

Case No. S183703

**SUPREME COURT COPY**

SUPREME COURT  
**FILED**

AUG 24 2011

Frederick K. Ohlrich Clerk

Deputy

SUPREME COURT OF THE STATE OF CALIFORNIA

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ALLAN PARKS

*Plaintiff and Appellant,*

vs.

MBNA AMERICA BANK, N.A.,

*Defendant and Respondent*

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After Decision by Fourth District - Division Three Court of Appeal (Case No. G040798) Reversing Judgment by Orange County Superior Court (Case No. 04CC00598), The Honorable Gail S. Andler Presiding

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**PLAINTIFF/APPELLANT'S REQUEST FOR JUDICIAL NOTICE  
OF LEGISLATIVE HISTORY OF CIVIL CODE SECTION 1748.9**

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LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
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San Diego, California 92127  
Telephone: (858) 674-4100  
Facsimile: (858) 674-4222

Attorney for Plaintiff/Appellant Allan Parks

## I.

### Motion to Take Judicial Notice of the NBA, As Originally Enacted

Under California Rules of Court, Rules 8.520(g), 8.252 and 8.54 and Evidence Code Sections 459, Plaintiff/Appellant Allan Parks ("Parks") requests that the Supreme Court take judicial notice of the legislative history of Civil Code Section 1748.9, as compiled by the Legislative Intent Service.

A true and correct copy of the Legislative Intent Service's compiled legislative history for Civil Code Section 1748.9, along with a declaration attesting to the compilation's completeness and accuracy is attached hereto. Parks cites to this Request for Judicial Notice in his August 16, 2011 Answer to the *Amicus Curiae* Briefs Filed by The Clearing House Ass'n, LLC, the American Bankers Association, and the California Bankers Association.

The legislative history is relevant because it contains the analysis and comments of interested persons and organizations, particularly representatives of the banking industry, who discuss the potential burdens associated with complying with Civil Code Section 1748.9. The burden of complying with a state banking law is relevant to the primary issue in this case, namely whether or not Civil Code Section 1748.9 is preempted by the National Bank Act.

During the trial court proceedings, Parks requested that the court take judicial notice of the legislative history, and that request was granted.

## II.

### Memorandum Of Points & Authorities

Reviewing courts, including the California Supreme Court have frequently taken judicial notice of Legislative Intent Service compilations for the purpose of understanding the legislative history of California statutes. *See e.g. Arya Group, Inc. v Cher*, 77 Cal. App. 4<sup>th</sup> 610, 614 n. 3 (2000); *Fendrich v. Van de Kamp*, 182 Cal. App. 3d. 246, 254 (1986); *Commodore Home Systems, Inc. v. Superior Court*, 32 Cal. 3d 211, 219

(1982). Because judicial notice of legislative history compilations is permissible and relevant to this case, judicial notice is appropriate.

LAW OFFICE OF MICHAEL R. VACHON, ESQ.  
Attorney for Plaintiff/Appellant Allan Parks

Date: August 16, 2011



Michael R. Vachon, Esq.

**III.**  
**Declaration of Michael R. Vachon, Esq. in Support of Motion to Take**  
**Judicial Notice**

I, Michael R. Vachon, Esq., declare:

1. I am over 18 years of age, and an attorney licensed to practice law in the State of California. I am the attorney of record for Plaintiff/Appellant Allan Parks, and have represented him at all times during this litigation (including during the trial court and court of appeal proceedings). Except as otherwise stated, I have personal knowledge of the facts contained herein and, if called as a witness, could and would competently testify to such facts.

2. A true and correct copy of the Legislative Intent Service's legislative history compilation, as I originally received it, is attached hereto.

On penalty of perjury under the laws of the State of California, I declare that the facts stated in this declaration are true.

Date: August 16, 2011



Michael R. Vachon, Esq.

LEGISLATIVE  
INTENT SERVICE

712 Main Street, Woodland, CA 95695  
(800) 666-1917 • (916) 441-7959 • Fax: (530) 668-5866

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**DECLARATION OF FILOMENA M. YEROSHEK**

I, Filomena M. Yeroshek, declare:

I am an attorney licensed to practice before the courts of the State of California, State Bar No. 125625, and am employed by Legislative Intent Service, a company specializing in researching the history and intent of legislation.

Under my direction and the direction of other attorneys on staff, the research staff of Legislative Intent Service undertook to locate and obtain all documents relevant to the enactment of Senate Bill 545 of 1999. Senate Bill 545 was approved by the Legislature and was enacted as Chapter 171 of the Statutes of 1999.

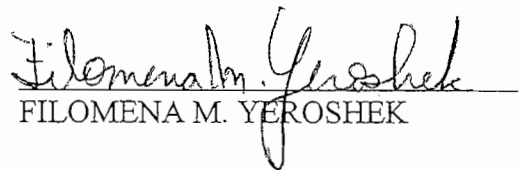
The following list identifies all documents obtained by the staff of Legislative Intent Service on Senate Bill 545 of 1999. All listed documents have been forwarded with this Declaration except as otherwise noted in this Declaration. All documents gathered by Legislative Intent Service and all copies forwarded with this Declaration are true and correct copies of the originals located by Legislative Intent Service. In compiling this collection, the staff of Legislative Intent Service operated under directions to locate and obtain all available material on the bill.

