

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, incentive, rebate or promotional program and not issued or reloaded in exchange for money tendered by the cardholder;

1 (2) is sold below face value or donated to:

2 (A) an employee of the seller or issuer;

3 (B) a nonprofit or charitable organization; or

4 (C) an educational institution, for fund-raising
5 purposes;

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

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

11 (5) does not expire and for which the seller does not
12 charge a fee other than a fee described in Subsection (d); or

13 (6) is issued by an air carrier holding a certificate
14 of public convenience and necessity under Title 49, United States
15 Code.

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

20 (d) If disclosed as provided by Subsection (f), the issuer
21 of a stored value card may impose and collect a reasonable handling
22 fee in connection with the issuance of or adding of value to the
23 card, a reasonable access fee for a card transaction conducted at an
24 unmanned teller machine, as defined by Section 59.301, Finance
25 Code, and a reasonable reissue or replacement charge if a lost or
26 expired card is reissued or replaced.

27 (e) The issuer of a stored value card may impose or collect a

1 periodic fee or other charge that causes the unredeemed balance of
2 the card to decrease over time only if the fee is reasonable, is not
3 assessed until after the first anniversary of the date the card is
4 sold or issued, and is disclosed as provided by Subsection (f).

5 (f) An expiration date or policy, fee, or other material
6 restriction or contract term applicable to a stored value card must
7 be clearly and conspicuously disclosed to a person at the time the
8 card is sold or issued to the person to enable the person to make an
9 informed decision before the person purchases the card. A
10 disclosure regarding expiration or a periodic fee that reduces the
11 unredeemed value of the stored value card must also be legibly
12 printed on the card. A stored value card that is sold without the
13 disclosure as required by this section of an expiration date or
14 policy, fee, or other material restriction or contract term
15 applicable to the card is valid until redeemed or replaced.

16 (g) This section does not create a cause of action against a
17 person who issues or sells a stored value card.

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

20 (a) Except as provided by this section and Sections 72.1015,
21 72.1016, and 72.102, personal property is presumed abandoned if,
22 for longer than three years:

23 (1) the existence and location of the owner of the
24 property is unknown to the holder of the property; and

25 (2) according to the knowledge and records of the
26 holder of the property, a claim to the property has not been
27 asserted or an act of ownership of the property has not been

1 exercised.

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

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

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

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

11 (b) If the existence and location of the owner of a stored
12 value card is unknown to the holder of the property, the stored
13 value card is presumed abandoned to the extent of its unredeemed and
14 uncharged value on the earlier of:

15 (1) the card's expiration date;

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

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

23 (c) If the person who sells or issues a stored value card in
24 this state does not obtain the name and address of the apparent
25 owner of the card and maintain a record of the owner's name and
26 address and the identification number of the card, the address of
27 the apparent owner is considered to be the Austin, Texas, address of

1 the comptroller.

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

6 (e) The comptroller shall transfer five percent of the money
7 collected from cards presumed to be abandoned for use as grants
8 under Subchapter M, Chapter 56, Education Code.

9 (f) This section does not create a cause of action against a
10 person who issues or sells a stored value card.

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

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

1 month in which the money order is presumed abandoned.

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

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

8 SECTION 6. The changes in law made by this Act apply only to
9 a stored value card issued or activated on or after the effective
10 date of this Act. A stored value card issued or activated before
11 the effective date of this Act is governed by the law in effect when
12 the card was issued or activated, and the former law is continued in
13 effect for that purpose.

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

President of the Senate

Speaker of the House

I hereby certify that S.B. No. 446 passed the Senate on March 29, 2005, by the following vote: Yeas 31, Nays 0; and that the Senate concurred in House amendment on May 9, 2005, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 446 passed the House, with amendment, on May 3, 2005, by a non-record vote.

Chief Clerk of the House

Approved:

Date

Governor