

S199384

IN THE SUPREME COURT OF CALIFORNIA

SUPREME COURT
FILED

APPLE, INC., a California Corporation,

Petitioner,

FEB 28 2012

vs.

Frederick K. Ohnisch Clerk

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,

Deputy

Respondent

DAVID KRESCENT, individually and on behalf of a class of persons similarly situated

Real Party in Interest

Court of Appeal Case No. B238097
Los Angeles Superior Court Civil Case No. BC463305
(Related to Cases Nos. BC462492 and BC462494)

**REAL PARTY IN INTEREST DAVID KRESCENT'S MOTION TO TAKE
JUDICIAL NOTICE IN SUPPORT OF ANSWER TO
PETITION FOR REVIEW AND PROPOSED ORDER**

SCHREIBER & SCHREIBER, INC.

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Attorneys for Plaintiff and Real Party in Interest
DAVID KRESCENT

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Petitioner,

vs.

SUPERIOR COURT OF THE COUNTY OF LOS ANGELES,

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Attorneys for Plaintiff and Real Party in Interest
DAVID KRESCENT

Plaintiff David Krescent hereby moves under EVIDENCE CODE § 451-454, for the Court to take judicial notice of all of the following:

1. The final amended version of Civil Code § 1747.08, a true and correct copy of which is attached hereto and incorporated herein as Exhibit “A”;

2. The final (senate) version of Civil Code § 1747.08 as amended in the California Senate as of August 24, 2011 (which was taken from the official California Legislature, website www.legalinfo.ca.gov/pub/.../ab_1219_bill_20110824_amended_sen_v92.html), a true and correct copy of which is attached hereto and incorporated herein as Exhibit “B.” (This is the proper subject of judicial notice pursuant to *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 fn.5; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal. App.4th 26);

3. The second to last (assembly) version of Civil Code § 1747.08 as amended in the California Senate as of May 17, 2011 (which was taken from the official California Legislature website www.legalinfo.ca.gov/pub/11-12/.../ab_1219_bill_20110517_amended_asm_v95.html), a true and correct copy of which is attached hereto and incorporated herein as Exhibit “C.” (This is the proper subject of judicial notice pursuant to *Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 fn.5; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal. App.4th 26).

1 Relevance

The entire matter is based upon an interpretation of Civil Code §§ 1747.02 and 1747.08, specifically, whether or not this Act applies to Internet and other remote transactions. The judicial notice request asks this Court to judicially notice draft and current versions of the law as a basis to determine the intent of the Legislature. Prior drafts of legislation are the proper subject of judicial notice (*Quintano v. Mercury Casualty Co.* (1995) 11 Cal.4th 1049, 1062 fn.5; *Kaufman & Broad Communities, Inc. v. Performance Plastering, Inc.* (2005) 133 Cal. App.4th 26). Evidence of the intent of the Legislature is highly relevant in interpreting the Act, and, in fact, the best evidence of the Legislature's intent other than the actual language of the Act itself.

2. The Trial Court was not Asked to Take Judicial Notice of the Material

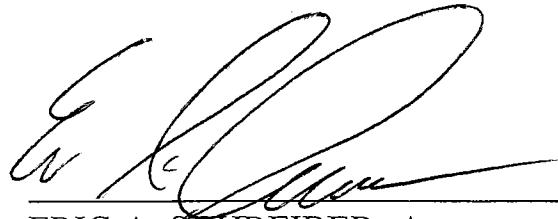
The amended Act was passed right around the time the matter was briefed and so the parties did not ask the Trial Court to take judicial notice of the Act. The Trial Court did, however, at oral argument make mention of the amended law, so the Trial Court was at least aware of either the passage or the proposed passage of the amended Act.

3. Post Order Matters

The Act was amended prior to the issuance of the Order overruling the demurrers, and this judicial notice request does not otherwise seek judicial notice of matters occurring after the Order overruling the demurrers.

DATED: February 27, 2012

SCHREIBER & SCHREIBER, INC.

A handwritten signature in black ink, appearing to read 'Eric A. Schreiber', written over a horizontal line.