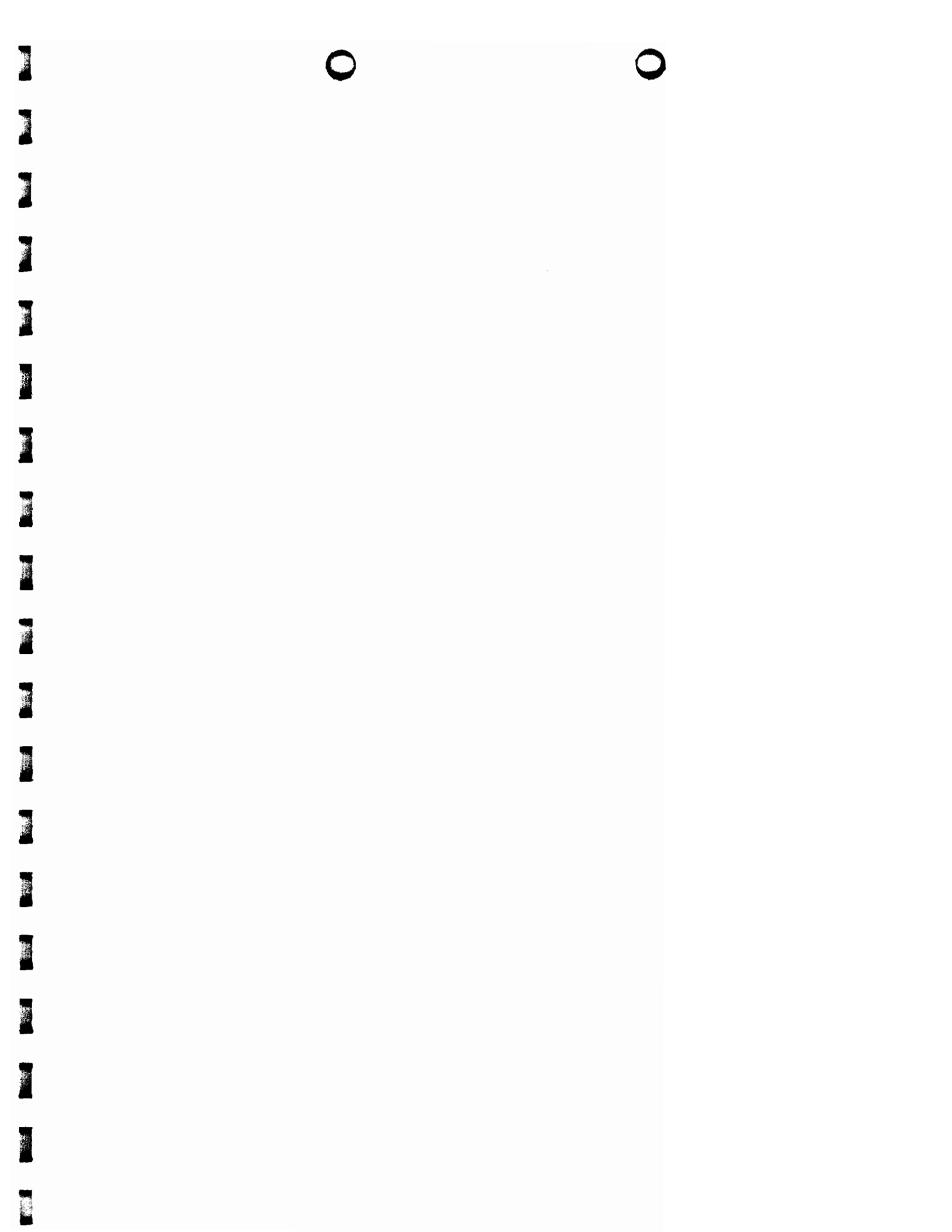
**SENATE BILL 545 OF 1999:**

1. All versions of Senate Bill 545 (Dunn-1999);
2. Procedural history of Senate Bill 545 from the 1999-2000 Senate Final History;
3. Analysis of Senate Bill 545 prepared for the Senate Committee on Judiciary;
4. Material from the legislative bill file of the Senate Committee on Judiciary on Senate Bill 545;
5. Third Reading analysis of Senate Bill 545 prepared by the Office of Senate Floor Analyses;
6. Analysis of Senate Bill 545 prepared for the Assembly Committee on Banking and Finance;

7. Material from the legislative bill file of the Assembly Committee on Banking and Finance on Senate Bill 545;
8. Third Reading analysis of Senate Bill 545 prepared by the Assembly Committee on Banking and Finance;
9. Unfinished Business analysis of Senate Bill 545 prepared by the Office of Senate Floor Analyses;
10. Post-enrollment documents regarding Senate Bill 545;
11. Press Release #L99:068 issued by the Office of the Governor on July 26, 1999 to announce that Senate Bill 545 had been signed;
12. Excerpt regarding Senate Bill 545 from the 1999 Digest of Legislation, prepared by the Office of Senate Floor Analyses, November 1999.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed this 10<sup>th</sup> day of June, 2004 at Woodland, California.

  
FILOMENA M. YEROSHEK



Introduced by Senator Dunn

February 19, 1999

An act to add Section 1748.9 to the Civil Code, relating to credit.

