

AMENDED IN ASSEMBLY JUNE 15, 2014  
AMENDED IN SENATE JANUARY 28, 2014  
AMENDED IN SENATE MAY 24, 2013  
AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 383**

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**Introduced by Senator Jackson**

February 20, 2013

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An act to amend Sections 1747.02 and 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Jackson. Credit cards: personal information.

Existing state and federal law regulates the provision of credit and the use of credit cards. The Song-Beverly Credit Card Act of 1971 generally regulates credit card transactions and prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder write any personal identification information, as defined, upon the credit card transaction form or otherwise. Existing law prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder provide his or her personal identification information to the person or entity to be written or caused to be written upon the credit card transaction form or otherwise. Notwithstanding those provisions, existing law authorizes a person or entity that accepts credit cards for the transaction of business to require the cardholder, as a condition to accepting the credit card, to provide reasonable forms of positive identification, which may include a driver's license or a

California state identification card, provided that the information is not written or recorded on the credit card transaction form or otherwise. Existing law authorizes the use of ZIP Code information in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island with an automated cashier that uses the ZIP Code information solely for prevention of fraud, theft, or identity theft.

This bill would authorize a person or entity that accepts credit cards in an online transaction involving an electronic downloadable product, as defined, to require a cardholder, as a condition to accepting a credit card as payment in full or in part, in an online transaction involving an electronic downloadable product, to provide the billing ZIP Code and street address number associated with the credit card, if used solely for the detection, investigation, or prevention of fraud, theft, identity theft, or criminal activity, or enforcement of terms of sale. The bill would authorize the person or entity accepting the credit card to require a cardholder, as a condition to accepting a credit card as payment in full or in part, in an online transaction involving an electronic downloadable product, to provide additional personal *identification* information, as defined, if it requires that information for the detection, investigation, or prevention of fraud, theft, identity theft, or criminal activity, or for enforcement of terms of sale, and the additional personal *identification* information is used solely for those purposes. The bill would require that person or entity to destroy or dispose of the ZIP Code, street address number, and any additional personal *identification* information it requires in a secure manner after it is no longer needed for those purposes. The bill would prohibit that person or entity from aggregating the ZIP Code, street address number, or additional personal information it requires with any other personal identification information, as defined, information and from sharing the ZIP Code, street address number, or additional personal *identification* information it requires with any other person or entity, as specified. The bill, notwithstanding the foregoing provisions, would also authorize a person or entity accepting a credit card in an online transaction involving an electronic downloadable product to request, but not require, personal information if the cardholder actively elects to provide the personal information by opting in to the collection of the information and specified conditions are met *require a consumer to establish an account as a condition for purchase of the product and to provide personally identifiable information in connection with that account, as specified. The bill would also authorize a consumer, concurrent with completing a transaction for an*

*electronically downloadable product, to elect to opt in to the collection and use of personally identifiable information provided certain disclosures are made and he or she is permitted to opt out prior to completing the transaction.*

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. (a) The Legislature finds and declares all of the  
2 following:

3 (1) The Song-Beverly Credit Card Act of 1971 establishes  
4 privacy and other protections for cardholders. These protections  
5 prohibit a person, firm, partnership, association, or corporation  
6 from requesting or requiring a cardholder to provide personal  
7 identification information in a credit card transaction, with  
8 specified, limited exceptions.

9 (2) The Song-Beverly Credit Card Act of 1971 applies to credit  
10 card transactions without reference to the method, platform, or  
11 technology used to process or to complete the transaction.

12 (3) The California Supreme Court, in *Apple Inc. v. Superior*  
13 *Court* (2013) 56 Cal.4th 128, declared the Song-Beverly Credit  
14 Card Act of 1971 not applicable to an online transaction involving  
15 a downloadable product. As a result, the privacy protections of the  
16 act do not apply to those transactions.

17 (b) It is the intent of the Legislature to advance privacy  
18 protections by limiting the scope of personally identifiable  
19 information that may be required to be collected for an online  
20 transaction involving an electronic downloadable product.

21 SEC. 2. Section 1747.02 of the Civil Code is amended to read:  
22 1747.02. As used in this title:

23 (a) “Credit card” means any card, plate, coupon book, or other  
24 single credit device existing for the purpose of being used from  
25 time to time upon presentation to obtain money, property, labor,  
26 or services on credit. “Credit card” does not mean any of the  
27 following:

28 (1) Any single credit device used to obtain telephone property,  
29 labor, or services in any transaction under public utility tariffs.

30 (2) Any device that may be used to obtain credit pursuant to an  
31 electronic fund transfer, but only if the credit is obtained under an

1 agreement between a consumer and a financial institution to extend  
2 credit when the consumer's asset account is overdrawn or to  
3 maintain a specified minimum balance in the consumer's asset  
4 account.

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

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

18 (c) "Card issuer" means any person who issues a credit card or  
19 the agent of that person for that purpose with respect to the credit  
20 card.

