

BILL ANALYSIS

S.B. 446
By: Senator Carona
Business & Industry
Committee Report (Amended)

BACKGROUND AND PURPOSE

High fees make stored value cards depreciate in value over time and even become worthless due to unreasonable expiration dates. Consumers unknowingly do not receive the full face value of a stored value card. The fees and unused balances are kept by the issuer. If the card is lost, or the issuer goes out of business, the stored value card holder receives nothing. The National Retail Federation estimates that \$17.24 billion worth of gift cards were sold during the 2004 holiday season, and that is projected to grow up to \$68 billion in 2005. It is estimated that between 5% and 10% of the total value of the cards sold is never redeemed. In other words, in 2005 up to \$68 million worth of stored value cards will likely be abandoned and kept by card-issuers.

Senate Bill No. 446 ensures that consumers will receive the full value of gift card purchases and that their rights will be fully protected.

RULEMAKING AUTHORITY

It is the opinion of the Committee on Business and Industry that this bill does not expressly grant any additional rulemaking authority to any state officer, department, agency, or institution.

SECTION-BY-SECTION ANALYSIS

SECTION 1. Amends Subchapter D, Chapter 35, Business & Commerce Code, by adding Section 35.42 which defines the following words or terms: "record", "stored value card" and "use". A stored value card includes a gift card and gift certificate.

Section 35.42 does not apply to a stored value card that: (1) is distributed by the issuer to a person under an awards, rewards, loyalty, or promotional program and not issued or reloaded in exchange for money tendered by the cardholder; (2) is sold below face value or donated to an employee of the seller or issuer, or a non-profit or charitable organization, or an educational institution, for fund-raising purposes; (3) is issued by a financial institution acting as a financial agent of the United States or this state; (4) is issued as a pre-paid calling card by a pre-paid calling card company regulated under Section 55.253 of the Utilities Code; or (5) does not expire and for which the seller does not charge a fee other than at the time of purchase. This section does not apply to a stored value card issued by a federally insured financial institution, as defined by Section 201.101 of the Finance Code, or which the financial institution is primarily liable as the issuing principal.

If properly disclosed, the issuer of a stored value card may impose and collect a reasonable handling fee in connection with the issuance of or adding value to the card and a reasonable reissue or replacement charge if a lost or expired card is reissued or replaced. The issuer may impose or collect a periodic fee or other charge that causes the unredeemed balance of the card to decrease over time only if the fee is reasonable, and it is not assessed until after the first anniversary of the date the card is sold or issued, and it is properly disclosed. For proper disclosure, an expiration date or policy, fee, or other material restriction or contract term must be clearly and conspicuously disclosed to a person at the time that the card is sold or issued. A disclosure regarding expiration or a periodic fee that reduces the unredeemed value of the stored value card must be legibly printed on the card.

SECTION 2. Amends Section 72.101(a), Property Code which states that personal property is presumed abandoned if, for longer than three years, the existence and location of the owner of the property is unknown to the holder of the property, and according to the knowledge and records of the holder of the property, a claim to the property has not been asserted or an act of ownership of the property has not been exercised.

SECTION 3. Amends Subchapter B, Chapter 72, Property Code by adding to Section 72.1016 to read that this section applies to a stored value card, as defined by Section 35.42 (a), Business & Commerce Code, other than a card to which Section 35.42, Business & Commerce Code, does not apply by operation of Subsection (b) of that section, or that is linked to and draws its value solely from a deposit account subject to Chapter 73. It further states that if the existence and location of a stored value card is unknown to the holder of the property, the stored value card is presumed abandoned to the extent of its unredeemed and unchanged value on the earlier of: (1) the card's expiration date, (2) the third anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card, or (3) the first anniversary of the date the card was issued, if the card is not used after it is issued, or the date the card was last used or value was last added to the card, if the card's value represents wages, as defined by Section 61.001 of the Labor Code.

A person who sells or issues a stored value card in this state shall obtain the name and address of the apparent owner of the card and maintain a record of the owner's name and address and the identification number of the card in the absence of an address record, the address of the apparent owner is considered to be the Austin, Texas, address of the comptroller. A fee cannot be charged after the card is presumed abandoned.

The comptroller is required to transfer five percent of the money collected from cards presumed to be abandoned for use as grants under the Education Code.

SECTION 4. Amends Section 72.103, Property Code by adding "Section 72.1016" and "stored value card". A holder of abandoned property shall preserve the property and not reduce the value of the property.

SECTION 5. Amends Section 73.001 (a) (1), Property Code by adding to the definition of "account": or funds received by a depository in exchange for the purchase of a stored value card.

SECTION 6. This change in law applies only to a stored value card issued or activated on or after the effective date of this Act. A stored value card issued or activated before the effective date of this Act is governed by the law in effect when the card was issued or activated, and the former law is continued in effect for that purpose.

SECTION 7. The effective date.

EFFECTIVE DATE

September 1, 2005

IMPACT OF COMMITTEE AMENDMENT

Committee Amendment No. 1 clarifies who exactly falls under the provisions of this bill. The amendment specifically excludes certain types of air carrier cards and travel cards that are used at ATM machines. Additionally, the amendment clarifies where the disclosure must be located on the card/packaging, and clarifies the collection process of the address information from the owner of the card.

Committee Amendment No. 1 adds that certain sections of the bill do not create a cause-of-action against a person who issues or sells a stored value card.