

SUBJECT: Regulating gift card reduced value or expiration

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 6 ayes — Giddings, Elkins, Martinez, Taylor, Vo, Zedler

0 nays

3 absent — Bailey, Bohac, Solomons

WITNESSES: For — None

Against — None

On — Randall S. James, Texas Banking Commissioner and the Texas Department of Banking

DIGEST: CSHB 255 would amend the Business and Commerce Code to add provisions governing stored-value cards such as gift cards or gift certificates.

A stored-value card would expire on the third anniversary of the date the card was sold or issued, notwithstanding a contrary applicable term. Any expiration date or policy, fee, or other restriction or contract term applicable to a stored-value card would have to be disclosed clearly and conspicuously to a person at the time the card was sold or issued to allow the person to make an informed decision before purchase. A disclosure regarding expiration or a periodic fee that reduced the unredeemed value of the card also would have to be printed legibly on the card. A policy, fee, or other material restriction or contract term, other than an expiration date, applicable to a stored-value card that was sold or issued without the required disclosure would have no effect.

Following proper disclosure, the issuer of a stored-value card could impose and collect a reasonable handling fee in connection with adding value to the card and a reasonable reissue or replacement charge. The card issuer could impose or collect a periodic fee, such as a monthly fee, only if the fee did not exceed 50 cents a month, was not assessed until after the

first anniversary of the date the card was sold or issued, and was disclosed previously.

“Stored-value card” would mean a record that evidenced a promise made for monetary consideration by a seller (or issuer of the record) that goods or services would be provided to the owner in the value shown in the record, which was pre-funded and would be reduced on redemption. “Record” would mean retrievable information inscribed on a tangible medium or stored in an electronic or other medium, such as a microchip or a magnetic strip.

Provisions related to reduction of value and card expiration would not apply to a stored-value card issued by a federally insured financial institution or a licensed check seller, either of which was primarily liable as the issuing principal. They also would not apply to a stored-value card that:

- was distributed by the issuer to a person under an awards, rewards, loyalty, or promotional program and not issued or rechargeable in exchange for money from the cardholder;
- was sold below face value or donated to an employee of the seller or issuer, a nonprofit or charitable organization, or an educational institution for fund-raising purposes;
- was issued by a financial institution acting as an agent of Texas or the United States;
- was issued as a prepaid calling card by a prepaid calling card company; or
- was issued by a commercial air carrier.

CSHB 255 would amend the Property Code to provide that if the existence and location of the owner of a stored-value card was unknown to the holder of the property, the card would be presumed abandoned to the extent of its unredeemed and uncharged value on the earliest of:

- the third anniversary of the date of issuance;
- the first anniversary of the latest date the card was issued, the date the card was last used, or the date on which value last was added to the card, if the card’s value represented wages; or

- the 15th anniversary of the date of the last activity on the card initiated by the cardholder, if the card was a stored-value card with features similar to a traveler's check and if the card would not expire and did not have a periodic or dormancy fee.

This section would not apply to a card that was linked to and drew its value solely from a deposit account at a financial institution, nor would it apply to cards issued by the parties exempted from the new reduction of value and card expiration provisions in the Business and Commerce Code.

A person who sold or issued a stored-value card in Texas could obtain the name and address of the apparent owner of the card and maintain a record of that information and the identification number of the card. In the absence of an address record for a card sold in Texas, the address of the apparent owner would be considered to be the state comptroller. A fee could not be charged against a stored-value card after the card was presumed abandoned.

The bill would include a stored-value card in the provision related to preservation of property, specifically money orders, in the Property Code, and would establish that a holder of an abandoned card would preserve the property and could not at any time, by any procedure, including a deduction for service, maintenance, or other charge, transfer the profits or assets or otherwise reduce the value of the property.

CSHB 255 would amend the definition of "account" in the Property Code, to include funds received by a depository in exchange for the purchase of a stored-value card.

The bill would take effect September 1, 2005, and would apply to a stored-value card sold or issued on or after that date.

**SUPPORTERS  
SAY:**

CSHB 255 would address consumer concerns about gift cards that lose value over time due to monthly maintenance fees or that have no value because they have expired without the consumer's knowledge. U.S. shoppers purchase more than \$55 billion per year in gift cards and certificates. Of that amount, Texas consumers purchase an estimated \$3.85 billion from merchants in Texas and nationally. Data indicate that up to 10 percent of the value of gift cards and certificates never is redeemed, which translates to approximate \$385 million in unredeemed gift card value in Texas alone.