LEGISLATIVE COUNSEL'S DIGEST

SB 545, as introduced, Dunn. Credit: notice.

Existing law requires charge card issuers to make specified disclosures in any charge card application form or preapproved written solicitation for a charge card mailed to a consumer who resides in this state, except as specified. One of these disclosures is any fee that may be assessed for an extension of credit by the charge card issuer to a charge cardholder where the extension of credit is not a credit sale and where the charge cardholder receives the extension of credit through the use of a preprinted check, draft, or similar credit device provided by the charge card issuer to obtain an extension of credit.

This bill would require any preprinted check, draft, or similar device provided by a charge card issuer as an extension of credit to a cardholder to clearly and conspicuously note on the check, draft, or similar device that the endorsement or use of the device will be regarded by the credit card issuer as either a charge on the cardholder's credit account if the device is endorsed or used to purchase goods or services or as a cash advance and that the same finance charges or transaction fees may be charged against the account that would be charged if the cardholder had used the credit card to purchase the goods or services or obtain a cash advance.



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 1748.9 is added to the Civil Code,  
2 to read:  
3 1748.9. A credit card issuer that extends credit to a  
4 cardholder through the use of a preprinted check, draft,  
5 or similar credit device shall clearly and conspicuously  
6 note on the check, draft, or similar device that the  
7 endorsement or use of the device will be regarded by the  
8 credit card issuer as either a charge on the cardholder's  
9 credit account if the device is endorsed or used to  
10 purchase goods or services or as a cash advance and that  
11 the same finance charges or transaction fees may be  
12 charged against the account that would be charged if the  
13 cardholder had used the credit card to purchase the goods  
14 or services or obtain a cash advance.





AMENDED IN SENATE APRIL 29, 1999

SENATE BILL

No. 545

Introduced by Senator Dunn

February 19, 1999

An act to add Section 1748.9 to the Civil Code, relating to credit.

LEGISLATIVE COUNSEL'S DIGEST

SB 545, as amended, Dunn. Credit: notice.

Existing law requires charge card issuers to make specified disclosures in any charge card application form or preapproved written solicitation for a charge card mailed to a consumer who resides in this state, except as specified. One of these disclosures is any fee that may be assessed for an extension of credit by the charge card issuer to a charge cardholder where the extension of credit is not a credit sale and where the charge cardholder receives the extension of credit through the use of a preprinted check, draft, or similar credit device provided by the charge card issuer to obtain an extension of credit.

This bill would require any preprinted check, draft, or similar device provided by a charge card issuer as an extension of credit to a cardholder to clearly and conspicuously note on the check, draft, or similar device ~~that the endorsement or use of the device will be regarded by the credit card issuer as either a charge on the cardholder's credit account if the device is endorsed or used to purchase goods or services or as a cash advance and that the same finance charges or transaction fees may be charged against the account that would be charged if~~



~~the cardholder had used the credit card to purchase the goods or services or obtain a cash advance a specified notice and to provide other information regarding the use of the check.~~

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 1748.9 is added to the Civil Code,

2 to read:

3 1748.9. (a) A credit card issuer that extends credit to  
4 a cardholder through the use of a preprinted check, draft,  
5 or similar credit device shall clearly and conspicuously  
6 note on the check, draft, or similar device that the  
7 endorsement or use of the device will be regarded by the  
8 credit card issuer as either a charge on the cardholder's  
9 credit account if the device is endorsed or used to  
10 purchase goods or services or as a cash advance and that  
11 the same finance charges or transaction fees may be  
12 charged against the account that would be charged if the  
13 cardholder had used the credit card to purchase the goods  
14 or services or obtain a cash advance. *credit card issuer as*  
15 *the acceptance of a loan subject to the terms of the*  
16 *cardholder's credit card agreement with the credit card*  
17 *issuer.*

18 (b) *The credit card issuer shall print on the front of the*  
19 *preprinted check, draft, or similar credit device, in no less*  
20 *than nine point font size, "Use of this check constitutes*  
21 *acceptance of a loan."*

22 (c) *The credit card issuer shall disclose, in addition to*  
23 *any other information required by law, the interest rate*  
24 *and the calculation of finance charges associated with the*  
25 *use of a preprinted check, draft, or similar device in clear,*  
26 *conspicuous language whenever it provides a cardholder*  
27 *with a preprinted check, draft, or similar credit device.*

AMENDED IN SENATE MAY 25, 1999  
AMENDED IN SENATE APRIL 29, 1999

SENATE BILL

No. 545

Introduced by Senator Dunn

February 19, 1999

---

An act to add Section 1748.9 to the Civil Code, relating to credit.

LEGISLATIVE COUNSEL'S DIGEST

SB 545, as amended, Dunn. Credit: notice.

Existing law requires charge card issuers to make specified disclosures in any charge card application form or preapproved written solicitation for a charge card mailed to a consumer who resides in this state, except as specified. One of these disclosures is any fee that may be assessed for an extension of credit by the charge card issuer to a charge cardholder where the extension of credit is not a credit sale and where the charge cardholder receives the extension of credit through the use of a preprinted check, draft, or similar credit device provided by the charge card issuer to obtain an extension of credit.

