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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, *and* 1747.09, ~~and 1748.30~~ of 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~~ *regulates* the provision of credit and the use of credit cards. ~~Existing state law~~ *The Song-Beverly Credit Card Act of 1971* generally 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~~

The bill would permit the collection of personal identification information if the credit card or debit card is being used as part of a layaway transaction. The bill would permit a person, firm, partnership, association, or corporation, including the operator of a commercial Internet Web site or online service, accepting the credit card or debit card in a business transaction to collect personal identification information, as defined, if used solely for the detection, investigation, or prevention of fraud, theft, or identity theft, criminal activity, or enforcement of terms of sale. The bill would require that operator to destroy or dispose of the personal identification information so collected and would prohibit the operator from sharing the personal identification 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 also permit the collection of personal identification information if the cardholder is advised, or if it is apparent, that the provision of personal identification information is not a condition to accepting the credit card or debit card as payment in full or in part for goods or services and the cardholder has consented to the collection of the personal identification information.

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.

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

21 (b) “Accepted credit card” means any credit card that the
22 cardholder has requested or applied for and received or has signed,
23 or has used, or has authorized another person to use, for the purpose
24 of obtaining money, property, labor, or services on credit. Any
25 credit card issued in renewal of, or in substitution for, an accepted
26 credit card becomes an accepted credit card when received by the
27 cardholder, whether the credit card is issued by the same or a
28 successor card issuer.

29 ~~(c) “Debit card” means an accepted debit card or other means~~
30 ~~of access to a debit cardholder’s account that may be used to initiate~~
31 ~~electronic funds transfers and may be used without unique~~
32 ~~identifying information such as a personal identification number~~
33 ~~to initiate access to the debit cardholder’s account. *has the same*~~
34 ~~*meaning as defined in Section 1748.30.*~~

35 ~~(d) “Accepted debit card” means a debit card that the debit~~
36 ~~cardholder has requested and received or has signed, or has used,~~
37 ~~or has authorized another person to use, for the purpose of~~
38 ~~obtaining money, property, labor, or services. Any debit card issued~~

1 ~~in renewal of, or in substitution for, an accepted debit card becomes~~
2 ~~an accepted debit card when received by the debit cardholder,~~
3 ~~whether the debit card is issued by the same or by a successor card~~
4 ~~issuer. *has the same meaning as defined in Section 1748.30.*~~

5 (e) “Card issuer” means any person who issues a credit card or
6 the agent of that person for that purpose with respect to the credit
7 card.

8 (f) “Cardholder” means a natural person to whom a credit card
9 is issued for consumer credit purposes, or a natural person who
10 has agreed with the card issuer to pay consumer credit obligations
11 arising from the issuance of a credit card to another natural person.
12 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term
13 includes any person to whom a credit card is issued for any
14 purpose, including business, commercial, or agricultural use, or a
15 person who has agreed with the card issuer to pay obligations
16 arising from the issuance of that credit card to another person.

17 (g) ~~“Debit card issuer” means any person who issues a debit~~
18 ~~card or the agent of that person for that purpose. *has the same*~~
19 ~~*meaning as defined in Section 1748.30.*~~

20 (h) ~~“Debit cardholder” means a natural person to whom a debit~~
21 ~~card is issued. *has the same meaning as defined in Section 1748.30.*~~

22 (i) “Retailer” means every person other than a card issuer or
23 debit card issuer who furnishes money, goods, services, or anything
24 else of value. “Retailer” does not mean the state, a county, city,
25 city and county, or any other public agency.

26 (j) “Unauthorized use” means the use of a credit card ~~or debit~~
27 ~~card~~ by a person, other than the cardholder ~~or debit cardholder,~~
28 (1) who does not have actual, implied, or apparent authority for
29 that use and (2) from which the cardholder ~~or debit cardholder~~
30 receives no benefit. “Unauthorized use” does not include the use
31 of a credit card ~~or debit card~~ by a person who has been given
32 authority by the cardholder ~~or debit cardholder~~ to use the credit
33 card ~~or debit card~~. Any attempted termination by the cardholder
34 ~~or debit cardholder~~ of the person’s authority is ineffective as against
35 the card issuer ~~or debit card issuer~~ until the cardholder ~~or debit~~
36 ~~cardholder~~ complies with the procedures required by the card issuer
37 ~~or debit card issuer~~ to terminate that authority. Notwithstanding
38 the above, following the card issuer’s ~~or debit card issuer’s~~ receipt
39 of oral or written notice from a cardholder ~~or debit cardholder~~
40 indicating that it wishes to terminate the authority of a previously