ERIC A. SCHREIBER, Attorneys for
PLAINTIFF DAVID KRESCENT
individually, and on behalf of a class of
persons similarly situated

ORDER

The court having read and considered the motion of Plaintiff and Real Party in Interest, David Krescent hereby GRANTS the motion and will take judicial notice of

1. The final amended version of Civil Code § 1747.08;
2. The final (senate) version of Civil Code § 1747.08 as amended in the California Senate as of August 24, 2011; and
3. The second to last (assembly) version of Civil Code § 1747.08 as amended in the California Senate as of May 17, 2011.

IT IS SO ORDERED

Dated, _____, 2012



EXHIBIT A

Assembly Bill No. 1219

CHAPTER 690

An act to amend Sections 1747.02 and 1747.08 of the Civil Code, relating to credit cards, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor October 9, 2011. Filed with
Secretary of State October 9, 2011.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, Perea. Credit cards; personal information.

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition. Existing law excepts from this prohibition the instance when the person or entity accepting the card is contractually obligated to provide personal identification information in order to complete the transaction or is obligated to collect and record the identification information by federal law.

This bill would except from the prohibition described above the instance when the person or entity accepting the card uses Zip Code information for prevention of fraud, theft, or identity theft in specified retail motor fuel transactions, and would specify that state law obligations are also permissible reasons to collect and record personal information.

This bill would declare that it is to take effect immediately as an urgency statute.

The people of the State of California do enact as follows:

SECTION 1. Section 1747.02 of the Civil Code is amended to read:
1747.02. As used in this title:

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

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

(2) Any device that may be used to obtain credit pursuant to an electronic fund transfer, but only if the credit is obtained under an agreement between a consumer and a financial institution to extend credit when the consumer's

asset account is overdrawn or to maintain a specified minimum balance in the consumer's asset account.

(3) Any key or card key used at an automated dispensing outlet to obtain or purchase petroleum products, as defined in subdivision (c) of Section 134.01 of the Business and Professions Code, that will be used primarily for business rather than personal or family purposes.

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

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

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

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

(f) "Unauthorized use" means the use of a credit card by a person, other than the cardholder, (1) who does not have actual, implied, or apparent authority for that use and (2) from which the cardholder receives no benefit. "Unauthorized use" does not include the use of a credit card by a person who has been given authority by the cardholder to use the credit card. Any attempted termination by the cardholder of the person's authority is ineffective as against the card issuer until the cardholder complies with the procedures required by the card issuer to terminate that authority. Notwithstanding the above, following the card issuer's receipt of oral or written notice from a cardholder indicating that it wishes to terminate the authority of a previously authorized user of a credit card, the card issuer shall follow its usual procedures for precluding any further use of a credit card by an unauthorized person.

(g) An "inquiry" is a writing that is posted by mail to the address of the card issuer to which payments are normally tendered, unless another address is specifically indicated on the statement for that purpose, then to that other address, and that is received by the card issuer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the alleged billing error, and that does all of the following:

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

(2) Sufficiently identifies the billing error.

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

(h) A "response" is a writing that is responsive to an inquiry and mailed to the cardholder's address last known to the card issuer.

(i) A "timely response" is a response that is mailed within two complete billing cycles, but in no event later than 90 days, after the card issuer receives an inquiry.

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

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

(l) "Secured credit card" means any credit card issued under an agreement or other instrument that pledges, hypothecates, or places a lien on real property or money or other personal property to secure the cardholder's obligations to the card issuer.

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

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

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

SEC. 2. Section 1747.08 of the Civil Code is amended to read:

1747.08. (a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business shall do any of the following:

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

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

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

(b) For purposes of this section "personal identification information," means information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number.

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

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

(2) Cash advance transactions.

(3) If any of the following applies:

(A) The person, firm, partnership, association, or corporation accepting the credit card is contractually obligated to provide personal identification information in order to complete the credit card transaction.

(B) The person, firm, partnership, association, or corporation accepting the credit card in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island automated cashier uses the Zip Code information solely for prevention of fraud, theft, or identity theft.

