

SUBJECT: Deadlines for paying consumer rebates

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 8 ayes — Giddings, Elkins, Darby, Bohac, Castro, Martinez, Solomons, Zedler
0 nays
1 absent — Bailey

WITNESSES: For — (*Registered, but did not testify*: Beth O’Brien, Public Citizen)
Against — None
On — (*Registered, but did not testify*: Pedro Perez, Jr. , Office of the Attorney General)

DIGEST: CSHB 2069 would add sec. 35.43 to the Business and Commerce Code to establish timelines for paying rebates to consumers.

A “consumer rebate” would include cash, credit, or credit toward future purchases of more than \$10 offered in connection with the sale of a good or service requiring the consumer to submit a rebate application after the sale. It would not include promotions or incentives; rebates redeemed at the time of purchase; rebates applied to bills; refunds in accordance with a manufacturer or retailer's return, guarantee, or warranty policies; or frequent shopper customer reward programs.

The bill would require companies to pay consumers a rebate within the promised time, or if no time period were promised, within 30 days of receiving a properly executed rebate form. If a rebate were contingent on continued purchase of a service, the time frame for paying a rebate would begin the later of:

- the date the consumer submitted the rebate request; or
- the expiration date of the service period.

For improperly completed rebate requests, the company would have to process the rebate or notify the consumer within the time allotted for paying the rebate and offer an opportunity to correct the rebate within 30 days of the notification. A company could mail the notification or could e-mail it if the consumer had permitted contact by e-mail.

The bill would not impose any obligation to pay a rebate to a consumer who was ineligible for the rebate or who was committing fraud, although the company would have to notify the consumer of that determination and instruct the consumer on how to remedy the rebate application. If a company learned that it inappropriately had rejected a consumer's rebate application, it would have 30 days after that discovery to pay the rebate.

A violation of the rebate payment requirements would be considered a deceptive trade practice as defined by Business and Commerce Code, ch. 17. A court could not certify an action brought under this statute as a class action.

The bill would take effect September 1, 2007.

**SUPPORTERS
SAY:**

CSHB 2069 would offer consumers protection when it comes to companies paying rebates. The amount of an expected rebate often is key to a purchasing decision, but sometimes the companies paying the rebates do not send them in a timely manner or may not send them at all. In other cases, the application for the rebate may be confusing and require many different pieces of information, making a mistake more likely. Consumers should have a chance to fix their applications before a rebate is rejected.

A company paying a rebate sets forth the terms by which it may be claimed. The company should be required to adhere to whatever time period it specified for paying a rebate, or if no time period was promised, pay within at least 30 days.

Under current law, consumers may complain about the business habits of companies that fail to pay rebates in a timely manner only to the Better Business Bureau or the Office of the Attorney General. CSHB 2069 would make the failure to pay rebates as required an actionable offense under deceptive trade practice laws, providing recourse to the consumer.

CSHB 2069 would address a problem that led the governor to veto a virtually identical bill in 2005 by specifying that a court could not certify

an action brought under the bill as a class action. This would eliminate a concern that businesses that did not meet their promises for processing rebates could be subject to expensive and lengthy litigation.

**OPPONENTS
SAY:**

Individual consumers rarely accumulate enough abuses of rebates by manufacturers to justify hiring an attorney and filing a lawsuit. A manufacturer that repeatedly violates the provisions of the bill should be subject to a class action lawsuit.

**OTHER
OPPONENTS
SAY:**

This bill would not go far enough to protect consumers from unfair rebate practices. Often companies offer hefty rebates on the outside of products, and it is not until consumers read the information within that they realize the required information is unavailable. An example of this would be software upgrades, for which a consumer may be promised a large rebate on an upgrade if an earlier version of the software had been purchased in the past. The rebate form may require proof of purchase of the original software, which few customers would have. Requiring adequate disclosure of the information needed for a rebate would better protect consumers, although they would be best protected by requiring all rebates to be instant and by cutting the application process out of the transaction altogether.

NOTES:

The committee substitute added a provision prohibiting a court from certifying an action brought under this statute as a class action.

The companion bill, SB 1389 by Van de Putte, passed the Senate on the Local and Uncontested Calendar on April 19 and was reported favorably, without amendment, by the House Business and Industry Committee on April 24, making it eligible to be considered in lieu of HB 2069.