

AMENDED IN SENATE JUNE 22, 1995
AMENDED IN ASSEMBLY MAY 16, 1995
AMENDED IN ASSEMBLY APRIL 20, 1995

CALIFORNIA LEGISLATURE—1995–96 REGULAR SESSION

ASSEMBLY BILL

No. 1316

Introduced by Assembly Member Bustamante

February 23, 1995

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. 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, which may include a driver's license or a California state identification card, as a condition of acceptance of the negotiable instrument.

This bill would provide that where one of these forms of identification is not available, this identification may include another form of photo identification.

(2) Existing law prohibits, with certain exceptions, any person, firm, partnership, association, or corporation, which accepts credit cards, from requesting or requiring and recording personal identification information concerning the cardholder, as specified, as a condition of acceptance of a credit card. Existing law, however, permits the person, firm, partnership, association, or corporation to require a purchaser to produce other reasonable forms of identification, which may include a driver's license or a California state identification card, as a condition of acceptance of the credit card.

This bill would provide that where one of these forms of identification is not available, this identification may include another form of photo identification. *The bill would authorize the recordation of a cardholder's driver's license or identification card number where the cardholder pays with a credit card number and does not make the credit card available upon request to verify the number.* The bill would exempt the person, firm, partnership, association, or corporation from the prohibition described above 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, until January 1, 1997, authorize the use of these credit card forms if the preprinted spaces for personal identification information are not filled in.

(4) The changes described in (2) and (3) would only apply to credit card transactions entered into on and after January 1, 1996.

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 1725 of the Civil Code is
2 amended to read:

3 1725. (a) Unless permitted under subdivision (c), no
4 person accepting a negotiable instrument as payment in
5 full or in part for goods or services sold or leased at retail
6 shall do any of the following:

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

11 (2) Require, as a condition of acceptance of the
12 negotiable instrument, or cause the person paying with
13 a negotiable instrument to sign a statement agreeing to
14 allow his or her credit card to be charged to cover the
15 negotiable instrument if returned as no good.

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

18 (4) Contact a credit card issuer to determine if the
19 amount of any credit available to the person paying with
20 a negotiable instrument will cover the amount of the
21 negotiable instrument.

22 (b) For the purposes of this section, the following
23 terms have the following meanings:

24 (1) “Check guarantee card” means a card issued by a
25 financial institution, evidencing an agreement under
26 which the financial institution will not dishonor a check
27 drawn upon itself, under the terms and conditions of the
28 agreement.

29 (2) “Credit card” has the meaning specified in Section
30 1747.02, and does not include a check guarantee card or
31 a card that is both a credit card and a check guarantee
32 card.

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

35 (4) “Retail” means a transaction involving the sale or
36 lease of goods or services or both, between an individual,
37 corporation, or other entity regularly engaged in business



1 and a consumer, for use by the consumer and not for
2 resale.

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

5 (1) Requiring the production of reasonable forms of
6 positive identification, other than a credit card, which
7 may include a driver’s license or a California state
8 identification card, or where one of these is not available,
9 another form of photo identification, as a condition of
10 acceptance of a negotiable instrument.

11 (2) Requesting, but not requiring, a purchaser to
12 voluntarily display a credit card as an indicia of
13 creditworthiness or financial responsibility, or as an
14 additional identification, provided the only information
15 concerning the credit card which is recorded is the type
16 of credit card displayed, the issuer of the card, and the
17 expiration date of the card. All retailers that request the
18 display of a credit card pursuant to this paragraph shall
19 inform the customer, by either of the following methods,
20 that displaying the credit card is not a requirement for
21 check writing:

22 (A) By posting the following notice in a conspicuous
23 location in the unobstructed view of the public within the
24 premises where the check is being written, clearly and
25 legibly: “Check writing ID: credit card may be requested
26 but not required for purchases.”

27 (B) By training and requiring the sales clerks or retail
28 employees requesting the credit card to inform all check
29 writing customers that they are not required to display a
30 credit card to write a check.

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

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

38 (5) Requiring, verifying, and recording the
39 purchaser’s name, address, and telephone number.



1 (6) Requesting or recording a credit card number on
2 a negotiable instrument used to make a payment on that
3 credit card account.

4 (d) This section does not require acceptance of a
5 negotiable instrument whether or not a credit card is
6 presented.

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

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



1 attorney, or city attorney in seeking or obtaining
2 injunctive relief pursuant to this subdivision.

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

6 SEC. 2. Section 1747.8 of the Civil Code is amended
7 to read:

8 1747.8. (a) Except as provided in subdivision (c), no
9 person, firm, partnership, association, or corporation
10 which accepts credit cards for the transaction of business
11 shall do either of the following:

12 (1) Request, or require as a condition to accepting the
13 credit card as payment in full or in part for goods or
14 services, the cardholder to write any personal
15 identification information upon the credit card
16 transaction form or otherwise.

17 (2) Request, or require as a condition to accepting the
18 credit card as payment in full or in part for goods or
19 services, the cardholder to provide personal
20 identification information, which the person, firm,
21 partnership, association, or corporation accepting the
22 credit card writes, causes to be written, or otherwise
23 records upon the credit card transaction form or
24 otherwise.

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

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

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

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

39 (2) Cash advance transactions.



1 (3) When the person, firm, partnership, association, or
2 corporation accepting the credit card is contractually
3 obligated to provide personal identification information
4 in order to complete the credit card transaction or is
5 obligated to collect and record the personal identification
6 information by federal law or regulation.

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

13 (5) When the preprinted spaces for personal
14 identification information in a credit card form are not
15 filled in. This paragraph shall be operative only until
16 January 1, 1997.

17 ~~(6) When the purchaser pays for the transaction with~~
18 ~~a credit card number and does not make the credit card~~
19 ~~available upon request to verify this number.~~

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

38 (e) Any person who violates this section shall be
39 subject to a civil penalty not to exceed two hundred fifty
40 dollars (\$250) for the first violation and one thousand



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

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

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

35 (h) *The changes made to this section by Assembly Bill*
36 *1316 of the 1995–96 Regular Session of the Legislature*
37 *apply only to credit card transactions entered into on and*
38 *after January 1, 1996. Nothing in those changes shall be*



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

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