

AMENDED IN SENATE AUGUST 31, 1999

AMENDED IN SENATE AUGUST 16, 1999

AMENDED IN ASSEMBLY MAY 18, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 1509

Introduced by Assembly Member Machado

February 26, 1999

An act to amend ~~Sections 1748.10 and 1748.12~~ of *Section 1748.10* of, and to amend, repeal, and add *Section 1748.12* of, the Civil Code, relating to credit card issuers.

LEGISLATIVE COUNSEL'S DIGEST

AB 1509, as amended, 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, *operative April 1, 2000*, 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, as specified. 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, *except as specified*.

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 1748.10 of the Civil Code is
2 amended to read:

3 1748.10. This act shall be known and may be cited as
4 the “Areias Credit Card Full Disclosure Act Of 1986.”

5 ~~SEC. 2. Section 1748.12 of the Civil Code is amended~~
6 ~~to read:~~

7 ~~1748.12. (a) For purposes of this section:~~

8 ~~(1) “Cardholder” means any consumer to whom a~~
9 ~~credit card is issued, provided that in cases when more~~
10 ~~than one credit card has been issued for the same account,~~
11 ~~all persons holding those credit cards may be treated as~~
12 ~~a single cardholder.~~

13 ~~(2) “Credit card” means any card, plate, coupon book,~~
14 ~~or other single credit device existing for the purpose of~~
15 ~~being used from time to time upon presentation to obtain~~
16 ~~money, property, labor, or services on credit. “Credit~~
17 ~~card” does not mean any of the following:~~

18 ~~(A) Any single credit device used to obtain telephone~~
19 ~~property, labor, or services in any transaction under~~
20 ~~public utility tariffs.~~

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

28 ~~(C) Any key or card key used at an automated~~
29 ~~dispensing outlet to obtain or purchase petroleum~~
30 ~~products, as defined in subdivision (c) of Section 13401 of~~
31 ~~the Business and Professions Code, which will be used~~



1 primarily for business rather than personal or family
2 purposes.

3 (3) “Marketing information” means the
4 categorization of cardholders compiled by a credit card
5 issuer, based on a cardholder’s shopping patterns,
6 spending history, or behavioral characteristics derived
7 from account activity which is provided to a marketer of
8 goods or services or a subsidiary or affiliate organization
9 of the company that collects the information for
10 consideration. “Marketing information” does not include
11 aggregate data which does not identify a cardholder
12 based on the cardholder’s shopping patterns, spending
13 history, or behavioral characteristics derived from
14 account activity or any communications to any person in
15 connection with any transfer, processing, billing,
16 collection, chargeback, fraud prevention, credit card
17 recovery, or acquisition of or for credit card accounts.

18 (b) At least 60 days prior to the initial disclosure of
19 marketing information concerning a cardholder to any
20 person, the credit card issuer shall provide a written
21 notice to the cardholder that clearly and conspicuously
22 describes the cardholder’s right to prohibit the disclosure
23 of marketing information concerning the cardholder
24 which discloses the cardholder’s identity. The notice shall
25 be in 10-point type and shall advise the cardholder of a
26 toll-free telephone number that the cardholder may call
27 to exercise this right. For credit cards issued before April
28 1, 2000, no notice need be furnished to a cardholder as to
29 whom marketing information will not be disclosed or to
30 whom notice has been given prior to April 1, 2000, that
31 was in accordance with the then-existing law.

32 (c) For all new credit cards issued on or after April 1,
33 2000, the written notice described in subdivision (b) shall
34 be furnished to the cardholder on the form containing the
35 new credit card when the credit card is delivered to the
36 cardholder. For credit cards issued prior to April 1, 2000,
37 for which written notice is required pursuant to
38 subdivision (b), the written notice shall be furnished to
39 the cardholder on a preprinted form on or before
40 December 31, 2000.



1 ~~(d) On or after January 1, 2001, each credit card issuer~~
2 ~~who discloses marketing information for consideration~~
3 ~~shall clearly and conspicuously disclose, at least once per~~
4 ~~calendar year, at intervals of not less than six months nor~~
5 ~~more than 16 months, provided that the end of the~~
6 ~~16-month interval falls within the next calendar year from~~
7 ~~the date the prior notice was received to every~~
8 ~~cardholder entitled to receive an annual statement of~~
9 ~~billings rights pursuant to 12 C.F.R. 226.9 (Regulation Z)~~
10 ~~the cardholder's right to prohibit the future disclosure of~~
11 ~~marketing information. The notice required by this~~
12 ~~subdivision may be included on or with any periodic~~
13 ~~statement or with the delivery of the renewal card and~~
14 ~~shall include a preprinted form in 10-point type by which~~
15 ~~the cardholder may exercise this right and shall advise the~~
16 ~~cardholder of a toll-free telephone number which the~~
17 ~~cardholder may call to exercise this right.~~