1 authorized user of a credit card ~~or debit card~~, the card issuer ~~or~~
2 ~~debit card issuer~~ shall follow its usual procedures for precluding
3 any further use of a credit card ~~or debit card~~ by an unauthorized
4 person.

5 (k) “Inquiry” means a writing that is posted by mail to the
6 address of the card issuer ~~or debit card issuer~~ to which payments
7 are normally tendered, unless another address is specifically
8 indicated on the statement for that purpose, then to that other
9 address, and that is received by the card issuer ~~or debit card issuer~~
10 no later than 60 days after the card issuer transmitted the first
11 periodic statement that reflects the alleged billing error, and that
12 does all of the following:

13 (1) Sets forth sufficient information to enable the card issuer ~~or~~
14 ~~debit card issuer~~ to identify the cardholder ~~or debit cardholder~~ and
15 the account.

16 (2) Sufficiently identifies the billing error.

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

19 (l) “Response” means a writing that is responsive to an inquiry
20 and mailed to the cardholder’s ~~or debit cardholder’s~~ address last
21 known to the card issuer ~~or debit card issuer~~.

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

25 (n) “Billing error” means an error by omission or commission
26 in (1) posting any debit or credit, or (2) in computation or similar
27 error of an accounting nature contained in a statement given to the
28 cardholder ~~or debit cardholder~~ by the card issuer ~~or debit card~~
29 issuer. A “billing error” does not mean any dispute with respect
30 to value, quality, or quantity of goods, services, or other benefit
31 obtained through use of a credit card ~~or debit card~~.

32 (o) “Adequate notice” means a printed notice to a cardholder
33 ~~or debit cardholder~~ that sets forth the pertinent facts clearly and
34 conspicuously so that a person against whom it is to operate could
35 reasonably be expected to have noticed it and understood its
36 meaning.

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

1 (q) “Student credit card” means any credit card that is provided
2 to a student at a public or private college or university and is
3 provided to that student solely based on his or her enrollment in a
4 public or private university, or is provided to a student who would
5 not otherwise qualify for that credit card on the basis of his or her
6 income. A “student credit card” does not include a credit card
7 issued to a student who has a cocardholder or cosigner who would
8 otherwise qualify for a credit card other than a student credit card.

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

14 (s) “Retail motor fuel payment island automated cashier” means
15 a remote electronic payment processing station that processes the
16 retail sale of fuel that is used to power internal combustion engines,
17 including motor vehicle engines, that is in a location where an
18 employee or other agent of the seller is not present, and that is
19 located in close proximity to a retail motor fuel dispenser.

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

21 1747.08. (a) Except as provided in subdivision (c), no person,
22 firm, partnership, association, or corporation that accepts credit
23 cards or debit cards for the transaction of business shall do any of
24 the following, whether in person or through an operator of a
25 commercial Internet Web site or online service:

26 (1) Request, or require as a condition to accepting the credit
27 card or debit card as payment in full or in part for goods or services,
28 the cardholder or debit cardholder to provide any personal
29 identification information.

30 (2) Request, or require as a condition to accepting the credit
31 card or debit card as payment in full or in part for goods or services,
32 the cardholder or debit cardholder to provide personal identification
33 information, which the person, firm, partnership, association, or
34 corporation accepting the credit card or debit card collects, causes
35 to be collected, or otherwise records upon the credit card or debit
36 card transaction template or otherwise.

37 (3) Utilize, in any credit card or debit card transaction, a credit
38 card or debit card template which contains spaces specifically
39 designated for filling in any personal identification information of
40 the cardholder or debit cardholder.

