

AMENDED IN ASSEMBLY APRIL 15, 2013

AMENDED IN ASSEMBLY MARCH 19, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

ASSEMBLY BILL

No. 844

Introduced by Assembly Member Dickinson

February 21, 2013

An act to amend Sections 1747.02, 1747.08, 1747.09, and 1748.30 of, and to add Section 1747.08.1 to, the Civil Code, and to amend Section 99030 of the Education Code, relating to credit and debit cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 844, as amended, Dickinson. Credit and debit cards: transactions: 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.

Under existing law, a person who violates the above provisions is subject to specified civil penalties, an action for injunctive relief, or both.

This bill would extend the above restrictions regarding the collection of personal identification information to debit cards. The bill would define “debit card” and related terms for these purposes, and would make conforming changes.

This bill would ~~prohibit~~ *permit* the operator of a commercial Internet Web site or online service that collects personal identifiable information ~~from requiring, as defined, to require~~ a credit cardholder or debit cardholder to provide ~~any information other than only~~ a ZIP Code to complete the Internet credit card or debit card transaction, *if used solely for the prevention of fraud, theft, or identity theft*, except under specified circumstances. *The bill would require that operator to destroy the ZIP Code information so collected, as specified, and would prohibit the operator from aggregating or sharing the ZIP Code information, as specified.* The bill would authorize the assessment of civil penalties or an action for injunctive relief, or both, for a violation of these provisions.

Existing law prohibits a person, firm, partnership, association, corporation, or limited liability company that accepts credit or debit cards for the transaction of business from printing more than the last 5 digits of an individual's credit card or debit card number, or the expiration date, on a transaction receipt, as specified.

This bill would revise the above provisions to remove specific references to printed receipts, and would make other conforming changes.

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

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

- 1 SECTION 1. Section 1747.02 of the Civil Code is amended
- 2 to read:
- 3 1747.02. As used in this title:
- 4 (a) "Credit card" means any card, plate, coupon book, or other
- 5 single credit device existing for the purpose of being used from
- 6 time to time to obtain money, property, labor, or services on credit.
- 7 "Credit card" does not mean any of the following:
- 8 (1) Any single credit device used to obtain telephone property,
- 9 labor, or services in any transaction under public utility tariffs.
- 10 (2) Any device that may be used to obtain credit pursuant to an
- 11 electronic fund transfer, but only if the credit is obtained under an
- 12 agreement between a consumer and a financial institution to extend
- 13 credit when the consumer's asset account is overdrawn or to
- 14 maintain a specified minimum balance in the consumer's asset
- 15 account.

1 (3) Any key or card key used at an automated dispensing outlet
2 to obtain or purchase petroleum products, as defined in subdivision
3 (c) of Section 13401 of the Business and Professions Code, that
4 will be used primarily for business rather than personal or family
5 purposes.

6 (b) "Accepted credit card" means any credit card that the
7 cardholder has requested or applied for and received or has signed,
8 or has used, or has authorized another person to use, for the purpose
9 of obtaining money, property, labor, or services on credit. Any
10 credit card issued in renewal of, or in substitution for, an accepted
11 credit card becomes an accepted credit card when received by the
12 cardholder, whether the credit card is issued by the same or a
13 successor card issuer.

14 (c) "Debit card" means an accepted debit card or other means
15 of access to a debit cardholder's account that may be used to initiate
16 electronic funds transfers and may be used without unique
17 identifying information such as a personal identification number
18 to initiate access to the debit cardholder's account.

19 (d) "Accepted debit card" means a debit card that the debit
20 cardholder has requested and received or has signed, or has used,
21 or has authorized another person to use, for the purpose of
22 obtaining money, property, labor, or services. Any debit card issued
23 in renewal of, or in substitution for, an accepted debit card becomes
24 an accepted debit card when received by the debit cardholder,
25 whether the debit card is issued by the same or by a successor card
26 issuer.

27 (e) "Card issuer" means any person who issues a credit card or
28 the agent of that person for that purpose with respect to the credit
29 card.

30 (f) "Cardholder" means a natural person to whom a credit card
31 is issued for consumer credit purposes, or a natural person who
32 has agreed with the card issuer to pay consumer credit obligations
33 arising from the issuance of a credit card to another natural person.
34 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term
35 includes any person to whom a credit card is issued for any
36 purpose, including business, commercial, or agricultural use, or a
37 person who has agreed with the card issuer to pay obligations
38 arising from the issuance of that credit card to another person.

