

- SUBJECT:** Prohibiting post-purchase fees assessed on gift cards
- COMMITTEE:** Business and Industry — favorable, without amendment
- VOTE:** 10 ayes — Deshotel, Elkins, Christian, England, Gattis, Keffer, S. Miller, Orr, Quintanilla, S. Turner
- 0 nays
- 1 absent — Giddings
- WITNESSES:** For — David Power, Public Citizen
- Against — Kathy Barber, Texas Retailers Association
- On — Robert Norris, Legislative Budget Board
- BACKGROUND:** Under Business and Commerce Code, sec. 604.052, retailers may assess reasonable fees on stored value or “gift” cards as long as the fee is disclosed.
- Under Property Code, sec. 72.1016, the comptroller may not claim gift cards as abandoned property that escheats to the state if they do not expire and carry fees that are properly disclosed. In the past, the comptroller was able to claim unused gift cards as abandoned property three years after issuance, and the balance became general revenue.
- DIGEST:** HB 1771 would prohibit retailers from assessing fees on a stored value card, including:
- a handling fee in connection with the issuance of or adding value to the card;
 - an access fee for a card transaction conducted at an unmanned teller machine;
 - a reissue or replacement charge; or
 - a periodic fee or other charge that caused the unredeemed balance to decrease over time.

The bill also would allow the comptroller to claim a gift card that did not expire as abandoned property.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2009.

**SUPPORTERS
SAY:**

HB 1771 would implement one of the recommendations of the Legislative Budget Board staff in the 2009 *Texas State Government Effectiveness and Efficiency* report. It would protect consumers from fees that diminish gift card value, ensuring consumers receive the full purchasing power of the card. A card's balance should be used at the consumer's discretion instead of imposing a fee when the consumer does not spend immediately the full value of the card. Twelve states prohibit post-purchase fees for gift cards, and states such as Minnesota, Montana, and Rhode Island prohibit expiration dates as well as post-purchase fees.

The bill would increase state revenue by allowing the comptroller to claim as abandoned property unused property cards whose balance had not been depleted three years after issuance. It also would permit those who own gift cards without an expiration date to recover the unused value of a card presumed abandoned after three years by making an authenticated claim to the state for their abandoned property.

**OPPONENTS
SAY:**

This bill would prevent purchase fees on pre-paid credit cards sold by retailers. Certain retailers such as Wal-Mart and Target sell gift cards for other retailers such as Starbuck's. In order to make a profit from these sales, the retailer will add a fee such as \$5 to the Starbuck's gift card. This bill would prevent this fee from being assessed and would eliminate retail profit from the sale of these gift cards.

NOTES:

A floor amendment by Rep. Chavez would permit a retailer to charge a fee on a stored value card at the time of initial sale or when adding value if the fee was disclosed at the time of sale and the consumer had the opportunity to decline the transaction after being informed of the fee.