

AMENDED IN ASSEMBLY JUNE 1, 2011
AMENDED IN ASSEMBLY MAY 17, 2011
AMENDED IN ASSEMBLY MAY 4, 2011
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 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Perea. Credit cards: 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. Existing law excepts from this prohibition the instance when the person or entity accepting the card is contractually obligated to provide personal identification information in order to complete the transaction or is obligated to collect and record the identification information by federal law. Existing law also permits a person or entity accepting a credit card

~~to record the cardholder’s driver’s license number or identification card number if the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number.~~

This bill would except from the prohibition described above the instance when the person or entity accepting the card uses the personal information for prevention of fraud, theft, or identity theft *in specified retail motor fuel transactions*, and would specify that state law obligations are also permissible reasons to collect and record personal information. ~~The bill also would except from the prohibition instances when the person or entity accepting the card requests personal information for purposes of verifying a proprietary credit card and the cardholder does not produce it and face-to-face transactions when the credit card does not have a functioning magnetic stripe or is not otherwise electronically readable, subject to specified limitations. The bill would delete the authorization of a person or entity accepting a credit card to record the cardholder’s driver’s license number or identification card number if the cardholder pays for the transaction with a credit card number and does not make the credit card available.~~ The bill would also make a statement of intent with regard to certain of these provisions.

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
- 2 to read:
- 3 1747.08. (a) Except as provided in subdivision (c), no person,
- 4 firm, partnership, association, or corporation that accepts credit
- 5 cards for the transaction of business shall do any of the following:
- 6 (1) Request, or require as a condition to accepting the credit
- 7 card as payment in full or in part for goods or services, the
- 8 cardholder to write any personal identification information upon
- 9 the credit card transaction form or otherwise.
- 10 (2) Request, or require as a condition to accepting the credit
- 11 card as payment in full or in part for goods or services, the
- 12 cardholder to provide personal identification information, which
- 13 the person, firm, partnership, association, or corporation accepting

1 the credit card writes, causes to be written, or otherwise records
2 upon the credit card transaction form or otherwise.

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

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

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

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

13 (2) Cash advance transactions.

14 (3) If any of the following applies:

15 (A) The person, firm, partnership, association, or corporation
16 accepting the credit card is contractually obligated to provide
17 personal identification information in order to complete the credit
18 card transaction.

19 (B) The person, firm, partnership, association, or corporation
20 accepting the credit card *in a sales transaction at a retail motor*
21 *fuel dispenser or retail motor fuel payment island automated*
22 *cashier* uses the personal identification information solely for
23 prevention of fraud, theft, or identity theft or uses the personal
24 information for any of these purposes concurrently with a purpose
25 permitted under paragraph (4).

26 (C) The person, firm, partnership, association, or corporation
27 accepting the credit card is obligated to collect and record the
28 personal identification information by federal or state law or
29 regulation.

30 (4) If personal identification information is required for a special
31 purpose incidental but related to the individual credit card
32 transaction, including, but not limited to, information relating to
33 shipping, delivery, servicing, or installation of the purchased
34 merchandise, or for special orders.

35 ~~(5) If personal identification information is requested to verify~~
36 ~~that a person has a proprietary credit card account with the person,~~
37 ~~firm, partnership, association, or corporation and that person does~~
38 ~~not produce the proprietary credit card at the time of the~~
39 ~~transaction. For purposes of this paragraph a “proprietary credit~~

1 card” means a credit card issued by the person, firm, partnership,
2 association, or corporation.

3 ~~(6) If, in a face-to-face transaction, the credit card does not have~~
4 ~~a properly functioning magnetic stripe or is otherwise not~~
5 ~~electronically readable, the person, firm, partnership, association,~~
6 ~~or corporation may record only the cardholder’s name, credit card~~
7 ~~account number, and expiration date; and provided further that the~~
8 ~~personal identification information that is required is used only to~~
9 ~~complete the transaction, or for a purpose authorized by this~~
10 ~~section, and is thereafter deleted, discarded, or destroyed.~~

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

24 (e) Any person who violates this section shall be subject to a
25 civil penalty not to exceed two hundred fifty dollars (\$250) for the
26 first violation and one thousand dollars (\$1,000) for each
27 subsequent violation, to be assessed and collected in a civil action
28 brought by the person paying with a credit card, by the Attorney
29 General, or by the district attorney or city attorney of the county
30 or city in which the violation occurred. However, no civil penalty
31 shall be assessed for a violation of this section if the defendant
32 shows by a preponderance of the evidence that the violation was
33 not intentional and resulted from a bona fide error made
34 notwithstanding the defendant’s maintenance of procedures
35 reasonably adopted to avoid that error. When collected, the civil
36 penalty shall be payable, as appropriate, to the person paying with
37 a credit card who brought the action, or to the general fund of
38 whichever governmental entity brought the action to assess the
39 civil penalty.

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

15 (g) Actions for collection of civil penalties under subdivision
16 (e) and for injunctive relief under subdivision (f) may be
17 consolidated.

18 (h) The changes made to this section by Chapter 458 of the
19 Statutes of 1995 apply only to credit card transactions entered into
20 on and after January 1, 1996. Nothing in those changes shall be
21 construed to affect any civil action which was filed before January
22 1, 1996.

23 (i) It is the intent of the amendments made by the act adding
24 this subdivision to clarify existing law. These clarifying
25 amendments continue to protect personal identification information
26 while allowing and recognizing the legitimate business need for
27 a person, firm, partnership, association, or corporation that accepts
28 credit cards for the transaction of business *at a retail motor fuel*
29 *dispenser or retail motor fuel automated payment island cashier*
30 to use personal identification information for the purposes
31 authorized by this section. ~~These amendments recognize, in part,~~
32 ~~legitimate business practices designed to address the increased~~
33 ~~potential for identity theft that results if the cardholder is not~~
34 ~~present or if the credit card does not function correctly.~~