

By: Hochberg, et al. (Senate Sponsor - Van de Putte) H.B. No. 511
(In the Senate - Received from the House April 29, 2005;
May 2, 2005, read first time and referred to Committee on Business
and Commerce; May 18, 2005, reported favorably by the following
vote: Yeas 6, Nays 0; May 18, 2005, sent to printer.)

A BILL TO BE ENTITLED
AN ACT

relating to the processing of consumer rebates.

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 35.43 to read as follows:

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

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

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

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

(B) a rebate that is redeemed at the time of
purchase;

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

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

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

(F) any manufacturer or retailer's frequent
shopper customer reward program.

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

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

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

(1) the date the consumer submits the rebate request;
or

(2) the expiration date of the service period.

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

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

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

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

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

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

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

- (1) is attempting to commit fraud;
- (2) has already received the offered rebate; or
- (3) is submitting proof of purchase that is not legitimate.

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

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

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

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

SECTION 2. This Act takes effect September 1, 2005.

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