Purchasers and users of gift cards can be shocked and angry to learn that the cards come with layers of hidden fees. These can include handling fees at the time of purchase, replacement fees if the card is lost or stolen, reissue fees if a card expires with unredeemed value that the holder still would like to spend, fees for making balance inquiries, administrative fees, and other periodic fees that reduce the unredeemed value of the card. Such fees often are printed in extremely small type on the back of cards, while some issuers of gift cards fail to disclose them entirely.

CSHB 255 would require issuers of gift cards to disclose “clearly and conspicuously” to purchasers, at the time of sale, expiration dates, any fees, restrictions, and other contract terms. In addition, an issuer could not impose a periodic fee until after the first anniversary of the date the card was sold or issued, and the fee could not be greater than 50 cents. The bill still would allow the issuer of a stored-value card to impose a reasonable handling fee in connection with issuing a card or adding value to the card and a reasonable reissue or replacement charge for a lost or expired card that was reissued or replaced. Finally, the bill would exempt banks and other institutions from the fee limitations, which would allow most issuers of “multiple-seller cards” — pre-funded cards that typically can be used as in the same manner as credit cards — to charge reasonable processing fees.

The bill also would allow the state to claim, after a reasonable period of time, any unused balance on a gift card for which the apparent owner could not be located. With estimates of unclaimed balances in Texas as high as \$385 million, inactive or expired cards that yielded even a fraction of this money could result in revenue gains to the state.

High fees make stored-value cards depreciate in value in a relatively short time, while unreasonable or undisclosed expiration dates can make them worthless. Texas should join 12 other states that have enacted legislation or taken legal action involving gift card fees and expiration dates to ensure that its consumers receive the full value of gift card purchases and protection from unreasonable policies that reduce card values.

**OPPONENTS  
SAY:**

This bill is unnecessary. Gift cards are widely used and very popular. The overwhelming majority of consumers understand how gift cards work and how to use them, as evidenced by the fact that gift card sales increase every year. As with other common methods of financial transactions, a period of adjustment and consumer education is necessary. When ATMs

first came about, bank customers complained loudly about fees associated with those electronic transactions. Now, such fees generally are accepted as a cost of convenience. The abandoned property provisions also are unnecessary. In most states, including Texas, cards that are not used for a period of time become unclaimed property, and remaining balances must be turned over to the state.

Sellers of gift cards already provide ample disclosure to consumers. Most bank-issued cards and an increasing number of store-issued gift cards disclose terms and fees on the actual cards, and sellers of cards frequently offer consumers information, such as a brochure, at the point of sale.

A prevailing misconception is that the card issuers are making money on the unredeemed values. In fact, gift cards are intended to be used within a short period of time, and the longer cards go unspent, the more they cost the issuer. Retailers must keep unused gift cards on their books as a liability and cannot collect any sales tax on those cards until redemption, but retailers and other card issuers must pay income taxes on such money if the card is not redeemed after two years. "Multiple-seller cards" are different from gift cards issued by a single retailer for use only at that store. These cards must be processed using third-party accounts, and multiple-seller card sellers legitimately charge fees to offset this expense. Fee restrictions in CSHB 255 would be unfair to the sellers of multiple-seller cards.

**NOTES:**

The original bill would have defined "gift card" essentially as an electronically readable gift certificate, and would have prohibited conditions of use that involved a decrease in card value over a period of time or the assessment of a fee against the card balance after a period of time. All other provisions in CSHB 255 were added in the committee substitute.

The companion bill, SB 446 by Carona, passed the Senate by 31-0 on March 29 and was reported favorably, as amended, by the House Business and Industry Committee on April 21, making it eligible to be considered in lieu of HB 255.

A related bill, HB 1343 by Gattis, which pertains to terms and conditions of an expiration date or reduction in value of a gift certificate or gift card, was heard by the House Business and Industry Committee on March 22. HB 1691 by Keel, which is very similar to HB 255 as introduced, was

heard in the Business and Industry Committee on March 9. SB 192 by Gallegos, which would prohibit service or inactivity fees and the expiration of a gift certificate, including a gift card, has been referred to the Senate Business and Commerce Committee.

The 78th Legislature in 2003 considered HB 650 by Campbell, which would have prohibited expiration of a gift certificate, including a gift card, before the second anniversary of the date the certificate was issued or sold and would have required the certificate clearly to state conditions or fees. HB 650 passed the House but failed to pass the Senate in the final days of the session.