39 (g) "Debit card issuer" means any person who issues a debit
40 card or the agent of that person for that purpose.

1 (h) “Debit cardholder” means a natural person to whom a debit
2 card is issued.

3 (i) “Retailer” means every person other than a card issuer or
4 debit card issuer who furnishes money, goods, services, or anything
5 else of value ~~upon presentation of a credit card or debit card by a~~
6 ~~cardholder or debit cardholder~~. “Retailer” ~~shall~~ does not mean the
7 state, a county, city, city and county, or any other public agency.

8 (j) “Unauthorized use” means the use of a credit card or debit
9 card by a person, other than the cardholder or debit cardholder,
10 (1) who does not have actual, implied, or apparent authority for
11 that use and (2) from which the cardholder or debit cardholder
12 receives no benefit. “Unauthorized use” does not include the use
13 of a credit card or debit card by a person who has been given
14 authority by the cardholder or debit cardholder to use the credit
15 card or debit card. Any attempted termination by the cardholder
16 or debit cardholder of the person’s authority is ineffective as against
17 the card issuer or debit card issuer until the cardholder or debit
18 cardholder complies with the procedures required by the card issuer
19 or debit card issuer to terminate that authority. Notwithstanding
20 the above, following the card issuer’s or debit card issuer’s receipt
21 of oral or written notice from a cardholder or debit cardholder
22 indicating that it wishes to terminate the authority of a previously
23 authorized user of a credit card or debit card, the card issuer or
24 debit card issuer shall follow its usual procedures for precluding
25 any further use of a credit card or debit card by an unauthorized
26 person.

27 (k) ~~An “inquiry” is~~ “Inquiry” means a writing that is posted by
28 mail to the address of the card issuer or debit card issuer to which
29 payments are normally tendered, unless another address is
30 specifically indicated on the statement for that purpose, then to
31 that other address, and that is received by the card issuer or debit
32 card issuer no later than 60 days after the card issuer transmitted
33 the first periodic statement that reflects the alleged billing error,
34 and that does all of the following:

35 (1) Sets forth sufficient information to enable the card issuer or
36 debit card issuer to identify the cardholder or debit cardholder and
37 the account.

38 (2) Sufficiently identifies the billing error.

39 (3) Sets forth information providing the basis for the
40 cardholder’s or debit cardholder’s belief that the billing error exists.

1 (l) A ~~“response”~~ is ~~“Response”~~ means a writing that is
2 responsive to an inquiry and mailed to the cardholder’s or debit
3 cardholder’s address last known to the card issuer or debit card
4 issuer.

5 (m) A ~~“timely response”~~ is ~~“Timely response”~~ means a response
6 that is mailed within two complete billing cycles, but in no event
7 later than 90 days, after the card issuer or debit card issuer receives
8 an inquiry.

9 (n) A ~~“billing error”~~ ~~“Billing error”~~ means an error by omission
10 or commission in (1) posting any debit or credit, or (2) in
11 computation or similar error of an accounting nature contained in
12 a statement given to the cardholder or debit cardholder by the card
13 issuer or debit card issuer. A “billing error” does not mean any
14 dispute with respect to value, quality, or quantity of goods, services,
15 or other benefit obtained through use of a credit card or debit card.

16 (o) “Adequate notice” means a printed notice to a cardholder
17 or debit cardholder that sets forth the pertinent facts clearly and
18 conspicuously so that a person against whom it is to operate could
19 reasonably be expected to have noticed it and understood its
20 meaning.

21 (p) “Secured credit card” means any credit card issued under
22 an agreement or other instrument that pledges, hypothecates, or
23 places a lien on real property or money or other personal property
24 to secure the cardholder’s obligations to the card issuer.

25 (q) “Student credit card” means any credit card that is provided
26 to a student at a public or private college or university and is
27 provided to that student solely based on his or her enrollment in a
28 public or private university, or is provided to a student who would
29 not otherwise qualify for that credit card on the basis of his or her
30 income. A “student credit card” does not include a credit card
31 issued to a student who has a cocardholder or cosigner who would
32 otherwise qualify for a credit card other than a student credit card.

