

1-1 By: Van de Putte S.B. No. 1389
1-2 (In the Senate - Filed March 7, 2007; March 20, 2007, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 10, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; April 10, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1389 By: Van de Putte

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the processing of consumer rebates.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Subchapter D, Chapter 35, Business & Commerce
1-13 Code, is amended by adding Section 35.43 to read as follows:

1-14 Sec. 35.43. CONSUMER REBATE RESPONSE AND GRACE PERIOD FOR
1-15 CORRECTIONS. (a) In this section:

1-16 (1) "Consumer" means a person who obtains a product or
1-17 service that is to be used primarily for personal, business,
1-18 family, or household purposes.

1-19 (2) "Consumer rebate" means an offer to a consumer of
1-20 cash, credit, or credit toward future purchases that is made in
1-21 connection with a sale of a good or service to the consumer, is in an
1-22 amount of \$10 or more, and requires the consumer to mail or
1-23 electronically submit a rebate request after the sale is completed.
1-24 The term does not include:

1-25 (A) any promotion or incentive that is offered by
1-26 a manufacturer to another company or organization that is not the
1-27 consumer to help promote or place the product or service;

1-28 (B) a rebate that is redeemed at the time of
1-29 purchase;

1-30 (C) any discount, cash, credit, or credit toward
1-31 a future purchase that is automatically provided to a consumer
1-32 without the need to submit a request for redemption;

1-33 (D) a rebate that is applied to a bill that the
1-34 consumer becomes obligated to pay after the date the purchase is
1-35 made;

1-36 (E) any refund that may be given to a consumer in
1-37 accordance with a manufacturer or retailer's return, guarantee,
1-38 adjustment, or warranty policies; or

1-39 (F) any manufacturer or retailer's frequent
1-40 shopper customer reward program.

1-41 (3) "Properly completed" means that the consumer
1-42 submitted the required information and documentation in the manner
1-43 and by the deadline specified in the rebate offer and otherwise
1-44 satisfied the terms and conditions of the rebate offer.

1-45 (b) Except as provided by Subsection (c), a person,
1-46 including a manufacturer or retailer, who offers a rebate shall
1-47 mail the amount of the rebate to the consumer or electronically pay
1-48 the consumer the amount of the rebate within the time period
1-49 promised in the rebate information provided to the consumer, or if
1-50 silent, not later than the 30th day after the date the person
1-51 receives a properly completed rebate request.

1-52 (c) If a consumer rebate offer is contingent on the consumer
1-53 continuing to purchase a service for a minimum length of time, the
1-54 time period in Subsection (b) begins on the later of:

1-55 (1) the date the consumer submits the rebate request;
1-56 or

1-57 (2) the expiration date of the service period.

1-58 (d) If the person offering the rebate receives a rebate
1-59 request that is timely submitted but not properly completed, the
1-60 person shall:

1-61 (1) process the rebate in the manner provided by
1-62 Subsection (b) as if the rebate request were properly completed; or

1-63 (2) notify the consumer, not later than the date

2-1 specified by Subsection (b), of the reasons that the rebate request
2-2 is not properly completed and the consumer's right to correct the
2-3 deficiency within 30 days after the date of the notification.

2-4 (e) The notification under Subsection (d)(2) must be by
2-5 mail, except that notification may be by e-mail if the consumer has
2-6 agreed to be notified by e-mail.

2-7 (f) If the consumer corrects the deficiency stated in the
2-8 notification under Subsection (d)(2) before the 31st day after the
2-9 postmark date of the person's mailed notification to the consumer
2-10 or the date the e-mail is received, if applicable, the person shall
2-11 process the rebate in the manner provided by Subsection (b) for a
2-12 properly completed request.

2-13 (g) This section does not impose any obligation on a person
2-14 to pay a rebate to any consumer who is not eligible under the terms
2-15 and conditions of the rebate offer or has not satisfied all of the
2-16 terms and conditions of the rebate offer, if the person offering the
2-17 rebate has complied with Subsections (d) and (e).

2-18 (h) A person offering a rebate has the right to reject a
2-19 rebate request from a consumer who the person determines:

2-20 (1) is attempting to commit fraud;

2-21 (2) has already received the offered rebate; or

2-22 (3) is submitting proof of purchase that is not
2-23 legitimate.

2-24 (i) A person making a determination under Subsection (h)
2-25 shall notify the consumer within the time period provided by
2-26 Subsection (d) that the person is considering rejecting, or has
2-27 rejected, the rebate request and shall instruct the consumer of any
2-28 actions that the consumer may take to cure the deficiency.

2-29 (j) If the person offering a rebate erroneously rejects a
2-30 properly completed rebate request, the person shall pay the
2-31 consumer as soon as practicable, but not later than 30 days, after
2-32 the date the person learns of the error.

2-33 (k) For the purposes of this section, if a person who offers
2-34 a rebate uses an independent entity to process the rebate, an act of
2-35 the entity is considered to be an act of the person and receipt of a
2-36 rebate request by the entity is considered receipt of the request by
2-37 the person.

2-38 (l) A violation of this section is a deceptive trade
2-39 practice in addition to the practices described by Subchapter E,
2-40 Chapter 17, and is actionable under that subchapter.

2-41 (m) A court may not certify an action brought under this
2-42 section as a class action.

2-43 SECTION 2. This Act takes effect September 1, 2007.

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