

ASSEMBLY BILL

No. 1509

Introduced by Assembly Member Machado

February 26, 1999

An act to amend Section 1748.12 of the Civil Code, relating to credit card issuers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1509, as introduced, Machado. Credit cards: marketing information.

Existing law requires a credit card issuer to provide written notice to all persons who are holders of the issuer's credit cards if the issuer discloses marketing information, as defined, concerning a consumer which discloses the consumer's identity to any person, except specified 3rd parties. The notice is required to describe the cardholder's right to prohibit this disclosure. Existing law specifies the methods of satisfying this requirement.

This bill would recast this provision to, among other things, require that a credit card issuer provide the notice before the issuer discloses the information and, if the information is disclosed, at least once per year. The bill would also revise the definition of marketing information, as specified, and exempt communications to a corporate subsidiary or affiliate of the card issuer that are not used for marketing purposes from the disclosure prohibition.

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 1748.12 of the Civil Code is
2 amended to read:

3 1748.12. (a) For purposes of this section:

4 (1) "Cardholder" means any consumer to whom a
5 credit card is issued, provided that in cases when more
6 than one credit card has been issued for the same account,
7 all persons holding those credit cards may be treated as
8 a single cardholder.

9 (2) "Credit card" means any card, plate, coupon book,
10 or other single credit device existing for the purpose of
11 being used from time to time upon presentation to obtain
12 money, property, labor, or services on credit. "Credit
13 card" does not mean any of the following:

14 (A) Any single credit device used to obtain telephone
15 property, labor, or services in any transaction under
16 public utility tariffs.

17 (B) Any device that may be used to obtain credit
18 pursuant to an electronic fund transfer but only if the
19 credit is obtained under an agreement between a
20 consumer and a financial institution to extend credit
21 when the consumer's asset account is overdrawn or to
22 maintain a specified minimum balance in the consumer's
23 asset account.

24 (C) Any key or card key used at an automated
25 dispensing outlet to obtain or purchase petroleum
26 products, as defined in subdivision (c) of Section 13401 of
27 the Business and Professions Code, which will be used
28 primarily for business rather than personal or family
29 purposes.

30 (3) "Marketing information" means the
31 categorization of cardholders compiled by a credit card
32 issuer, based on a cardholder's shopping patterns,
33 spending history, or behavioral characteristics derived
34 from account activity which is provided to a marketer of
35 goods or services or a subsidiary or affiliate organization
36 of the company that collects the information for
37 consideration. "Marketing information" does not include
38 aggregate data which does not identify a cardholder



1 based on the cardholder's shopping patterns, spending
2 history, or behavioral characteristics derived from
3 account activity or any communications to any person in
4 connection with any transfer, processing, billing,
5 collection, chargeback, fraud prevention, credit card
6 recovery, or acquisition of or for credit card accounts.

7 ~~(b) If the credit card issuer discloses~~ *At least 60 days*
8 *prior to the initial disclosure of* marketing information
9 concerning a cardholder to any person, the credit card
10 issuer shall provide a written notice to the cardholder that
11 clearly and conspicuously describes the cardholder's right
12 to prohibit the disclosure to marketers of goods *or*
13 *services* of marketing information concerning the
14 cardholder which discloses the cardholder's identity. The
15 notice shall include ~~either~~ a preprinted form *in 10-point*
16 *type* by which the cardholder may exercise this right ~~or~~
17 *and* shall advise the cardholder of a toll-free telephone
18 number ~~which~~ *that* the cardholder may call to exercise
19 this right.

20 (c) The requirements of subdivision (b) ~~may~~ *shall* be
21 satisfied by furnishing ~~the notice~~ to the cardholder *a*
22 *preprinted form in 10-point type for the cardholder that*
23 *clearly and conspicuously describes the cardholder's right*
24 *to prohibit the disclosure of marketing information and*
25 *a toll-free telephone number that the cardholder may call*
26 *to exercise this right. This initial notice to the cardholder*
27 *shall be provided* (1) on or with the credit application;
28 *and* (2) on or with the credit card when it is delivered to
29 the cardholder; ~~or (3) in any manner and at any time,~~
30 ~~provided that it is furnished prior to the disclosure of~~
31 ~~marketing information relating to the cardholder.~~ *If a*
32 *credit card issuer decides to disclose marketing*
33 *information after the initial receipt of the credit card by*
34 *the cardholder, but prior to the passing of one year from*
35 *the date of receipt, the issuer shall notify the cardholder*
36 *prior to the initial disclosure of marketing information*
37 *relating to the cardholder.* No notice need be furnished
38 to a cardholder to whom prior notice has been given, as
39 to whom no marketing information will be disclosed, or
40 to whom notice has been given prior to the effective date



1 of this act, which complies with ~~the provisions of~~
2 subdivision (b).

3 (d) *In addition to the initial disclosure required*
4 *pursuant to subdivision (b), on or after January 1, 2000,*
5 *each credit card issuer who discloses marketing*
6 *information for consideration shall clearly and*
7 *conspicuously disclose, at least once per calendar year, at*
8 *intervals of not less than six months nor more than 12*
9 *months, to every cardholder entitled to receive an annual*
10 *statement of billings rights pursuant to 12 C.F.R. 226.99*
11 *(Regulation Z) the cardholder's right to prohibit the*
12 *future disclosure of marketing information. The notice*
13 *required by this subdivision and with the delivery of the*
14 *renewal card may be included on or with any periodic*
15 *statement and shall include a preprinted form in 10-point*
16 *type by which the cardholder may exercise this right and*
17 *shall advise the cardholder of a toll-free telephone*
18 *number which the cardholder may call to exercise this*
19 *right.*

20 (e) (1) *The cardholder's election to prohibit*
21 *disclosure of marketing information shall be effective*
22 *only with respect to marketing information that is*
23 *disclosed to any party after the card issuer has received*
24 *and processed the cardholder's election pursuant to*
25 *subdivision (b) or (d), not to exceed three working*
26 *weeks, and shall not apply to communications covered by*
27 *subdivision (f).*

28 (2) *An election to prohibit disclosure of marketing*
29 *information, as provided in subdivision (b) or (d), shall*
30 *terminate upon receipt by the credit card issuer of notice*
31 *from the cardholder that the cardholder's election under*
32 *subdivision (b) or (d) is no longer effective.*

33 ~~(e)~~

34 (f) *The requirements of subdivisions (b) and ~~(e)~~ (d)*
35 *do not apply to any of the following communications of*
36 *marketing information by a credit card issuer:*

37 (1) *Communications to any party to, or merchant*
38 *specified in, the credit card agreement, or to any person*
39 *whose name appears on the credit card or on whose*
40 *behalf the credit card is issued.*



1 (2) Communications to consumer credit reporting
2 agencies, as defined in subdivision (d) of Section 1785.3.

3 (3) Communications to a corporate subsidiary or
4 affiliate of the card issuer *that are not used for marketing*
5 *purposes.*

6 (4) Communications to a third party when the third
7 party is responsible for conveying information from the
8 card issuer to any of its cardholders.

9 ~~(f)~~

10 (g) If the laws of the United States require disclosure
11 to cardholders regarding the use of personal information,
12 compliance with the federal requirements shall be
13 deemed to be compliance with this section.

14 ~~(g) This section shall become operative on July 1, 1994.~~