33 (r) “Retail motor fuel dispenser” means a device that dispenses
34 fuel that is used to power internal combustion engines, including
35 motor vehicle engines, that processes the sale of fuel through a
36 remote electronic payment system, and that is in a location where
37 an employee or other agent of the seller is not present.

38 (s) “Retail motor fuel payment island automated cashier” means
39 a remote electronic payment processing station that processes the
40 retail sale of fuel that is used to power internal combustion engines,

1 including motor vehicle engines, that is in a location where an
2 employee or other agent of the seller is not present, and that is
3 located in close proximity to a retail motor fuel dispenser.

4 SEC. 2. Section 1747.08 of the Civil Code is amended to read:

5 1747.08. (a) Except as provided in subdivision (c), no person,
6 firm, partnership, association, or corporation that accepts credit
7 cards or debit cards for the transaction of business shall do any of
8 the following:

9 (1) Request, or require as a condition to accepting the credit
10 card or debit card as payment in full or in part for goods or services,
11 the cardholder or debit cardholder to provide any personal
12 identification information.

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

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

24 (b) For purposes of this section “personal identification
25 information,” means information concerning the cardholder or
26 debit cardholder, other than information set forth on the credit card
27 or debit card, and including, but not limited to, the cardholder’s
28 or debit cardholder’s address and telephone number.

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

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

33 (2) Cash advance transactions.

34 (3) If any of the following applies:

35 (A) The person, firm, partnership, association, or corporation
36 accepting the credit card or debit card is contractually obligated
37 to provide personal identification information in order to complete
38 the credit card or debit card transaction.

39 (B) The person, firm, partnership, association, or corporation
40 accepting the credit card or *debit card* in a sales transaction at a

1 retail motor fuel dispenser or retail motor fuel payment island
2 automated cashier uses the ZIP Code information solely for
3 prevention of fraud, theft, or identity theft.

4 (C) The person, firm, partnership, association, or corporation
5 accepting the credit card or debit card is obligated to collect and
6 record the personal identification information by federal or state
7 law or regulation.

8 (4) If personal identification information is required for a special
9 purpose incidental but related to the individual credit card or debit
10 card transaction, including, but not limited to, information relating
11 to shipping, delivery, servicing, or installation of the purchased
12 merchandise, or for special orders.

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

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

1 a credit card or debit card who brought the action, or to the general
2 fund of whichever governmental entity brought the action to assess
3 the civil penalty.

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

18 (g) Actions for collection of civil penalties under subdivision
19 (e) and for injunctive relief under subdivision (f) may be
20 consolidated.

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

26 SEC. 3. Section 1747.08.1 is added to the Civil Code, to read:

27 1747.08.1. (a) An operator of a commercial Internet Web site
28 or online service that collects personal identifiable information for
29 a credit card or debit card transaction ~~shall not require a cardholder~~
30 ~~or a debit cardholder to provide any information other than their~~
31 ~~ZIP Code to complete the credit card or debit card transaction~~
32 ~~through the Internet~~ *may require a cardholder or debit cardholder,*
33 *as a condition to accepting a credit card or debit card as payment*
34 *in full or in part in an online transaction, to provide only the billing*
35 *ZIP Code number associated with the credit card or debit card, if*
36 *used solely for the prevention of fraud, theft, or identity theft. An*
37 *operator of a commercial Internet Web site or online service*
38 *accepting the credit card or debit card shall destroy or dispose of*
39 *the ZIP Code in a secure manner after it is no longer needed for*
40 *the prevention of fraud, theft, or identity theft. An operator of a*

1 *commercial Internet Web site or online service accepting the credit*
2 *card or debit card may not aggregate the ZIP Code with any other*
3 *personal identifiable information and may not share the ZIP Code*
4 *with any other operator of a commercial Internet Web site or online*
5 *service.*

6 (b) Subdivision (a) does not apply to any of the following:

7 (1) Instances in which the credit card or *debit card* is being used
8 as a deposit to secure payment in the event of default, loss, damage,
9 or other similar occurrence.

10 (2) Cash advance transactions.

11 (3) Instances in which ~~either~~ any of the following applies:

12 (A) An operator of a commercial Internet Web site or online
13 service is contractually obligated to provide personal identifiable
14 information in order to complete the credit card or debit card
15 transaction.