This bill would require any preprinted check, draft, or similar *credit* device provided by a charge card issuer as an extension of credit to a cardholder to ~~clearly and conspicuously note on the check, draft, or similar device a specified notice and to provide other information regarding~~ *the have an affixed attachment notifying the cardholder that use of the check, draft, or similar credit device constitutes a*



charge against the person's credit card and may be subject to immediate finance charges, 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 1748.9 is added to the Civil Code,  
2 to read:

3 ~~1748.9. (a) A credit card issuer that extends credit to~~  
4 ~~a cardholder through the use of a preprinted check, draft,~~  
5 ~~or similar credit device shall clearly and conspicuously~~  
6 ~~note on the check, draft, or similar device that the~~  
7 ~~endorsement or use of the device will be regarded by the~~  
8 ~~credit card issuer as the acceptance of a loan subject to the~~  
9 ~~terms of the cardholder's credit card agreement with the~~  
10 ~~credit card issuer.~~

11 ~~(b) The credit card issuer shall print on the front of the~~  
12 ~~preprinted check, draft, or similar credit device, in no less~~  
13 ~~than nine point font size, "Use of this check constitutes~~  
14 ~~acceptance of a loan."~~

15 ~~(c) print on an attachment that is affixed, by~~  
16 ~~perforation or other means, to each preprinted check,~~  
17 ~~draft, or similar credit device that is offered, in no less~~  
18 ~~than nine point font size, "Use of this check, draft, or~~  
19 ~~credit device constitutes a charge against your credit~~  
20 ~~account and may subject you to immediate finance~~  
21 ~~charges."~~

22 ~~(b) The credit card issuer shall disclose, in addition to~~  
23 ~~any other information required by law, the interest rate~~  
24 ~~and the calculation of finance charges associated with the~~  
25 ~~use of a preprinted check, draft, or similar device in clear,~~  
26 ~~conspicuous language, separate from and in larger font~~  
27 ~~size than the rest of the text, whenever it provides a~~  
28 ~~cardholder with a preprinted check, draft, or similar~~  
29 ~~credit device.~~

AMENDED IN ASSEMBLY JUNE 24, 1999

AMENDED IN SENATE MAY 25, 1999

AMENDED IN SENATE APRIL 29, 1999

**SENATE BILL**

**No. 545**

**Introduced by Senator Dunn**

February 19, 1999

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An act to add Section 1748.9 to the Civil Code, relating to credit.

LEGISLATIVE COUNSEL'S DIGEST

SB 545, as amended, Dunn. Credit: notice.

Existing law requires charge card issuers to make specified disclosures in any charge card application form or preapproved written solicitation for a charge card mailed to a consumer who resides in this state, except as specified. One of these disclosures is any fee that may be assessed for an extension of credit by the charge card issuer to a charge cardholder where the extension of credit is not a credit sale and where the charge cardholder receives the extension of credit through the use of a preprinted check, draft, or similar credit device provided by the charge card issuer to obtain an extension of credit.

This bill would, *as of July 1, 2000*, require any preprinted check; ~~or draft, or similar credit device~~ provided by a charge card issuer as an extension of credit to a cardholder to have an affixed attachment notifying the cardholder that use of the check; ~~or draft, or similar credit device~~ constitutes a charge against the person's credit card and ~~may be subject to~~



~~immediate finance charges, as specified account, notifying the card holder of the annual percentage rate and calculation of finance charges associated with the use of the check or draft, and notifying the cardholder whether the finance charges are triggered immediately upon use of the check or draft.~~

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 1748.9 is added to the Civil Code,  
2 to read:  
3 1748.9. (a) A credit card issuer that extends credit to  
4 a cardholder through the use of a preprinted check, draft,  
5 or similar credit device shall print on an attachment that  
6 is affixed, by perforation or other means, to each  
7 preprinted check, draft, or similar credit device that is  
8 offered, in no less than nine point font size, "Use of this  
9 check, draft, or credit device constitutes a charge against  
10 your credit account and may subject you to immediate  
11 finance charges."  
12 (b) ~~The credit card issuer shall disclose, in addition to~~  
13 ~~any other information required by law, the interest rate~~  
14 ~~and the calculation of finance charges associated with the~~  
15 ~~use of a preprinted check, draft, or similar device in clear,~~  
16 ~~conspicuous language, separate from and in larger font~~  
17 ~~size than the rest of the text, whenever it provides a~~  
18 ~~cardholder with a preprinted check, draft, or similar~~  
19 ~~credit device. a cardholder through the use of a~~  
20 ~~preprinted check or draft shall disclose on the front of an~~  
21 ~~attachment that is affixed by perforation or other means~~  
22 ~~to the preprinted check or draft, in clear and conspicuous~~  
23 ~~language, all of the following information:~~  
24 (1) That "use of the attached check or draft will  
25 constitute a charge against your credit account."  
26 (2) The annual percentage rate and the calculation of  
27 finance charges, as required by Section 226.16 of  
28 Regulation Z of the Code of Federal Regulations,  
29 associated with the use of the attached check or draft.

- 1 (3) *Whether the finance charges are triggered*
- 2 *immediately upon the use of the check or draft.*
- 3 *SEC. 2. This act shall become operative on July 1,*
- 4 *2000.*



Senate Bill No. 545

CHAPTER 171

An act to add Section 1748.9 to the Civil Code, relating to credit.