21 (d) "Cardholder" means a natural person to whom a credit card  
22 is issued for consumer credit purposes, or a natural person who  
23 has agreed with the card issuer to pay consumer credit obligations  
24 arising from the issuance of a credit card to another natural person.  
25 For purposes of Sections 1747.05, 1747.10, and 1747.20, the term  
26 includes any person to whom a credit card is issued for any  
27 purpose, including business, commercial, or agricultural use, or a  
28 person who has agreed with the card issuer to pay obligations  
29 arising from the issuance of that credit card to another person.

30 (e) "Retailer" means every person other than a card issuer who  
31 furnishes money, goods, services, or anything else of value upon  
32 presentation of a credit card by a cardholder. "Retailer" shall not  
33 mean the state, a county, city, city and county, or any other public  
34 agency.

35 (f) "Unauthorized use" means the use of a credit card by a  
36 person, other than the cardholder, (1) who does not have actual,  
37 implied, or apparent authority for that use and (2) from which the  
38 cardholder receives no benefit. "Unauthorized use" does not include  
39 the use of a credit card by a person who has been given authority  
40 by the cardholder to use the credit card. Any attempted termination

1 by the cardholder of the person’s authority is ineffective as against  
2 the card issuer until the cardholder complies with the procedures  
3 required by the card issuer to terminate that authority.  
4 Notwithstanding the above, following the card issuer’s receipt of  
5 oral or written notice from a cardholder indicating that the  
6 cardholder wishes to terminate the authority of a previously  
7 authorized user of a credit card, the card issuer shall follow its  
8 usual procedures for precluding any further use of a credit card by  
9 an unauthorized person.

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

17 (1) Sets forth sufficient information to enable the card issuer to  
18 identify the cardholder and the account.

19 (2) Sufficiently identifies the billing error.

20 (3) Sets forth information providing the basis for the  
21 cardholder’s belief that the billing error exists.

22 (h) “Response” means a writing that is responsive to an inquiry  
23 and mailed to the cardholder’s address last known to the card  
24 issuer.

25 (i) “Timely response” means a response that is mailed within  
26 two complete billing cycles, but in no event later than 90 days,  
27 after the card issuer receives an inquiry.

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

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

38 (l) “Secured credit card” means any credit card issued under an  
39 agreement or other instrument that pledges, hypothecates, or places

1 a lien on real property or money or other personal property to  
2 secure the cardholder's obligations to the card issuer.

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

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

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

22 (p) "Online transaction involving an electronic downloadable  
23 product" means a credit card transaction for a product, service,  
24 subscription, or any other consideration, in which the product,  
25 service, subscription, or consideration is provided by means of a  
26 download to a computer, telephone, or other electronic device.

27 SEC. 3. Section 1747.08 of the Civil Code is amended to read:

28 1747.08. (a) Except as provided in subdivision (c), a person,  
29 firm, partnership, association, or corporation that accepts credit  
30 cards for the transaction of business shall not do any of the  
31 following:

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

36 (2) Request, or require as a condition to accepting the credit  
37 card as payment in full or in part for goods or services, the  
38 cardholder to provide personal identification information, which  
39 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 that  
4 contains preprinted spaces specifically designated for filling in  
5 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 fuel  
21 dispenser or retail motor fuel payment island automated cashier  
22 uses the ZIP Code information solely for prevention of fraud, theft,  
23 or identity theft.

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

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

33 (d) (1) This section does not prohibit any person, firm,  
34 partnership, association, or corporation from requiring the  
35 cardholder, as a condition to accepting the credit card as payment  
36 in full or in part, for goods or services, to provide reasonable forms  
37 of positive identification, which may include a driver’s license or  
38 a California state identification card, or where one of these is not  
39 available, another form of photo identification, provided that none  
40 of the information contained thereon is written or recorded on the