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

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

(d) This section does not prohibit any person, firm, partnership, association, or corporation from requiring the cardholder, as a condition to accepting the credit card as payment in full or in part for goods or services, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, or where one of these is not available, another form of photo identification, provided that none of the information contained thereon is written or recorded on the credit card transaction form or otherwise. If the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number, the cardholder's driver's license

number or identification card number may be recorded on the credit card transaction form or otherwise.

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

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

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

(h) The changes made to this section by Chapter 458 of the Statutes of 1995 apply only to credit card transactions entered into on and after January 1, 1996. Nothing in those changes shall be construed to affect any civil action which was filed before January 1, 1996.

SEC. 3. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to prevent potential disruption of gasoline station services throughout the state, it is necessary to create a new exception to the prohibition on the collection of Zip Code information when credit cards are used that will apply in the purchase of gasoline and that will be implemented immediately.

EXHIBIT B



OFFICIAL CALIFORNIA LEGISLATIVE INFORMATION



Beta Site for California Legislative Information.

New Laws Report now available. See New Features for more information.

1999-2008 Cumulative Statutory Record now available in Legislative Publications. See New Features for more information.

A new downloadable database is now available.

Welcome to the official site for California legislative information. This WWW site is maintained by the Legislative Counsel of California, pursuant to California law. For more information, you may read Accessing California Legislative Information on the Internet, refer to Frequently Asked Questions, or visit other Legislative WWW sites. For new additions to our site, see our New Features page .

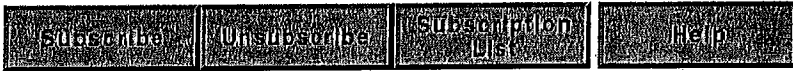
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TODAY'S EVENTS	BILL INFORMATION	CALIFORNIA LAW	YOUR LEGISLATURE	LEGISLATIVE PUBLICATIONS
NEW LAWS				

Feedback	Help	Privacy Policy & Conditions of Use
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Votes

Assembly Floor - 09/08/2011 - 1434 bytes
Senate Floor - 09/07/2011 - 1076 bytes
Senate Committee - 08/25/2011 - 837 bytes
Assembly Floor - 06/03/2011 - 1430 bytes
Assembly Committee - 05/10/2011 - 912 bytes
Assembly Committee - 05/02/2011 - 977 bytes



BILL NUMBER: AB 1219 AMENDED
BILL TEXT

AMENDED IN SENATE AUGUST 24, 2011
AMENDED IN SENATE JUNE 22, 2011
AMENDED IN ASSEMBLY JUNE 1, 2011
AMENDED IN ASSEMBLY MAY 17, 2011
AMENDED IN ASSEMBLY MAY 4, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 29, 2011

INTRODUCED BY Assembly Member Perea

FEBRUARY 18, 2011

An act to amend Sections 1747.02 and 1747.08 of the Civil Code, relating to credit cards , and declaring the urgency thereof, to take effect immediately .

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Perea. Credit cards: personal information.

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition. Existing law excepts from this prohibition the instance when the person or entity accepting the card is contractually obligated to provide personal identification information in order to complete the transaction or is obligated to collect and record the identification information by federal law.

This bill would except from the prohibition described above the instance when the person or entity accepting the card uses the personal information for prevention of fraud, theft, or identity theft in specified retail motor fuel transactions, and would specify that state law obligations are also permissible reasons to collect and record personal information. The bill would also make a statement of intent with regard to certain of these provisions.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote: ~~majority~~ 2/3 . Appropriation:
no. Fiscal committee: no. State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1747.02 of the Civil Code is amended to read:
1747.02. As used in this title:

(a) "Credit card" means any card, plate, coupon book, or other single credit device existing for the purpose of being used from time to time upon presentation to obtain money, property, labor, or

services on credit. "Credit card" does not mean any of the following:

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

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

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

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

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

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

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

(f) "Unauthorized use" means the use of a credit card by a person, other than the cardholder, (1) who does not have actual, implied, or apparent authority for that use and (2) from which the cardholder receives no benefit. "Unauthorized use" does not include the use of a credit card by a person who has been given authority by the cardholder to use the credit card. Any attempted termination by the cardholder of the person's authority is ineffective as against the card issuer until the cardholder complies with the procedures required by the card issuer to terminate that authority.

