

AMENDED IN ASSEMBLY APRIL 20, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1316**

**Introduced by Assembly Member Bustamante**

February 23, 1995

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~~An act to amend Sections 17201 and 17506 of the Business and Professions Code, relating to limited liability companies. An act to amend Sections 1725 and 1747.8 of the Civil Code, relating to consumer protection.~~

LEGISLATIVE COUNSEL'S DIGEST

AB 1316, as amended, Bustamante. ~~Limited liability companies~~ Consumer protection.

(1) Existing law prohibits, with certain exceptions, any person accepting a negotiable instrument as payment for goods or services sold or leased at retail from, among other things, requiring as a condition of acceptance that the person paying with the negotiable instrument provide a credit card as a means of identification and from recording the credit card number. Existing law, however, permits the retailer to require a purchaser to produce other reasonable forms of identification as a condition of acceptance of the negotiable instrument.

This bill would clarify that this identification may include photo identification.

(2) Existing law prohibits, with certain exceptions, any person, firm, partnership, association, or corporation, which accepts credit cards, from requesting or requiring personal

identification information concerning the cardholder, as specified, as a condition of acceptance of a credit card.

This bill would exempt the person, firm, partnership, association, or corporation from this prohibition if obligated to collect and record the personal identification information by federal law or regulation or if the purchaser pays for the transaction with a credit card number and does not make the credit card available upon request to verify this number.

(3) Existing law also prohibits the utilization, in any credit card transaction, of a credit card form that contains preprinted spaces specifically designated for filling in any personal identification information.

This bill would authorize the use of these credit card forms if the preprinted spaces for personal identification information are not filled in.

~~Existing law provides for the creation of limited liability companies.~~

~~This bill would, with respect to certain provisions governing unfair competition and false advertising, define “person” to include limited liability companies.~~

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 17201 of the Business and~~  
2 ~~SECTION 1. Section 1725 of the Civil Code is~~  
3 ~~amended to read:~~

4 1725. (a) Unless permitted under subdivision (c), no  
5 person accepting a negotiable instrument as payment in  
6 full or in part for goods or services sold or leased at retail  
7 shall do any of the following:

8 (1) Require the person paying with a negotiable  
9 instrument to provide a credit card as a condition of  
10 acceptance of the negotiable instrument, or record the  
11 number of the credit card.

12 (2) Require, as a condition of acceptance of the  
13 negotiable instrument, or cause the person paying with  
14 a negotiable instrument to sign a statement agreeing to



1 allow his or her credit card to be charged to cover the  
2 negotiable instrument if returned as no good.

3 (3) Record a credit card number in connection with  
4 any part of the transaction described in this subdivision.

5 (4) Contact a credit card issuer to determine if the  
6 amount of any credit available to the person paying with  
7 a negotiable instrument will cover the amount of the  
8 negotiable instrument.

9 (b) For the purposes of this section, the following  
10 terms have the following meanings:

11 (1) “Check guarantee card” means a card issued by a  
12 financial institution, evidencing an agreement under  
13 which the financial institution will not dishonor a check  
14 drawn upon itself, under the terms and conditions of the  
15 agreement.

16 (2) “Credit card” has the meaning specified in Section  
17 1747.02, and does not include a check guarantee card or  
18 a card that is both a credit card and a check guarantee  
19 card.

20 (3) “Negotiable instrument” has the meaning  
21 specified in Section 3104 of the Commercial Code.

22 (4) “Retail” means a transaction involving the sale or  
23 lease of goods or services or both, between an individual,  
24 corporation, or other entity regularly engaged in business  
25 and a consumer, for use by the consumer and not for  
26 resale.

27 (c) This section does not prohibit any person from  
28 doing any of the following:

29 (1) Requiring the production of reasonable forms of  
30 positive identification, other than a credit card, which  
31 may include a driver’s license—~~or~~ a California state  
32 identification card, *or other form of photo identification*,  
33 as a condition of acceptance of a negotiable instrument.

34 (2) Requesting, but not requiring, a purchaser to  
35 voluntarily display a credit card as an indicia of  
36 creditworthiness or financial responsibility, or as an  
37 additional identification, provided the only information  
38 concerning the credit card which is recorded is the type  
39 of credit card displayed, the issuer of the card, and the  
40 expiration date of the card. All retailers that request the



1 display of a credit card pursuant to this paragraph shall  
2 inform the customer, by either of the following methods,  
3 that displaying the credit card is not a requirement for  
4 check writing:

5 (A) By posting the following notice in a conspicuous  
6 location in the unobstructed view of the public within the  
7 premises where the check is being written, clearly and  
8 legibly: "Check writing ID: credit card may be requested  
9 but not required for purchases."