[Approved by Governor July 23, 1999. Filed with  
Secretary of State July 26, 1999.]

LEGISLATIVE COUNSEL'S DIGEST

SB 545, Dunn, "Credit: notice."

Existing law requires charge card issuers to make specified disclosures in any charge card application form or preapproved written solicitation for a charge card mailed to a consumer who resides in this state, except as specified. One of these disclosures is any fee that may be assessed for an extension of credit by the charge card issuer to a charge cardholder where the extension of credit is not a credit sale and where the charge cardholder receives the extension of credit through the use of a preprinted check, draft, or similar credit device provided by the charge card issuer to obtain an extension of credit.

This bill would, as of July 1, 2000, require any preprinted check or draft provided by a charge card issuer as an extension of credit to a cardholder to have an affixed attachment notifying the cardholder that use of the check or draft constitutes a charge against the person's credit account, notifying the cardholder of the annual percentage rate and calculation of finance charges associated with the use of the check or draft, and notifying the cardholder whether the finance charges are triggered immediately upon use of the check or draft.

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

SECTION 1. Section 1748.9 is added to the Civil Code, to read:

1748.9. (a) A credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft shall disclose on the front of an attachment that is affixed by perforation or other means to the preprinted check or draft, in clear and conspicuous language, all of the following information:

- (1) That "use of the attached check or draft will constitute a charge against your credit account."
- (2) The annual percentage rate and the calculation of finance charges, as required by Section 226.16 of Regulation Z of the Code of Federal Regulations, associated with the use of the attached check or draft.
- (3) Whether the finance charges are triggered immediately upon the use of the check or draft.





Ch. 171

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SEC. 2. This act shall become operative on July 1, 2000.

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VOLUME 1  
CALIFORNIA LEGISLATURE  
AT SACRAMENTO  
1999-2000 REGULAR SESSION

# SENATE FINAL HISTORY

SHOWING ACTIONS TAKEN IN THIS SESSION ON ALL SENATE BILLS  
CONSTITUTIONAL AMENDMENTS, CONCURRENT, JOINT RESOLUTIONS  
AND SENATE RESOLUTIONS

CONVENED DECEMBER 7, 1998  
ADJOURNED SINE DIE NOVEMBER 30, 2000

DAYS IN SESSION ..... 240  
CALENDAR DAYS ..... 725

LIEUTENANT GOVERNOR  
*President of the Senate*

SENATOR JOHN L. BURTON  
*President pro Tempore*

*Compiled Under the Direction of*  
GREGORY SCHMIDT  
*Secretary of the Senate*

By  
DAVID H. KNEALE, ESQ.  
*History Clerk*



## S.B. No. 544—Karnette.

An act to amend Section 1 of Chapter 868 of the Statutes of 1998, relating to school district reorganization, and declaring the urgency thereof, to take effect immediately.

## 1999

- Feb. 19—Introduced. Read first time. To Com. on RLS. for assignment. To print.
- Feb. 23—From print. May be acted upon on or after March 25.
- Mar. 11—To Com. on ED.
- Mar. 31—Set for hearing April 21.
- April 5—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- April 26—From committee: Do pass as amended. To Consent Calendar. (Ayes 14. Noes 0. Page 862.)
- April 27—Read second time. Amended. To Consent Calendar.
- April 29—Read third time. Urgency clause adopted. Passed. (Ayes 35. Noes 0. Page 992.) To Assembly.
- April 29—In Assembly. Read first time. Held at Desk.
- May 10—To Com. on ED.
- July 1—From committee: Do pass. To Consent Calendar. (Ayes 18. Noes 0.)
- July 2—Read second time. To Consent Calendar.
- July 8—Read third time. Urgency clause adopted. Passed. (Ayes 68. Noes 0. Page 2974.) To Senate.
- July 8—In Senate. To enrollment.
- July 14—To Governor at 11 a.m.
- July 22—Approved by Governor.
- July 22—Chaptered by Secretary of State. Chapter 153, Statutes of 1999.

## S.B. No. 545—Dunn.

An act to add Section 1748.9 to the Civil Code, relating to credit.

## 1999

- Feb. 19—Introduced. Read first time. To Com. on RLS. for assignment. To print.
- Feb. 23—From print. May be acted upon on or after March 25.
- Mar. 3—To Com. on JUD.
- Mar. 16—Set for hearing March 23.
- Mar. 17—Set, first hearing. Hearing canceled at the request of author.
- April 28—Set for hearing May 11.
- April 29—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- May 6—Hearing postponed by committee.
- May 10—Set for hearing May 18 pending suspension of rules.
- May 13—Joint Rule 61(a)(3) suspended.
- May 24—From committee: Do pass as amended. (Ayes 6. Noes 1. Page 1272.)
- May 25—Read second time. Amended. To third reading.
- May 27—Read third time. Passed. (Ayes 23. Noes 11. Page 1395.) To Assembly.
- May 27—In Assembly. Read first time. Held at Desk.
- June 10—To Com. on B. & F.
- June 24—From committee with author's amendments. Read second time. Amended. Re-referred to committee.
- June 29—From committee: Do pass. (Ayes 12. Noes 0.)
- June 30—Read second time. To third reading.
- July 6—Read third time. Passed. (Ayes 53. Noes 17. Page 5896.) To Senate.
- July 6—In Senate. To unfinished business.
- July 12—Senate concurs in Assembly amendments. (Ayes 21. Noes 15. Page 2197.) To enrollment.
- July 16—Enrolled. To Governor at 11 a.m.
- July 23—Approved by Governor.
- July 26—Chaptered by Secretary of State. Chapter 171, Statutes of 1999.