16 (B) An operator of a commercial Internet Web site or online
17 service is obligated to collect and record the personal identifiable
18 information by federal or state law or regulation.

19 (C) *An operator of a commercial Internet Web site or online*
20 *service maintains a preexisting account associated with the*
21 *cardholder or debit cardholder where the cardholder or debit*
22 *cardholder has previously provided personal identifiable*
23 *information as part of the creation of an account on the commercial*
24 *Internet Web site or online service.*

25 (4) Instances in which personal identifiable information is
26 required for a special purpose incidental but related to the
27 individual credit card or debit card transaction, including, but not
28 limited to, information relating to shipping, delivery, servicing, or
29 installation of the purchased merchandise, or for special orders.

30 (c) For purposes of this section, the following definitions apply:

31 (1) "Personal identifiable information" means individually
32 identifiable information ~~about an individual consumer~~ concerning
33 a cardholder or debit cardholder, other than information set forth
34 on the credit card or debit card, collected online by the operator
35 from that individual, and maintained by the operator in an
36 accessible form, ~~an includes any of cardholder or debit cardholder,~~
37 including, but not limited to, the following:

38 (A) ~~First and last name.~~

39 (B)

1 (A) Home or other physical address, including street name and
2 name of a city or town.

3 ~~(C)~~

4 (B) Email address.

5 ~~(D)~~

6 (C) Telephone number.

7 (2) "Operator" means a person or entity *and any and all*
8 *affiliated corporate entities* that ~~owns~~ own an Internet Web site or
9 an online service that collects and maintains personal identifiable
10 information from a ~~consumer cardholder or debit cardholder~~
11 residing in California who uses or visits the Internet Web site or
12 online service if the Internet Web site or online service is operated
13 for commercial purposes.

14 ~~(3) "Consumer" means an individual who seeks or acquires, by~~
15 ~~purchase or lease, any goods, services, money, or credit for~~
16 ~~personal, family, or household purposes.~~

17 (d) (1) A person who violates this section shall be subject to a
18 civil penalty not to exceed two hundred fifty dollars (\$250) for the
19 first violation and one thousand dollars (\$1,000) for each
20 subsequent violation, to be assessed and collected in a civil action
21 brought by the person paying with a credit card or debit card, by
22 the Attorney General, or by the district attorney or city attorney
23 of the county or city in which the violation occurred.

24 (2) Notwithstanding paragraph (1), a civil penalty shall not be
25 assessed for a violation of this section if the defendant shows, by
26 a preponderance of the evidence, that the violation was not
27 intentional and resulted from a bona fide error made
28 notwithstanding the defendant's maintenance of procedures
29 reasonably adopted to avoid that error.

30 (3) When collected, the civil penalty shall be payable, as
31 appropriate, to the person paying with a credit card or debit card
32 who brought the action, or to the general fund of the governmental
33 entity that brought the action to assess the civil penalty.

34 (e) The Attorney General, or any district attorney or city attorney
35 within his or her respective jurisdiction, may bring an action in
36 the superior court in the name of the people of the State of
37 California to enjoin violation of subdivision (a) and, upon notice
38 to the defendant of not less than five days, to temporarily restrain
39 and enjoin the violation. If it appears to the satisfaction of the court
40 that the defendant has, in fact, violated subdivision (a), the court

1 may issue an injunction restraining further violations, without
2 requiring proof that any person has been damaged by the violation.
3 In these proceedings, if the court finds that the defendant has
4 violated subdivision (a), the court may direct the defendant to pay
5 any or all costs incurred by the Attorney General, district attorney,
6 or city attorney in seeking or obtaining injunctive relief pursuant
7 to this subdivision.

8 (f) Actions for collection of civil penalties under subdivision
9 (d) and for injunctive relief under subdivision (e) may be
10 consolidated.

11 (g) This section shall apply only to credit card and debit card
12 transactions entered into on and after January 1, 2014. This section
13 shall not be construed to affect any civil action that was filed before
14 January 1, 2014.