10 (B) By training and requiring the sales clerks or retail  
11 employees requesting the credit card to inform all check  
12 writing customers that they are not required to display a  
13 credit card to write a check.

14 (3) Requesting production of, or recording, a credit  
15 card number as a condition for cashing a negotiable  
16 instrument that is being used solely to receive cash back  
17 from the person.

18 (4) Requesting, receiving, or recording a credit card  
19 number in lieu of requiring a deposit to secure payment  
20 in event of default, loss, damage, or other occurrence.

21 (5) Requiring, verifying, and recording the  
22 purchaser's name, address, and telephone number.

23 (6) Requesting or recording a credit card number on  
24 a negotiable instrument used to make a payment on that  
25 credit card account.

26 (d) This section does not require acceptance of a  
27 negotiable instrument whether or not a credit card is  
28 presented.

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



1 a bona fide error made notwithstanding the defendant's  
2 maintenance of procedures reasonably adopted to avoid  
3 such an error. When collected, the civil penalty shall be  
4 payable, as appropriate, to the person paying with a  
5 negotiable instrument who brought the action or to the  
6 general fund of whichever governmental entity brought  
7 the action to assess the civil penalty.

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

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

27 *SEC. 2. Section 1747.8 of the Civil Code is amended*  
28 *to read:*

29 1747.8. (a) Except as provided in subdivision (c), no  
30 person, firm, partnership, association, or corporation  
31 which accepts credit cards for the transaction of business  
32 shall do ~~any~~ *either* of the following:

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

38 (2) Request, or require as a condition to accepting the  
39 credit card as payment in full or in part for goods or  
40 services, the cardholder to provide personal



1 identification information, which the person, firm,  
 2 partnership, association, or corporation accepting the  
 3 credit card writes, causes to be written, or otherwise  
 4 records upon the credit card transaction form or  
 5 otherwise.

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

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

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

17 (1) When the credit card is being used as a deposit to  
 18 secure payment in the event of default, loss, damage, or  
 19 other similar occurrence.

20 (2) Cash advance transactions.

21 (3) When the person, firm, partnership, association, or  
 22 corporation accepting the credit card is contractually  
 23 obligated to provide personal identification information  
 24 in order to complete the credit card transaction *or is*  
 25 *obligated to collect and record the personal identification*  
 26 *information by federal law or regulation.*

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

33 (5) *When the preprinted spaces for personal*  
 34 *identification information in a credit card form are not*  
 35 *filled in.*

36 (6) *When the purchaser pays for the transaction with*  
 37 *a credit card number and does not make the credit card*  
 38 *available upon request to verify this number.*

39 (d) This section does not prohibit any person, firm,  
 40 partnership, association, or corporation from requiring



1 the cardholder, as a condition to accepting the credit card  
2 as payment in full or in part for goods or services, to  
3 provide reasonable forms of positive identification, which  
4 may include a driver's license ~~or~~ a California state  
5 identification card, *or other form of photo identification*,  
6 provided that none of the information contained thereon  
7 is written or recorded on the credit card transaction form  
8 or otherwise *and the credit card is made available upon*  
9 *request for verification of the credit card number.*

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

28 (f) The Attorney General, or any district attorney or  
29 city attorney within his or her respective jurisdiction,  
30 may bring an action in the superior court in the name of  
31 the people of the State of California to enjoin violation of  
32 subdivision (a) and, upon notice to the defendant of not  
33 less than five days, to temporarily restrain and enjoin the  
34 violation. If it appears to the satisfaction of the court that  
35 the defendant has, in fact, violated subdivision (a), the  
36 court may issue an injunction restraining further  
37 violations, without requiring proof that any person has  
38 been damaged by the violation. In these proceedings, if  
39 the court finds that the defendant has violated  
40 subdivision (a), the court may direct the defendant to pay



1 any or all costs incurred by the Attorney General, district  
2 attorney, or city attorney in seeking or obtaining  
3 injunctive relief pursuant to this subdivision.

4 (g) Actions for collection of civil penalties under  
5 subdivision (e) and for injunctive relief under subdivision  
6 (f) may be consolidated.

7 ~~Professions Code is amended to read:~~

8 ~~17201. As used in this chapter, the term person shall~~  
9 ~~mean and include natural persons, corporations, limited~~  
10 ~~liability companies, firms, partnerships, joint stock~~  
11 ~~companies, associations and other organizations of~~  
12 ~~persons.~~

13 ~~SEC. 2. Section 17506 of the Business and Professions~~  
14 ~~Code is amended to read:~~

15 ~~17506. As used in this chapter, "person" includes any~~  
16 ~~individual, partnership, firm, association, limited liability~~  
17 ~~company, or corporation.~~