Notwithstanding the above, following the card issuer's receipt of oral or written notice from a cardholder indicating that it wishes to terminate the authority of a previously authorized user of a credit card, the card issuer shall follow its usual procedures for precluding any further use of a credit card by an unauthorized person.

(g) An "inquiry" is a writing that is posted by mail to the address of the card issuer to which payments are normally tendered, unless another address is specifically indicated on the statement for that purpose, then to that other address, and that is received by

the card issuer no later than 60 days after the card issuer transmitted the first periodic statement that reflects the alleged billing error, and that does all of the following:

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

(2) Sufficiently identifies the billing error.

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

(h) A "response" is a writing that is responsive to an inquiry and mailed to the cardholder's address last known to the card issuer.

(i) A "timely response" is a response that is mailed within two complete billing cycles, but in no event later than 90 days, after the card issuer receives an inquiry.

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

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

(l) "Secured credit card" means any credit card issued under an agreement or other instrument that pledges, hypothecates, or places a lien on real property or money or other personal property to secure the cardholder's obligations to the card issuer.

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

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

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

SEC. 2. Section 1747.08 of the Civil Code is amended to read:

1747.08. (a) Except as provided in subdivision (c), no person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business shall do any of the following:

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

(2) Request, or require as a condition to accepting the credit

card as payment in full or in part for goods or services, the cardholder to provide personal identification information, which the person, firm, partnership, association, or corporation accepting the credit card writes, causes to be written, or otherwise records upon the credit card transaction form or otherwise.

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

(b) For purposes of this section "personal identification information," means information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number.

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

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

(2) Cash advance transactions.

(3) If any of the following applies:

(A) The person, firm, partnership, association, or corporation accepting the credit card is contractually obligated to provide personal identification information in order to complete the credit card transaction.

(B) The person, firm, partnership, association, or corporation accepting the credit card in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island automated cashier uses the personal identification information solely for prevention of fraud, theft, or identity theft or uses the personal information for any of these purposes concurrently with a purpose permitted under paragraph (4).

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

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

(d) This section does not prohibit any person, firm, partnership, association, or corporation from requiring the cardholder, as a condition to accepting the credit card as payment in full or in part for goods or services, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, or where one of these is not available, another form of photo identification, provided that none of the information contained thereon is written or recorded on the credit card transaction form or otherwise. If the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number, the cardholder's driver's license number or identification card number may be recorded on the credit card transaction form or otherwise.

(e) Any person who violates this section shall be subject to a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation and one thousand dollars (\$1,000) for each subsequent violation, to be assessed and collected in a civil action brought by the person paying with a credit card, by the Attorney General, or by the district attorney or city attorney of the county or city in

which the violation occurred. However, no civil penalty shall be assessed for a violation of this section if the defendant shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the defendant's maintenance of procedures reasonably adopted to avoid that error. When collected, the civil penalty shall be payable, as appropriate, to the person paying with a credit card who brought the action, or to the general fund of whichever governmental entity brought the action to assess the civil penalty.

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

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

(h) The changes made to this section by Chapter 458 of the Statutes of 1995 apply only to credit card transactions entered into on and after January 1, 1996. Nothing in those changes shall be construed to affect any civil action which was filed before January 1, 1996.

(i) It is the intent of the amendments made by the act adding this subdivision to clarify existing law. These clarifying amendments continue to protect personal identification information while allowing and recognizing the legitimate business need for a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business at a retail motor fuel dispenser or retail motor fuel automated payment island cashier to use personal identification information for the purposes authorized by this section.

This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

An urgency clause is necessary in order to create a new exception pertaining to use of credit cards in the purchase of gasoline. Immediate implementation of this statute will prevent potential disruption of gasoline station services throughout the state.

EXHIBIT C



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Analyses

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Votes

- Assembly Floor - 09/08/2011 - 1434 bytes
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BILL NUMBER: AB 1219 AMENDED
BILL TEXT

AMENDED IN ASSEMBLY MAY 17, 2011
AMENDED IN ASSEMBLY MAY 4, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY MARCH 29, 2011

INTRODUCED BY Assembly Member Perea

FEBRUARY 18, 2011

An act to amend Section 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

AB 1219, as amended, Perea. Credit cards: personal information.

