Company reported in January 2015 that 25.1% of its residential customers at or below 200% of the federal poverty guidelines carried an arrearage over 60 days old. Thus, to the extent that utility reporting creates a score for “thin file” or “no file” consumers, we fear that it will end up being a negative credit score. For low income consumers who already have a credit score, utility reporting may harm their existing credit histories.

This harmful impact on credit scores would disproportionately affect low-income and moderate-income African American households, who frequently struggle to pay utility bills. Data from the U.S. Energy Information Administration shows that, among households living at or below their state’s median income, 17% of white-headed households reported paying less than a total home energy bill “almost every month” or “some months” in 2009, while the rate was 29.6% for similarly-situated African American-headed households – a rate that was 74% higher for the latter.⁵

Proponents assert that a low credit score is better than no score. In some areas, however, no credit history is better than a bad one. For employment and insurance – where a negative credit report or low score could harm job prospects or increase rates – it is often better to have no credit history. Indeed, with insurance, the absence of a credit score is treated as a “neutral.”⁶ A low score could also put a consumer on the radar for lead generators and predatory lenders who target high-cost credit to vulnerable consumers.

² N.J. Stat. Ann. § 48:3-85(b)(1) (prohibiting electric or gas utility disclosure, sale or transfer of customer’s proprietary information, including, but not limited to, customer’s name, address, telephone number, energy usage, and electric power payment history, to a third party without the consent of the customer).

³ Wis. Stat. § 196.137 (prohibiting municipal utilities from releasing “customer information” without the customer’s consent except in specific situations).

⁴ See generally, State & Local Energy Efficiency Action Network, A Regulator’s Privacy Guide to Third-Party Data Access for Energy Efficiency, December 2012, p.7 (Table 2), available at https://www4.eere.energy.gov/seeaction/system/files/documents/cib_regulator_privacy_guide_0.pdf.

⁵ Based on NCLC’s analysis of U.S. Department of Energy, Energy Information Administration, 2009 Residential Energy Consumption Survey, Section M, available upon request. See also https://www.eia.gov/survey/form/eia_457/form.pdf (relevant survey question at p. 89, Question M-1c).

⁶ See *Safeco Ins. Co. of Am. v. Burr*, 127 S. Ct. 2201, 2206-2207, n. 4 (2007) (noting that a number of states require the use of “neutral” credit scores for thin or no file consumers).

Conflict with State Utility Protections for Seniors and Others

Households retaining service and paying late under terms of state-sanctioned protections will experience harm to their credit scores under terms of this bill. The National Association of State Utility Consumer Advocates voted to oppose full file utility credit reporting⁷ in part because it conflicts with utility consumer protections in many states. Full file utility credit reporting threatens consumers with black marks on their credit reports even when state law provides for protection against disconnection of service. While S.2355 does preclude electric and gas utilities from reporting as late consumers who are paying according to terms of a payment plan, it would provide full discretion to the utility -- rather than referring state statute or regulation -- to determine whether a customer is meeting his or her "obligations of the payment plan." This broad utility discretion and lack of consumers' ability to dispute a utility's determination represents a gaping hole in the bill's payment plan exception. Further, the language does not provide any exception for other essential state regulatory utility consumer protections, including seasonal or temperature-based protections against disconnection, and protections for elders or consumers with a serious illness or disability.

* * *

While we have significant concerns about full-file reporting as proposed in S.2355, we do not oppose permitting consumers to voluntarily opt-in to utility credit reporting or efforts to include certain other types of "alternative data," such as rental data if reported appropriately.

Thank you for your attention. If you have any questions about this letter, please contact John Howat (jhowat@nclc.org) or Chi Chi Wu (cwu@nclc.org) at (617) 542-8010.

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⁷ National Association of State Utility Consumer Advocates, Resolution 2010-3: Opposing "Full Credit Reporting" of Payment Histories on Residential Gas and Electric Accounts, June 15, 2010, *available at* <http://nasuca.org/opposing-full-credit-reporting-of-payment-histories-on-residential-gas-and-electric-accounts-2010-03-2/>.

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