1 (b) For purposes of this section, the following terms have the
2 following meanings:

3 (1) “Personal identification information,” means information
4 concerning the cardholder or debit cardholder, other than
5 information set forth on the credit card or debit card, and including,
6 but not limited to, the cardholder’s or debit cardholder’s address
7 and telephone number.

8 (2) “Operator” means a person or entity ~~and any and all affiliated~~
9 ~~corporate entities that own~~ *owns* an Internet Web site or online
10 service and that accepts a credit card or debit card for the
11 transaction of business from a cardholder or debit cardholder
12 residing in California. *“Operator” does not mean the state, a*
13 *county, city, city and county, or any other public agency.*

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

15 (1) If the credit card or debit card is being used as a deposit to
16 secure payment in the event of default, loss, damage, or other
17 similar occurrence, *or as part of a layaway transaction.*

18 (2) Cash advance transactions.

19 (3) If any of the following applies:

20 (A) The person, firm, partnership, association, or corporation
21 accepting the credit card or debit card is contractually obligated
22 to provide personal identification information in order to complete
23 the credit card or debit card transaction.

24 (B) The person, firm, partnership, association, or corporation
25 accepting the credit card or debit card in a sales transaction at a
26 retail motor fuel dispenser or retail motor fuel payment island
27 automated cashier uses the ZIP Code information solely for
28 prevention of fraud, theft, or identity theft.

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

33 (D) The person, firm, partnership, association, or corporation,
34 including the operator of a commercial Internet Web site or online
35 service, accepting the credit card or debit card in a business
36 transaction uses the personal identification information ~~solely~~ for
37 the *detection, investigation, or prevention of fraud, theft, or identity*
38 ~~theft. An operator of a commercial Web Site or online service~~
39 ~~accepting the credit card or debit card shall destroy or dispose of~~
40 ~~the personal identification information in a secure manner after it~~

1 is no longer needed for the prevention of fraud, theft, or identity
2 theft. An operator of a commercial Web Site or online service may
3 not share the personal identification information with any other
4 operator of a commercial Internet Web site or online service. *theft,*
5 *criminal activity, or enforcement of terms of sale.*

6 (E) *The cardholder is advised, or it is apparent, that the*
7 *provision of personal identification information is not a condition*
8 *to accepting the credit card or debit card as payment in full or in*
9 *part for goods or services and the cardholder has consented to*
10 *the collection of the personal identification information.*

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

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

31 (e) This section does not prohibit any person, firm, partnership,
32 association, or corporation, including the operator of a commercial
33 Internet Web site or online service, from collecting *or using*
34 personal identification information if the operator ~~maintains~~ *or its*
35 *affiliated corporate entities maintain* an account associated with
36 the credit cardholder or debit cardholder and if the cardholder
37 provides personal information as part of *the establishment,*
38 *updating, or maintenance of* that account.

39 (f) Any person who violates this section shall be subject to a
40 civil penalty not to exceed two hundred fifty dollars (\$250) for the

1 first violation and one thousand dollars (\$1,000) for each
2 subsequent violation, to be assessed and collected in a civil action
3 brought by the person paying with a credit card or debit card, by
4 the Attorney General, or by the district attorney or city attorney
5 of the county or city in which the violation occurred. However,
6 no civil penalty shall be assessed for a violation of this section if
7 the defendant shows by a preponderance of the evidence that the
8 violation was not intentional and resulted from a bona fide error
9 made notwithstanding the defendant's maintenance of procedures
10 reasonably adopted to avoid that error. When collected, the civil
11 penalty shall be payable, as appropriate, to the person paying with
12 a credit card or debit card who brought the action, or to the general
13 fund of whichever governmental entity brought the action to assess
14 the civil penalty.

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

29 (h) Actions for collection of civil penalties under subdivision
30 (f) and for injunctive relief under subdivision (g) may be
31 consolidated.

32 (i) The changes made to this section by Chapter 458 of the
33 Statutes of 1995 apply only to credit card transactions entered into
34 on and after January 1, 1996. Nothing in those changes shall be
35 construed to affect any civil action which was filed before January
36 1, 1996.