1 credit card transaction form or otherwise. If the cardholder pays  
2 for the transaction with a credit card number and does not make  
3 the credit card available upon request to verify the number, the  
4 cardholder's driver's license number or identification card number  
5 may be recorded on the credit card transaction form or otherwise.  
6 (2) Notwithstanding subdivision (a), a person, firm, partnership,  
7 association, or corporation accepting the credit card may require  
8 a cardholder, as a condition to accepting a credit card as payment  
9 in full or in part, in an online transaction involving an electronic  
10 downloadable product, to provide ~~the billing ZIP Code number~~  
11 ~~and numerical portion of the street address associated with the~~  
12 ~~credit card, if used solely for the detection, investigation, or~~  
13 ~~prevention of fraud, theft, identity theft, or criminal activity, or~~  
14 ~~for enforcement of terms of sale. The person, firm, partnership,~~  
15 ~~association, or corporation accepting the credit card may require~~  
16 ~~a cardholder, as a condition to accepting a credit card as payment~~  
17 ~~in full or in part, in an online transaction involving an electronic~~  
18 ~~downloadable product, to provide additional personal *identification*~~  
19 ~~information, if it requires that information for the detection,~~  
20 ~~investigation, or prevention of fraud, theft, identity theft, or~~  
21 ~~criminal activity, or for enforcement of terms of sale, and the~~  
22 ~~additional personal *identification* information is used solely for~~  
23 ~~the detection, investigation, or prevention of fraud, theft, identity~~  
24 ~~theft, or criminal activity, or for enforcement of terms of sale. *those*~~  
25 ~~*purposes.* The person, firm, partnership, association, or corporation~~  
26 ~~accepting the credit card shall destroy or dispose of the ZIP Code,~~  
27 ~~street address number, and any additional personal *identification*~~  
28 ~~information it requires pursuant to this subdivision in a secure~~  
29 ~~manner after it is no longer needed for the detection, investigation,~~  
30 ~~or prevention of fraud, theft, identity theft, or criminal activity, or~~  
31 ~~for enforcement of terms of sale *purposes authorized under this*~~  
32 ~~*paragraph.* The person, firm, partnership, association, or~~  
33 ~~corporation accepting the credit card shall not aggregate the ZIP~~  
34 ~~Code, street address number, or additional personal *identification*~~  
35 ~~information it requires pursuant to this subdivision with any other~~  
36 ~~personal identification information and shall not share the ZIP~~  
37 ~~Code, street address number, or additional personal *identification*~~  
38 ~~information it requires pursuant to this subdivision with any other~~  
39 ~~person, firm, partnership, association, or corporation unless it is~~  
40 ~~required to do so by state or federal law, or is contractually~~

1 obligated to share the information with another entity to verify the  
2 information, complete the transaction, or for the detection,  
3 investigation, or prevention of fraud, theft, identity theft, or  
4 criminal activity, or for enforcement of terms of sale.

5 ~~(3) (A) Notwithstanding subdivision (a), a person, firm,~~  
6 ~~partnership, association, or corporation may request, but not~~  
7 ~~require, personal information from a cardholder as part of an online~~  
8 ~~transaction involving an electronic downloadable product, as long~~  
9 ~~as the cardholder actively elects to provide the personal information~~  
10 ~~by opting in to the collection of the information and is~~  
11 ~~contemporaneously notified of all of the following:~~

12 ~~(i) That providing the information is not required to complete~~  
13 ~~the transaction.~~

14 ~~(ii) The purpose of the request.~~

15 ~~(iii) The intended use of the information.~~

16 ~~(B) A cardholder shall be provided with an additional~~  
17 ~~opportunity to opt out of the collection of the information before~~  
18 ~~the online transaction involving an electronic downloadable product~~  
19 ~~is completed.~~

20 *(3) (A) Notwithstanding subdivision (a), a person, firm,*  
21 *partnership, association, or corporation that provides an electronic*  
22 *downloadable product may require a consumer to establish an*  
23 *account as a condition for the purchase of an electronic*  
24 *downloadable product and may require a consumer to provide*  
25 *personally identifiable information to establish, maintain, or update*  
26 *that account. Except as provided in subparagraph (B), the personal*  
27 *identification information collected pursuant to this subdivision*  
28 *may only be used for the establishment, maintenance, or updating*  
29 *of the account, or to process a credit card transaction.*

30 *(B) (i) Concurrent with completing a transaction for an*  
31 *electronically downloadable product, or when establishing an*  
32 *account pursuant to subparagraph (A), a cardholder may elect to*  
33 *provide personally identifiable information by opting in to the*  
34 *collection and use of that information if he or she is*  
35 *contemporaneously notified of the following:*

36 *(I) That providing the information is not required to complete*  
37 *the transaction.*

38 *(II) The purpose of the request.*

39 *(III) The intended use of the information.*

1     (ii) *A cardholder shall be provided with an opportunity to opt*  
2 *out of the collection of the information before the online transaction*  
3 *involving an electronic downloadable product is completed.*

4     (e) Any person who violates this section shall be subject to a  
5 civil penalty not to exceed two hundred fifty dollars (\$250) for the  
6 first violation and one thousand dollars (\$1,000) for each  
7 subsequent violation, to be assessed and collected in a civil action  
8 brought by the person paying with a credit card, by the Attorney  
9 General, or by the district attorney or city attorney of the county  
10 or city in which the violation occurred. However, no civil penalty  
11 shall be assessed for a violation of this section if the defendant  
12 shows by a preponderance of the evidence that the violation was  
13 not intentional and resulted from a bona fide error made  
14 notwithstanding the defendant's maintenance of procedures  
15 reasonably adopted to avoid that error. When collected, the civil  
16 penalty shall be payable, as appropriate, to the person paying with  
17 a credit card who brought the action, or to the general fund of  
18 whichever governmental entity brought the action to assess the  
19 civil penalty.

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

34     (g) Actions for collection of civil penalties under subdivision  
35 (e) and for injunctive relief under subdivision (f) may be  
36 consolidated.

37     (h) The changes made to this section by Chapter 458 of the  
38 Statutes of 1995 apply only to credit card transactions entered into  
39 on and after January 1, 1996. Nothing in those changes shall be

1 construed to affect any civil action that was filed before January  
2 1, 1996.

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