15 SEC. 4. Section 1747.09 of the Civil Code is amended to read:

16 1747.09. (a) Except as provided in this section, no person,
17 firm, partnership, association, corporation, or limited liability
18 company that accepts credit or debit cards for the transaction of
19 business shall display more than the last five digits of the credit
20 or debit card account number or the expiration date upon any of
21 the following:

22 (1) Any receipt provided to the cardholder.

23 (2) Any receipt retained by the person, firm, partnership,
24 association, corporation, or limited liability company.

25 (3) Any receipt retained by the person, firm, partnership,
26 association, corporation, or limited liability company that at the
27 time of the purchase, exchange, refund, or return, is not signed by
28 the cardholder, because the cardholder or debit cardholder used a
29 personal identification number to complete the transaction.

30 (b) This section shall apply only to receipts that include a credit
31 or debit card account number that are electronically printed and
32 shall not apply to transactions in which the sole means of recording
33 the person's credit or debit card account number is by handwriting
34 or by an imprint or copy of the credit or debit card.

35 (c) This section shall not apply to documents, other than the
36 receipts described in paragraphs (1) to (3), inclusive, of subdivision
37 (a), used for internal administrative purposes.

38 (d) Paragraphs (2) and (3) of subdivision (a) shall become
39 operative on January 1, 2009.

40 SEC. 5. Section 1748.30 of the Civil Code is amended to read:

1 1748.30. For purposes of this title, the following definitions
2 shall apply:

3 (a) "Accepted debit card" means any debit card which the debit
4 cardholder has requested and received or has signed, or has used,
5 or has authorized another person to use, for the purpose of
6 obtaining money, property, labor, or services. Any debit card issued
7 in renewal of, or in substitution for, an accepted debit card becomes
8 an accepted debit card when received by the debit cardholder,
9 whether the debit card is issued by the same or by a successor card
10 issuer.

11 (b) "Account" means a demand deposit (checking), savings, or
12 other consumer asset account, other than an occasional or incidental
13 credit balance in a credit plan, established primarily for personal,
14 family, or household purposes.

15 (c) "Adequate notice" has the same meaning as found in
16 subdivision (o) of Section 1747.02.

17 (d) "Debit card" means an accepted debit card or other means
18 of access to a debit cardholder's account that may be used to initiate
19 electronic funds transfers and may be used without unique
20 identifying information such as a personal identification number
21 to initiate access to the debit cardholder's account.

22 (e) "Debit card issuer" means any person who issues a debit
23 card or the agent of that person for that purpose.

24 (f) "Debit cardholder" means a natural person to whom a debit
25 card is issued.

26 (g) "Unauthorized use" means the use of a debit card by a
27 person, other than the debit cardholder, to initiate an electronic
28 fund transfer from the debit cardholder's account without actual
29 authority to initiate the transfer and from which the debit cardholder
30 receives no benefit. The term does not include an electronic fund
31 transfer initiated in any of the following manners:

32 (1) By a person who was furnished the debit card to the debit
33 cardholder's account by the debit cardholder, unless the debit
34 cardholder has notified the debit card issuer that transfers by that
35 person are no longer authorized.

36 (2) With fraudulent intent by the debit cardholder or any person
37 acting in concert with the debit cardholder.

38 (3) By the debit card issuer or its employee.

39 SEC. 6. Section 99030 of the Education Code is amended to
40 read:

1 99030. The Regents of the University of California and the
2 governing body of each accredited private or independent college
3 or university in the state are requested to, and the Trustees of the
4 California State University and the Board of Governors of the
5 California Community Colleges shall, adopt policies to regulate
6 the marketing practices used on campuses by credit card
7 companies. In adopting the policies, it is the intent of the
8 Legislature that those entities consider including all of the
9 following requirements:

10 (a) That sites at which student credit cards are marketed be
11 registered with the campus administration and that consideration
12 be given to limiting the number of sites allowed on a campus.

13 (b) That marketers of student credit cards be prohibited from
14 offering gifts to students for filling out credit card applications.

15 (c) That credit card and debt education and counseling sessions
16 become a regular part of campus orientation of new students. For
17 purposes of this section, colleges and universities shall utilize
18 existing debt education materials prepared by nonprofit entities
19 and thus not incur the expense of preparing new materials.

20 (d) For the purposes of this chapter, “student credit card” has
21 the meaning set forth in subdivision (q) of Section 1747.02 of the
22 Civil Code.