

By: Carona

S.B. No. 446

A BILL TO BE ENTITLED

AN ACT

relating to the reduction in value or expiration of a stored value card.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Subchapter D, Chapter 35, Business & Commerce Code, is amended by adding Section 35.42 to read as follows:

Sec. 35.42. REDUCTION OF VALUE OR EXPIRATION OF STORED VALUE CARD. (a) In this section:

(1) "Record" has the meaning assigned by Section 43.002, and includes a record that contains a microprocessor chip, magnetic strip, or other means of storing information.

(2) "Stored value card" means a record that evidences a promise made for monetary consideration by the seller or issuer of the record that goods or services will be provided to the owner of the record in the value shown in the record, that is prefunded, and the value of which is reduced on redemption. The term includes a gift card or gift certificate.

(3) "Use" of a stored value card includes a whole or partial redemption of or adding value to the card.

(b) This section 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:

- 1           (A) an employee of the seller or issuer;  
2           (B) a nonprofit or charitable organization; or  
3           (C) an educational institution, for fund-raising  
4 purposes;

5           (3) is issued by a financial institution acting as a  
6 financial agent of the United States or this state;

7           (4) is issued as a prepaid calling card by a prepaid  
8 calling card company regulated under Section 55.253, Utilities  
9 Code; or

10          (5) does not expire and for which the seller does not  
11 charge a fee other than at the time of purchase.

12          (c) This section does not apply to a stored value card  
13 issued by a federally insured financial institution, as defined by  
14 Section 201.101, Finance Code, for which the financial institution  
15 is primarily liable as the issuing principal.

16          (d) If disclosed as provided by Subsection (f), the issuer  
17 of a stored value card may impose and collect a reasonable handling  
18 fee in connection with the issuance of or adding of value to the  
19 card and a reasonable reissue or replacement charge if a lost or  
20 expired card is reissued or replaced.

21          (e) The issuer of a stored value card may impose or collect a  
22 periodic fee or other charge that causes the unredeemed balance of  
23 the card to decrease over time only if the fee is reasonable, is not  
24 assessed until after the first anniversary of the date the card is  
25 sold or issued, and is disclosed as provided by Subsection (f).

26          (f) An expiration date or policy, fee, or other material  
27 restriction or contract term applicable to a stored value card must

1 be clearly and conspicuously disclosed to a person at the time the  
2 card is sold or issued to the person to enable the person to make an  
3 informed decision before the person purchases the card. A  
4 disclosure must be legibly printed on the retail packaging for the  
5 stored value card or on a posted notice accompanying the sales  
6 display. A disclosure regarding expiration or a periodic fee that  
7 reduces the unredeemed value of the stored value card must also be  
8 legibly printed on the card. A stored value card that is sold  
9 without the disclosure as required by this section of an expiration  
10 date or policy, fee, or other material restriction or contract term  
11 applicable to the card is valid until redeemed or replaced.

12 SECTION 2. Subsection (a), Section 72.101, Property Code,  
13 is amended to read as follows:

14 (a) Except as provided by this section and Sections 72.1015,  
15 72.1016, and 72.102, personal property is presumed abandoned if,  
16 for longer than three years:

17 (1) the existence and location of the owner of the  
18 property is unknown to the holder of the property; and

19 (2) according to the knowledge and records of the  
20 holder of the property, a claim to the property has not been  
21 asserted or an act of ownership of the property has not been  
22 exercised.

23 SECTION 3. Subchapter B, Chapter 72, Property Code, is  
24 amended by adding Section 72.1016 to read as follows:

25 Sec. 72.1016. STORED VALUE CARD. (a) This section applies  
26 to a stored value card, as defined by Section 35.42(a), Business &  
27 Commerce Code, other than a card:

1           (1) to which Section 35.42, Business & Commerce Code,  
2 does not apply by operation of Subsection (b) of that section; or

3           (2) that is linked to and draws its value solely from a  
4 deposit account subject to Chapter 73.

5           (b) If the existence and location of the owner of a stored  
6 value card is unknown to the holder of the property, the stored  
7 value card is presumed abandoned to the extent of its unredeemed and  
8 uncharged value on the earlier of:

9           (1) the card's expiration date;

10           (2) the third anniversary of the date the card was  
11 issued, if the card is not used after it is issued, or the date the  
12 card was last used or value was last added to the card; or

13           (3) the first anniversary of the date the card was  
14 issued, if the card is not used after it is issued, or the date the  
15 card was last used or value was last added to the card, if the card's  
16 value represents wages, as defined by Section 61.001, Labor Code.

17           (c) A person who sells or issues a stored value card in this  
18 state shall obtain the name and address of the apparent owner of the  
19 card and maintain a record of the owner's name and address and the  
20 identification number of the card. In the absence of an address  
21 record, the address of the apparent owner is considered to be the  
22 Austin, Texas, address of the comptroller.

23           (d) A person may charge a fee against a stored value card as  
24 provided by Section 35.42, Business & Commerce Code. A fee may not  
25 be charged against a stored value card after the card is presumed  
26 abandoned under this section.

27           (e) The comptroller shall transfer five percent of the money

1 collected from cards presumed to be abandoned for use as grants  
2 under Subchapter M, Chapter 56, Education Code.

3 SECTION 4. Section 72.103, Property Code, is amended to  
4 read as follows:

5 Sec. 72.103. PRESERVATION OF PROPERTY. Notwithstanding any  
6 other provision of this title except a provision of this section or  
7 Section 72.1016 relating to a money order or a stored value card, a  
8 holder of abandoned property shall preserve the property and may  
9 not at any time, by any procedure, including a deduction for  
10 service, maintenance, or other charge, transfer or convert to the  
11 profits or assets of the holder or otherwise reduce the value of the  
12 property. For purposes of this section, value is determined as of  
13 the date of the last transaction or contact concerning the  
14 property, except that in the case of a money order, value is  
15 determined as of the date the property is presumed abandoned under  
16 Section 72.102(c). If a holder imposes service, maintenance, or  
17 other charges on a money order prior to the time of presumed  
18 abandonment, such charges may not exceed the amount of 50 cents per  
19 month for each month the money order remains uncashed prior to the  
20 month in which the money order is presumed abandoned.

21 SECTION 5. Subdivision (1), Subsection (a), Section 73.001,  
22 Property Code, is amended to read as follows:

23 (1) "Account" means funds deposited with a depository  
24 in an interest-bearing account, a checking or savings account, or  
25 funds received by a depository in exchange for the purchase of a  
26 stored value card.

27 SECTION 6. The changes in law made by this Act apply only to

1 a stored value card issued or activated on or after the effective  
2 date of this Act. A stored value card issued or activated before  
3 the effective date of this Act is governed by the law in effect when  
4 the card was issued or activated, and the former law is continued in  
5 effect for that purpose.

6 SECTION 7. This Act takes effect September 1, 2005.