

AMENDED IN ASSEMBLY APRIL 25, 2011

AMENDED IN ASSEMBLY MARCH 29, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1219

Introduced by Assembly Member Perea

February 18, 2011

An act to amend Section ~~1747.04~~ 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Perea. Credit cards: ~~federal conformance~~ *personal information.*

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition.

This bill would condition the prohibition described above upon the cardholder physically presenting a credit card with a properly functioning magnetic stripe or other electronically readable device.

~~Existing law declares the intent of the Legislature that specified state laws regulating credit cards that are similar to the federal Truth in Lending Act be interpreted to essentially conform to the Truth in Lending Act and any rule, regulation, or interpretation promulgated under that act by the Board of Governors of the Federal Reserve System. Existing federal law creates the Bureau of Consumer Financial~~

Protection, which is charged with implementing and enforcing federal consumer financial laws.

~~This bill would delete the reference to the intent of the Legislature, described above, and instead provide that specified state law regulating credit cards shall be interpreted to conform with the Truth in Lending Act and any rule, regulation, or interpretation promulgated under that act by the Board of Governors of the Federal Reserve System. The bill would also provide that these provisions shall be interpreted to be in conformance with any rule, regulation, or interpretation of the Truth in Lending Act promulgated by the Bureau of Consumer Financial Protection.~~

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1747.08 of the Civil Code is amended to
2 read:

3 1747.08. (a) Except as provided in subdivision (c), ~~no~~ if a
4 cardholder physically presents a credit card to an employee,
5 authorized agent, or representative of a person, firm, partnership,
6 association, or corporation as payment, and the credit card has
7 a properly functioning magnetic stripe or other electronically
8 readable device, the person, firm, partnership, association, or
9 corporation that accepts credit cards for the transaction of business
10 shall *not* do any of the following:

11 (1) Request, or require as a condition to accepting the credit
12 card as payment in full or in part for goods or services, the
13 cardholder to write any personal identification information upon
14 the credit card transaction form or otherwise.

15 (2) Request, or require as a condition to accepting the credit
16 card as payment in full or in part for goods or services, the
17 cardholder to provide personal identification information, which
18 the person, firm, partnership, association, or corporation accepting
19 the credit card writes, causes to be written, or otherwise records
20 upon the credit card transaction form or otherwise.

21 (3) Utilize, in any credit card transaction, a credit card form
22 which contains preprinted spaces specifically designated for filling
23 in any personal identification information of the cardholder.

1 (b) For purposes of this section “personal identification
2 information,” means information concerning the cardholder, other
3 than information set forth on the credit card, and including, but
4 not limited to, the cardholder’s address and telephone number.

5 (c) Subdivision (a) does not apply in the following instances:

6 (1) If the credit card is being used as a deposit to secure payment
7 in the event of default, loss, damage, or other similar occurrence.

8 (2) Cash advance transactions.

9 (3) If the person, firm, partnership, association, or corporation
10 accepting the credit card is contractually obligated to provide
11 personal identification information in order to complete the credit
12 card transaction or is obligated to collect and record the personal
13 identification information by federal law or regulation.

14 (4) If personal identification information is required for a special
15 purpose incidental but related to the individual credit card
16 transaction, including, but not limited to, information relating to
17 shipping, delivery, servicing, or installation of the purchased
18 merchandise, or for special orders.

19 (d) This section does not prohibit any person, firm, partnership,
20 association, or corporation from requiring the cardholder, as a
21 condition to accepting the credit card as payment in full or in part
22 for goods or services, to provide reasonable forms of positive
23 identification, which may include a driver’s license or a California
24 state identification card, or where one of these is not available,
25 another form of photo identification, provided that none of the
26 information contained thereon is written or recorded on the credit
27 card transaction form or otherwise. If the cardholder pays for the
28 transaction with a credit card number and does not make the credit
29 card available upon request to verify the number, the cardholder’s
30 driver’s license number or identification card number may be
31 recorded on the credit card transaction form or otherwise.

32 (e) Any person who violates this section shall be subject to a
33 civil penalty not to exceed two hundred fifty dollars (\$250) for the
34 first violation and one thousand dollars (\$1,000) for each
35 subsequent violation, to be assessed and collected in a civil action
36 brought by the person paying with a credit card, by the Attorney
37 General, or by the district attorney or city attorney of the county
38 or city in which the violation occurred. However, no civil penalty
39 shall be assessed for a violation of this section if the defendant
40 shows by a preponderance of the evidence that the violation was

1 not intentional and resulted from a bona fide error made
2 notwithstanding the defendant’s maintenance of procedures
3 reasonably adopted to avoid that error. When collected, the civil
4 penalty shall be payable, as appropriate, to the person paying with
5 a credit card who brought the action, or to the general fund of
6 whichever governmental entity brought the action to assess the
7 civil penalty.

8 (f) The Attorney General, or any district attorney or city attorney
9 within his or her respective jurisdiction, may bring an action in
10 the superior court in the name of the people of the State of
11 California to enjoin violation of subdivision (a) and, upon notice
12 to the defendant of not less than five days, to temporarily restrain
13 and enjoin the violation. If it appears to the satisfaction of the court
14 that the defendant has, in fact, violated subdivision (a), the court
15 may issue an injunction restraining further violations, without
16 requiring proof that any person has been damaged by the violation.
17 In these proceedings, if the court finds that the defendant has
18 violated subdivision (a), the court may direct the defendant to pay
19 any or all costs incurred by the Attorney General, district attorney,
20 or city attorney in seeking or obtaining injunctive relief pursuant
21 to this subdivision.

22 (g) Actions for collection of civil penalties under subdivision
23 (e) and for injunctive relief under subdivision (f) may be
24 consolidated.

25 (h) The changes made to this section by Chapter 458 of the
26 Statutes of 1995 apply only to credit card transactions entered into
27 on and after January 1, 1996. Nothing in those changes shall be
28 construed to affect any civil action which was filed before January
29 1, 1996.

30 ~~SECTION 1. Section 1747.01 of the Civil Code is amended~~
31 ~~to read:~~

32 ~~1747.01. The provisions of this title as to which there are~~
33 ~~similar provisions in the federal Truth in Lending Act, as amended~~
34 ~~(15 U.S.C. 1601, et seq.), shall be interpreted by anyone construing~~
35 ~~them to conform with the Truth in Lending Act and any rule,~~
36 ~~regulation, or interpretation promulgated thereunder by the Board~~
37 ~~of Governors of the Federal Reserve System, or any rule,~~
38 ~~regulation, or interpretation of the act promulgated by the Bureau~~
39 ~~of Consumer Financial Protection, and any interpretation issued~~
40 ~~by an official or employee of the Federal Reserve System or the~~

- 1 Bureau of Consumer Financial Protection duly authorized to issue
- 2 that interpretation.

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