# POLICIES & FOLLOW-UP SERVICES

## POLICIES

Our experience in providing legislative history since 1974 has led to the development of certain policies which govern our service. These policies are the terms and conditions of our relationship with you. We enunciate them here so that you are aware of the basis upon which this research is provided to you.

**SCOPE OF ANALYSIS:** Any analysis provided to you is based upon the circumstances of your case as you have briefly related them to us, as well as a review of the enclosed documents. As such, it is only tentative in nature and should not be considered a legal opinion. A more conclusive statement of the impact of the legislative history in your case would be dependent upon a complete understanding of all of the factual issues involved and the applicable legal principles. You may wish to involve an expert witness who has extensive experience in presenting legislative documents to the courts in this role.

**AVAILABILITY OF THIS RESEARCH TO ALL CLIENTS:** It is our policy to furnish materials and research to any and all clients who request them. Our services are not available on an exclusive basis. This policy exists because we are neutral and objective providers of legislative research. Due to this, the Courts of California have regularly cited our Service. (See List of Cases Citing Legislative Intent Service)

**CONFIDENTIALITY:** Neither Legislative Intent Service nor its attorneys are undertaking to represent you as an attorney as a result of providing this research to you. We are researching documents and the history of public acts and are not practicing law. We are working under the attorney work product protections of the Code of Civil Procedure as your agent. It is our policy to strictly preserve and maintain the confidentiality of the identity of those attorneys who request our services, and the theories, arguments and facts regarding their

## COMPLETENESS OF THE RESEARCH

**PROVIDED:** We cannot represent that every document ever drafted with regard to the enactment researched has been provided. There is no uniform system for retaining legislative materials; in fact, there are as many potential sources for documentation as there are individuals involved with the measure. Furthermore, there is no legal duty on behalf of many of these participants in the process to make public the documents generated.

Consequently, while we represent that we are providing the most complete and thorough research product commercially available on legislative history, and in the vast majority of cases can and will provide every reasonably relevant document, there are occasions where particular documents are not provided either because they are unavailable or because we are unaware of their existence or applicability to the legislation. A particular example are the Assembly and Senate *Journals*. The legislative indices for the *Journals* are not produced for two to three years subsequent to the legislative session; on line *Journals* are only date searchable. Therefore, we cannot be held responsible for failing to locate substantive comments on recent legislation except where a specific request is made for a page by page search (at additional cost).

## EXPERT WITNESS AVAILABILITY:

You may wish to separately retain Mr. Bill Keller, one of our Directors, in order to utilize his skills as a consultant or expert witness. Mr. Keller has extensive experience in analyzing and presenting legislative documents to the courts. (Please see information in binder pocket.) If you do desire to utilize Mr. Keller in this capacity, a specific agreement directly with him will be necessary. The fee for this service will be quoted upon request. He may be reached at the telephone number or web site indicated in our enclosed letter of analysis.

(Continued on back)

# POLICIES & FOLLOW-UP SERVICES

## **FOLLOW-UP SERVICES**

**ADDITIONAL DOCUMENTS:** We perform research at the time of your request in a thorough and professional manner; however, further materials on the research may become available over time. Our policy is to report to you by fax concerning any additional material pertinent to your request that becomes available shortly after the date of our initial letter to you. If your need for this research is ongoing after our first report, we recommend that you periodically call to determine whether further documentation on the enactment has become available.

**TAPES AND RECORDINGS:** The Legislature has videotaped selected committee and all floor proceedings since August of 1990. The tapes are available upon request, but require a few weeks to acquire. We recommend that you consider requesting tapes only when language you are focusing upon was changed in the committee or floor amendments and the materials do not provide other discussion of the source and purpose for the change. Please call for information on the availability and cost of the tapes.

**QUESTIONS:** We are at your service. Please do not hesitate to call us with your questions at any time. If the scope of the question is beyond what can be done free of charge, we will frankly say so and quote the fee necessary to proceed. But, please, call so we can talk about it.

**FREE MCLE TALKS:** Legislative Intent Service attorneys present informed talks on the sources of legislative history and utilization of them to determine legislative intent in construing a statute. We will address interested groups of ten or more attorneys and others. We come at our own expense and at your convenience. Legislative Intent Service has been approved as a provider of Minimum Continuing Legal Education by the State Bar of California. This program will provide one (1) hour of MCLE credit.

SENATE JUDICIARY COMMITTEE  
Adam B. Schiff, Chairman  
1999-2000 Regular Session

SB 545	S
Senator Dunn	B
As Amended April 29, 1999	
Hearing Date: May 18, 1999	5
Civil Code	4
JMR:cjt	5

SUBJECT

Disclosures Regarding Checks Issued by Credit Card Issuers

DESCRIPTION

This bill would require any credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar device, to provide specified disclosures directly on the device and in the accompanying material that explain the terms and conditions of using the device.

(This analysis reflects author's amendments to be offered in Committee.)

