

SUBJECT: Deadlines for paying consumer rebates

COMMITTEE: Business and Industry — committee substitute recommended

VOTE: 7 ayes — Giddings, Elkins, Martinez, Bohac, Taylor, Vo, Zedler
0 nays
2 absent — Bailey, Solomons

WITNESSES: For — Tom "Smitty" Smith, Public Citizen; Gary Schumann
Against — None
On — Rose Ann Reeser, Texas Attorney General

DIGEST: CSHB 511 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 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 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.

The bill would take effect September 1, 2005.

**SUPPORTERS
SAY:**

Consumers should have some protection when it comes to companies paying rebates. The amount of money in 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. In other cases, the application for the rebate can 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.

The company paying the rebate sets forth the terms by which it can be claimed. Verifying that all of the required information is included, then paying the rebate, should not take more than 30 days.

Under current law, consumers can 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 511 would make the failure to pay rebates as required an actionable offense under deceptive trade practice laws, providing recourse to the consumer.

**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 definition of consumer rebate, extensions for rebates involving continued purchase of a service, and exclusion of ineligible or fraudulent claims from payment requirements.