Existing state and federal law regulate the provision of credit and the use of credit cards. Existing state law prohibits a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business from requesting or requiring the cardholder to provide personal identification information, which is then recorded, as a condition to accepting the credit card as payment in full or in part for goods or services, but provides various exceptions to this prohibition. Existing law excepts from this prohibition the instance when the person or entity accepting the card is contractually obligated to provide personal identification information in order to complete the transaction or is obligated to collect and record the identification information by federal law. Existing law also permits a person or entity accepting a credit card to record the cardholder's driver's license number or identification card number if the cardholder pays for the transaction with a credit card number and does not make the credit card available upon request to verify the number.

~~This bill would condition the prohibition described above upon the cardholder physically presenting a credit card with a properly functioning magnetic stripe or other electronically readable device. The bill would except from the prohibition~~ described above the instance when the person or entity accepting the card uses the personal information for prevention of fraud, theft, or identity theft and would specify that state law obligations are also permissible reasons to collect and record personal information. *The bill also would except from the prohibition instances when the person or entity accepting the card requests personal information for purposes of verifying a proprietary credit card and the cardholder does not produce it and face-to-face transactions when the credit card does not have a functioning magnetic stripe or is not otherwise electronically readable, subject to specified limitations.*

The bill would delete the authorization of a person or entity accepting a credit card to record the cardholder's driver's license number or identification card number if the cardholder pays for the transaction with a credit card number and does not make the credit card available. The bill would also make a statement of intent with

regard to certain of these provisions.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 1747.08 of the Civil Code is amended to read:

1747.08. (a) Except as provided in subdivision (c), ~~if a cardholder physically presents a credit card to an employee, authorized agent, or representative of a person, firm, partnership, association, or corporation as payment, and the credit card has a properly functioning magnetic stripe or other electronically readable device, the~~ no person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business shall ~~not~~ do any of the following:

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

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

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

(b) For purposes of this section "personal identification information," means information concerning the cardholder, other than information set forth on the credit card, and including, but not limited to, the cardholder's address and telephone number.

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

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

(2) Cash advance transactions.

(3) If any of the following applies:

~~(1) The person, firm, partnership, association, or corporation accepting the credit card:~~

(A) ~~Is~~ The person, firm, partnership, association, or corporation accepting the credit card is contractually obligated to provide personal identification information in order to complete the credit card transaction.

(B) ~~Uses~~ The person, firm, partnership, association, or corporation accepting the credit card uses the personal identification information solely for prevention of fraud, theft, or identity theft or uses the personal information for any of these purposes concurrently with a purpose permitted under paragraph (4).

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

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

(5) If personal identification information is requested to verify that a person has a proprietary credit card account with the person, firm, partnership, association, or corporation and that person does not produce the proprietary credit card at the time of the transaction. For purposes of this paragraph a "proprietary credit card" means a credit card issued by the person, firm, partnership, association, or corporation.

(6) If, in a face-to-face transaction, the credit card does not have a properly functioning magnetic stripe or is otherwise not electronically readable, the person, firm, partnership, association, or corporation may record only the cardholder's name, credit card account number, and expiration date; and provided further that the personal identification information that is required is used only to complete the transaction, or for a purpose authorized by this section, and is thereafter deleted, discarded, or destroyed.

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

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

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

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

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

(h) The changes made to this section by Chapter 458 of the Statutes of 1995 apply only to credit card transactions entered into on and after January 1, 1996. Nothing in those changes shall be construed to affect any civil action which was filed before January 1, 1996.

(i) It is the intent of the amendments made by the act adding this subdivision to clarify existing law. These clarifying amendments continue to protect personal identification information while allowing and recognizing the legitimate business need for a person, firm, partnership, association, or corporation that accepts credit cards for the transaction of business to use personal identification information ~~to appropriately process and complete all components of customer transactions and to protect consumers against criminal activity, such as identity theft, which is currently the largest source of consumer complaints to the Federal Trade Commission~~ for the purposes authorized by this section. These amendments recognize, in part, legitimate business practices designed to address the increased potential for identity theft that results if the cardholder is not present or if the credit card does not function correctly.