CHANGES TO EXISTING LAW

Existing law, under the Areias-Robbins Credit Card Full Disclosure Act of 1986, requires that any application form or preapproved written solicitation for an open-end credit card account shall contain or be accompanied by certain disclosures, including: (1) any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates; (2) any membership fee that may be imposed; and (3) any per transaction fee that may be imposed on purchases. (Civil Code Section 1748.11. All further references are to the Civil Code unless otherwise indicated.)

This bill would require any credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar device, to print on the front of the device in no less than nine point font size: "Use of this check constitutes a charge against your credit account."

The bill also would require the credit card issuer to provide a disclosure accompanying the device that sets forth the interest rate and the finance charges associated with use of the device in clear and conspicuous language that is separate from and in larger font than any other text.



COMMENT

1. Stated need for legislation

Proponents of this bill assert that credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. Proponents argue that one of the most common new products that credit card issuers use to increase the revenue from their current customer base is the preprinted check. Proponents contend that these products, designed to look like checks from a consumer's checking account, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase or to make payments on other debts.

According to proponents, the problem with these products is that while they clearly specify the amount of cash that can be obtained with the product ("Get \$500 today!"), the disclosures that explain the cost of using the product are often hidden or absent. Proponents believe that many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

2. Opponents argue that disclosure should not be placed on the actual check

Opponents do not object to clarifying the disclosures that are required with regards to the use of a preprinted check or similar devices, but oppose any requirement that the disclosures appear on the check or device. The opponents make the following arguments:

- Insufficient room on the check. Opponents assert that the information on the front and back of checks is already heavily regulated, and there is insufficient free room on the check for the proposed disclosure.

While opponents argument may have had some merit under the bill's original version, the bill has been amended to require only that the check contain the following language: "Use of this check constitutes a charge against your credit account." Based on this limited requirement, it is difficult to imagine that sufficient room could not be found.

- Could lead to delay or rejection in processing. Opponents assert that the Federal Reserve Board regulates the information on the front of the check and the placement of some of that information. Opponents assert that if a check does not meet the specifications set forth by the Federal Reserve Board, the check will not be accepted. However, there does not appear to be anything in the bill at this time which would prohibit a credit card



issuer from simultaneously complying with federal requirements and the provisions of this bill.

In addition, opponents contend that it serves the best interests of the consumers using these checks for the checks to have the same appearance as normal checks. Opponents argue that this is necessary to ensure that merchants continue to accept the checks, and do not identify the customer's check as different than normal checks.

- Consumer's privacy. According to opponents, consumers using these checks do not typically want others to know that these checks are from a credit card account. Opponents argue that this information is relevant for the consumer and the credit card issuer, but has no relevance for any other party who may process or review the check. Opponents believe that any consumers who did not care if the merchant or creditor knew that they were using a credit card account would simply use the credit card and not the checks.

The ultimate issue is whether placing this disclosure on the check itself would further the policy behind the bill of informing the consumer of the fees and rates that apply when using the check. It seems that placing this disclosure directly on the check would benefit those consumers who fail to read the accompanying information to understand that use of the check is a charge against their account. However, due to the limited disclosure that can be provided in the space available, the benefit of this information to the consumers depends on whether more consumers would look at the accompanying material for the applicable fees and rates than would otherwise without the check disclosure.

SHOULD THE DISCLOSURE BE REQUIRED ON THE CHECK OR OTHER SIMILAR DEVICE?

Support: CALPIRG; Consumers Union

Opposition: California Bankers Association; Household International, Inc.

#### HISTORY

Source: Author

Related Pending Legislation: None Known

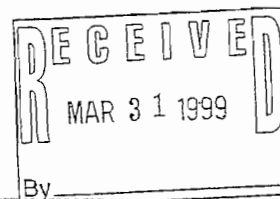
Prior Legislation: None Known

\*\*\*\*\*





LAW OFFICES OF PAUL SOTER  
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San Francisco, California 94127  
Tel. (415) 333-3193  
Fax (415) 333-3792



March 30, 1999

The Honorable Joseph L. Dunn  
State Capitol  
Sacramento, CA 95814

Re: Senate Bill 545

Dear Senator Dunn,

I am an attorney in private practice in San Francisco. My practice is largely devoted to advising financial institutions on compliance with federal and California laws and regulations pertaining to their lending operations. My clients include both out-of-state credit card issuers and some of the few remaining California-based institutions that still issue credit cards from California. I would accordingly like to comment on the current version of Senate Bill 545.

#### Current Contents of S.B. 545

In its current form, S.B. 545 would require any credit card advance check to contain a clear and conspicuous disclosure that the consumer's use of the check will constitute a cash advance or loan advance against the consumer's credit card account, and that the same finance charges or transaction fees may be charges against the credit card account that would apply if the cardholder had used the credit card to make a purchase or obtain a cash advance.

#### Philosophical Issue as to Disclosure

Let me begin by saying that none of my clients have any objections to the notion that consumers should be fully informed of the terms and conditions of credit instruments provided to them by lenders. However, the current form of S.B. 545 raises several practical concerns.