18 ~~(e) (1) The cardholder's election to prohibit~~
19 ~~disclosure of marketing information shall be effective~~
20 ~~only with respect to marketing information that is~~
21 ~~disclosed to any party beginning 30 days after the card~~
22 ~~issuer has received, at the designated address on the form~~
23 ~~containing the new credit card or on the preprinted form;~~
24 ~~the cardholder's election pursuant to subdivisions (b) and~~
25 ~~(c) or subdivision (d). This does not apply to the~~
26 ~~disclosure of marketing information prior to the~~
27 ~~cardholder's notification to the credit card issuer of the~~
28 ~~cardholder's election.~~

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

35 ~~(f) The requirements of this section do not apply to~~
36 ~~any of the following communications of marketing~~
37 ~~information by a credit card issuer:~~

38 ~~(1) Communications to any party to, or merchant~~
39 ~~specified in, the credit card agreement, or to any person~~



1 ~~whose name appears on the credit card or on whose~~
2 ~~behalf the credit card is issued.~~

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

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

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

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

15 *SEC. 2. Section 1748.12 of the Civil Code is amended*
16 *to read:*

17 1748.12. (a) For purposes of this section:

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

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

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

31 (B) Any device that may be used to obtain credit
32 pursuant to an electronic fund transfer but only if the
33 credit is obtained under an agreement between a
34 consumer and a financial institution to extend credit
35 when the consumer's asset account is overdrawn or to
36 maintain a specified minimum balance in the consumer's
37 asset account.

38 (C) Any key or card key used at an automated
39 dispensing outlet to obtain or purchase petroleum
40 products, as defined in subdivision (c) of Section 13401 of



1 the Business and Professions Code, which will be used
2 primarily for business rather than personal or family
3 purposes.

4 (3) "Marketing information" means the
5 categorization of cardholders compiled by a credit card
6 issuer, based on a cardholder's shopping patterns,
7 spending history, or behavioral characteristics derived
8 from account activity which is provided to a marketer of
9 goods for consideration. "Marketing information" does
10 not include aggregate data which does not identify a
11 cardholder based on the cardholder's shopping patterns,
12 spending history, or behavioral characteristics derived
13 from account activity or any communications to any
14 person in connection with any transfer, processing,
15 billing, collection, chargeback, fraud prevention, credit
16 card recovery, or acquisition of or for credit card
17 accounts.

18 (b) If the credit card issuer discloses marketing
19 information concerning a cardholder to any person, the
20 credit card issuer shall provide a written notice to the
21 cardholder that clearly and conspicuously describes the
22 cardholder's right to prohibit the disclosure to marketers
23 of goods of marketing information concerning the
24 cardholder which discloses the cardholder's identity. The
25 notice shall include either a preprinted form by which the
26 cardholder may exercise this right or shall advise the
27 cardholder of a toll-free telephone number which the
28 cardholder may call to exercise this right.

29 (c) The requirements of subdivision (b) may be
30 satisfied by furnishing the notice to the cardholder (1) on
31 or with the credit application, (2) with the credit card
32 when it is delivered to the cardholder, or (3) in any
33 manner and at any time, provided that it is furnished
34 prior to the disclosure of marketing information relating
35 to the cardholder. No notice need be furnished to a
36 cardholder to whom prior notice has been given, as to
37 whom no marketing information will be disclosed, or to
38 whom notice has been given prior to the effective date of
39 this act which complies with the provisions of subdivision
40 (b).



1 (d) An election to prohibit disclosure of marketing
2 information, as provided in subdivision (b), shall
3 terminate upon receipt by the credit card issuer of notice
4 from the cardholder that the cardholder's election under
5 subdivision (b) is no longer effective.

6 (e) The requirements of subdivisions (b) and (c) do
7 not apply to any of the following communications of
8 marketing information by a credit card issuer:

9 (1) Communications to any party to, or merchant
10 specified in, the credit card agreement, or to any person
11 whose name appears on the credit card or on whose
12 behalf the credit card is issued.

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

15 (3) Communications to a corporate subsidiary or
16 affiliate of the card issuer.

17 (4) Communications to a third party when the third
18 party is responsible for conveying information from the
19 card issuer to any of its cardholders.

20 (f) If the laws of the United States require disclosure
21 to cardholders regarding the use of personal information,
22 compliance with the federal requirements shall be
23 deemed to be compliance with this section.