37 SEC. 3. Section 1747.09 of the Civil Code is amended to read:
38 1747.09. (a) Except as provided in this section, no person,
39 firm, partnership, association, corporation, or limited liability
40 company that accepts credit or debit cards for the transaction of

1 business shall display more than the last five digits of the credit
2 or debit card account number or the expiration date upon any of
3 the following:

- 4 (1) Any receipt provided to the cardholder.
- 5 (2) Any receipt retained by the person, firm, partnership,
6 association, corporation, or limited liability company.
- 7 (3) Any receipt retained by the person, firm, partnership,
8 association, corporation, or limited liability company that at the
9 time of the purchase, exchange, refund, or return, is not signed by
10 the cardholder, because the cardholder or debit cardholder used a
11 personal identification number to complete the transaction.

12 (b) This section shall apply only to receipts that include a credit
13 or debit card account number that are electronically printed and
14 shall not apply to transactions in which the sole means of recording
15 the person’s credit or debit card account number is by handwriting
16 or by an imprint or copy of the credit or debit card.

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

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

22 ~~SEC. 4. Section 1748.30 of the Civil Code is amended to read:~~
23 ~~1748.30. For purposes of this title, the following definitions~~
24 ~~shall apply:~~

25 ~~(a) “Accepted debit card” means any debit card which the debit~~
26 ~~cardholder has requested and received or has signed, or has used,~~
27 ~~or has authorized another person to use, for the purpose of~~
28 ~~obtaining money, property, labor, or services. Any debit card issued~~
29 ~~in renewal of, or in substitution for, an accepted debit card becomes~~
30 ~~an accepted debit card when received by the debit cardholder,~~
31 ~~whether the debit card is issued by the same or by a successor card~~
32 ~~issuer.~~

33 ~~(b) “Account” means a demand deposit (checking), savings, or~~
34 ~~other consumer asset account, other than an occasional or incidental~~
35 ~~credit balance in a credit plan, established primarily for personal,~~
36 ~~family, or household purposes.~~

37 ~~(c) “Adequate notice” has the same meaning as found in~~
38 ~~subdivision (e) of Section 1747.02.~~

39 ~~(d) “Debit card” means an accepted debit card or other means~~
40 ~~of access to a debit cardholder’s account that may be used to initiate~~

1 ~~electronic funds transfers and may be used without unique~~
2 ~~identifying information such as a personal identification number~~
3 ~~to initiate access to the debit cardholder's account.~~

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

6 ~~(f) "Debit cardholder" means a natural person to whom a debit~~
7 ~~card is issued.~~

8 ~~(g) "Unauthorized use" means the use of a debit card by a~~
9 ~~person, other than the debit cardholder, to initiate an electronic~~
10 ~~fund transfer from the debit cardholder's account without actual~~
11 ~~authority to initiate the transfer and from which the debit cardholder~~
12 ~~receives no benefit. The term does not include an electronic fund~~
13 ~~transfer initiated in any of the following manners:~~

14 ~~(1) By a person who was furnished the debit card to the debit~~
15 ~~cardholder's account by the debit cardholder, unless the debit~~
16 ~~cardholder has notified the debit card issuer that transfers by that~~
17 ~~person are no longer authorized.~~

18 ~~(2) With fraudulent intent by the debit cardholder or any person~~
19 ~~acting in concert with the debit cardholder.~~

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

21 ~~SEC. 5.~~

22 *SEC. 4.* Section 99030 of the Education Code is amended to
23 read:

24 99030. The Regents of the University of California and the
25 governing body of each accredited private or independent college
26 or university in the state are requested to, and the Trustees of the
27 California State University and the Board of Governors of the
28 California Community Colleges shall, adopt policies to regulate
29 the marketing practices used on campuses by credit card
30 companies. In adopting the policies, it is the intent of the
31 Legislature that those entities consider including all of the
32 following requirements:

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

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

38 (c) That credit card and debt education and counseling sessions
39 become a regular part of campus orientation of new students. For
40 purposes of this section, colleges and universities shall utilize

- 1 existing debt education materials prepared by nonprofit entities
- 2 and thus not incur the expense of preparing new materials.
- 3 (d) For the purposes of this chapter, “student credit card” has
- 4 the meaning set forth in subdivision (q) of Section 1747.02 of the
- 5 Civil Code.

O