

**SUBJECT:** \$10 late-payment fee on retail credit loans

**COMMITTEE:** Business and Commerce — favorable, without amendment

**VOTE:** 9 ayes — Brimer, Brady, Corte, Crabb, Eiland, Giddings, Janek, Rhodes, Solomons  
0 nays

**WITNESSES:** For — Jim McCollum, J.C. Penney Co.; Terry Talley, Foley's Department Store  
Against — Robert Schneider, Consumers Union; Tom Smith, Public Citizen  
On — Leslie Pettijohn, Office of the Consumer Credit Commissioner

**BACKGROUND:** Since 1991 the late fee retailers may charge consumers who make their payments more than 10 days late has been capped by law at the lesser of 5 percent of each installment amount or \$5.

**DIGEST:** HB 1094 would increase to \$10 the maximum late fee retailers may charge on credit installment payments that are more than 10 days late. The bill would take effect immediately if approved by a two-thirds vote of the membership of each house.

**SUPPORTERS SAY:** HB 1094 would allow retailers in Texas to recoup the costs associated with servicing the accounts of retail credit customers who fail to pay their bills in a timely manner. Without an increase retailers may have to recoup these business costs by increasing the price of merchandise. This would be unfair to good credit and cash customers.

The average late fee allowed now is inadequate to cover actual expenses of processing late fee payments. For example, the charge on the average credit card monthly balance of \$30 is capped at \$1.50, while the average cost to collect on a delinquent account is \$6.88. The \$1.50 assessment is only 22 percent of the average cost of collection.

The low late charge fee provides no incentive for customers to pay bills on time. And, because federal law allows out-of-state creditors to charge a larger late fee than Texas, consumers have an incentive to pay out-of-state installment loans earlier than their Texas accounts. Furthermore, state law in at least 22 states permits a late fee of \$10 or more on retail installment loans.

Retail credit customers receive two notices that a bill is due before a late charge is imposed. They have 30 days to pay from the initial notice and another 10 days from the second notice. Retail businesses want to keep their customers, and if a customer in good standing had a special circumstance for not paying a bill on time, the late fee would mostly likely be waived.

OPPONENTS  
SAY:

HB 1094 would increase the late fee on the average monthly retail credit balance of \$30 by 600 percent. The increase would be even larger if the balance was smaller. The \$1.50 late charge currently allowed on a \$30 balance would rise to \$10, which would be assessed in addition to the accrued interest, which may be 21 percent, or even more.

The bill proposes that Texas raise its late fee charges on retail credit higher than those in 26 other states.

This bill would unfairly penalize a consumer for an innocent mistake. For example, if a check arrived one day late, the consumer would be charged \$10 in addition to the accrued interest. At a very minimum, the time period should be extended from 10 days to 30 days late.

Increasing the late fee payment would provide no incentive for retailers to lower their late-fee collection costs, which are probably less than the \$6.88 average figure cited. The Texas Retailers Association reports that the cost of late-fee collection varies from \$3.40 to \$10.26. The largest single cost item is payroll and outside collection costs. Retailers are not likely to send a 10-day overdue payment to a collection agency, so the average collection costs cited are likely inflated.

NOTES:

The companion bill, SB 419 by Armbrister, has been referred to the Senate Economic Development Committee.