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

25 (h) *This section shall become inoperative on April 1,*
26 *2000, and as of January 1, 2001, is repealed under a later*
27 *enacted statute, that is enacted before January 1, 2001,*
28 *deletes or extends that date.*

29 *SEC. 3. Section 1748.12 is added to the Civil Code, to*
30 *read:*

31 *1748.12. (a) For purposes of this section:*

32 (1) *"Cardholder" means any consumer to whom a*
33 *credit card is issued, provided that in cases when more*
34 *than one credit card has been issued for the same account,*
35 *all persons holding those credit cards may be treated as*
36 *a single cardholder.*

37 (2) *"Credit card" means any card, plate, coupon book,*
38 *or other single credit device existing for the purpose of*
39 *being used from time to time upon presentation to obtain*



1 money, property, labor, or services on credit. “Credit
2 card” does not mean any of the following:

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

6 (B) Any device that may be used to obtain credit
7 pursuant to an electronic fund transfer but only if the
8 credit is obtained under an agreement between a
9 consumer and a financial institution to extend credit
10 when the consumer’s asset account is overdrawn or to
11 maintain a specified minimum balance in the consumer’s
12 asset account.

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

19 (3) “Marketing information” means the
20 categorization of cardholders compiled by a credit card
21 issuer, based on a cardholder’s shopping patterns,
22 spending history, or behavioral characteristics derived
23 from account activity which is provided to a marketer of
24 goods or services or a subsidiary or affiliate organization
25 of the company that collects the information for
26 consideration. “Marketing information” does not include
27 aggregate data which does not identify a cardholder
28 based on the cardholder’s shopping patterns, spending
29 history, or behavioral characteristics derived from
30 account activity or any communications to any person in
31 connection with any transfer, processing, billing,
32 collection, chargeback, fraud prevention, credit card
33 recovery, or acquisition of or for credit card accounts.

34 (b) If the credit card issuer discloses marketing
35 information concerning a cardholder to any person, the
36 credit card issuer shall provide a written notice to the
37 cardholder that clearly and conspicuously describes the
38 cardholder’s right to prohibit the disclosure of marketing
39 information concerning the cardholder which discloses
40 the cardholder’s identity. The notice shall be in 10-point



1 type and shall advise the cardholder of their ability to
2 respond either by completing a preprinted form or a
3 toll-free telephone number that the cardholder may call
4 to exercise this right.

5 (c) The requirements of subdivision (b) shall be
6 satisfied by furnishing the notice to the cardholder:

7 (1) At least 60 days prior to the initial disclosure of
8 marketing information concerning the cardholder by the
9 credit card issuer.

10 (2) For all new credit cards issued on or after April 1,
11 2000, on the form containing the new credit card when
12 the credit card is delivered to the cardholder.

13 (3) At least once per calendar year, to every
14 cardholder entitled to receive an annual statement of
15 billings rights pursuant to 12 C.F.R. 226.9 (Regulation Z).
16 The notice required by this paragraph may be included
17 on or with any periodic statement or with the delivery of
18 the renewal card.

19 (d) (1) The cardholder's election to prohibit
20 disclosure of marketing information shall be effective
21 only with respect to marketing information that is
22 disclosed to any party beginning 30 days after the credit
23 card issuer has received, at the designated address on the
24 form containing the new credit card or on the preprinted
25 form, or by telephone, the cardholder's election to
26 prohibit disclosure. This does not apply to the disclosure
27 of marketing information prior to the cardholder's
28 notification to the credit card issuer of the cardholder's
29 election.

30 (2) An election to prohibit disclosure of marketing
31 information shall terminate upon receipt by the credit
32 card issuer of notice from the cardholder that the
33 cardholder's election to prohibit disclosure is no longer
34 effective.

35 (e) The requirements of this section do not apply to
36 any of the following communications of marketing
37 information by a credit card issuer:

38 (1) Communications to any party to, or merchant
39 specified in, the credit card agreement, or to any person



1 *whose name appears on the credit card or on whose*
2 *behalf the credit card is issued.*

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

5 *(3) To the extent that the Fair Credit Reporting Act*
6 *preempts the requirements of this section as to*
7 *communication by a credit card issuer to a corporate*
8 *subsidiary or affiliate, the credit card issuer may*
9 *communicate information about a cardholder to a*
10 *corporate subsidiary or affiliate to the extent and in the*
11 *manner permitted under that act.*

12 *(4) Communications to a third party when the third*
13 *party is responsible for conveying information from the*
14 *card issuer to any of its cardholders.*

15 *(f) If the laws of the United States require disclosure*
16 *to cardholders regarding the use of personal information,*
17 *compliance with the federal requirements shall be*
18 *deemed to be compliance with this section.*

19 *(g) This section shall become operative on April 1,*
20 *2000.*