#### Practical Issues

*S.B. 545 Will Disadvantage California Lenders:* First, as noted above, there are very few credit card issuers remaining in California. Out-of-state issuers' credit card agreements universally provide that the law of the issuer's jurisdiction governs the credit card agreement. Thus, the only credit card issuers that would be subject to the disclosure requirements of S.B. 545



Law Offices of Paul Soter

The Hon. Joseph L. Dunn  
March 30, 1999  
Page 2

would be those few California issuers. This has the potential to place those California issuers at a further competitive disadvantage as against the out-of-state issuers, and to provide further encouragement for them to move their credit card operations to other states as well.

*S.B. 545 Seems to Require Standard Pricing:* Second, as currently worded, S.B. 545 assumes and accordingly seems to require that credit card issuers apply the same pricing for advances made with credit card checks as for credit card purchase transactions. However, this is not necessarily the case. Many credit card issuers have different interest rates for purchase transactions and for cash advance or loan advance transactions; vary the pricing for either or both during special promotions (e.g., introductory rates, holiday promotions, tax period promotions, etc.) or on a regular basis through tiered pricing structures. S.B. 545 would seem not to permit such pricing variations or experimentation. This appears to be an unintended and unnecessary statutory regulation of pricing.

*There is Insufficient Room on the Front of the Check:* Third, there is very little room on the face of a check for the disclosure contemplated by S.B. 545. Credit card checks are processed like ordinary deposit account checks through the check clearing system. The front of the check needs to contain the information concerning the payee, the date, and the amount of the check, and is required to contain the name and address of the paying bank and the check routing information required by the Federal Reserve System for processing checks (*See* Federal Reserve Board Circular 3, Section 3).

*There is Insufficient Room on the Back of the Check:* Fourth, space on the back of a check is also severely limited. Federal Reserve Board regulations restrict the space for endorsements and messages to three inches from the edge of the check; the rest of the space on the back of the check is reserved for routing endorsements. (*See* Appendix D to Federal Reserve Board Regulation CC.) This requirement realistically does not leave space for a conspicuous disclosure.

*A Disclosure on the Back of the Check Puts the Wrong Party on Notice:* Fifth, a notice placed on the reverse of a check may do nothing to inform the person writing the check. The consumer who writes a credit card check will normally only look at its front. It is the payee or endorser of the check who would look at the back of a check, in the course of endorsing it for deposit. This obviously would not effect the ends of S.B. 545.

*A Disclosure on the Check is Not Consumer-Friendly:* Sixth, in my clients' experience, consumers do not want credit card checks to be readily identifiable as such. To some extent, consumers feel that there may be a stigma attached to the use of a credit instrument as opposed to a debit instrument to pay for a transaction. For this reason, credit card checks, home equity line of credit checks, and unsecured line of credit checks have evolved to resemble ordinary deposit account checks. Accordingly, it seems that consumers themselves would not welcome the

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Law Offices of Paul Soter

The Hon. Joseph L. Dunn  
March 30, 1999  
Page 3

disclosure being printed on the check itself.

**A Practical Alternative**

A possible alternative to the current provisions of S.B. 545 would be for the disclosures set forth in S.B. 545 be required to be contained in the letter that accompanies credit card checks when the checks are provided to consumers. This would accomplish four purposes. First, it would permit the disclosures to be provided clearly, conspicuously, and fully, without space constraints. Second, a requirement that the disclosures be provided in the mailer rather than on the check would make compliance much easier for California lenders, and would probably not constitute a significant further burden of a nature likely to be calculated into a decision on whether to relocate out of California. Third, most credit card issuers already provide much or all of the disclosures proposed by S.B. 545 in their credit card mailers. The existence of such a relatively non-burdensome requirement in California law would probably result in most out-of-state issuers electing to comply with the requirement rather than facing potential conflict with California authorities: a mailer is much easier and cheaper to redesign than a check. Fourth, placing the disclosures in the mailer would avoid the consumer stigmatization issue of having credit card checks clearly recognizable as such.

\* \* \*

In closing, I would like to express my appreciation for your consideration of the above comments. Please contact me if you have any questions concerning this matter.

Sincerely,

**COPY**

R. Paul Soter, Jr.

bcc: Claire J. Bunton, Esq.  
James A. Clark, Esq. ✓





JK

MEMORANDUM

May 4, 1999

TO: Members, Senate Judiciary Committee

FROM: Earl Lui, Senior Attorney

RE: SB 545 (Dunn), as amended April 29: SUPPORT

HEARING: Tuesday, May 11, 1999

Consumers Union, the nonprofit publisher of *Consumer Reports* magazine, urges you to support SB 545 (Dunn) when it is heard in the Senate Judiciary Committee. This bill adds a simple, clear disclosure to unsolicited preprinted "checks" sent to consumers by their credit card issuers.

Such checks are in reality loans (or "cash advances") drawn on the consumer's available credit line. This bill would require a disclosure that "Use of this check constitutes acceptance of a loan." Such a disclosure would make it clear to consumers that they are taking out a loan. In addition, the bill would require a disclosure on the interest rate and charges each time the credit card issuer sends out the unsolicited check. Current law does not require such a disclosure. By accompanying the check, this disclosure will provide better notice to consumers about the costs of using the check.

For these reasons, we support SB 545 and urge an "Aye" vote.

cc: Counsel, Senate Judiciary Committee





Publisher of Consumer Reports

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For these reasons, we support SB 545 and urge an "Aye" vote.

cc: Counsel, Senate Judiciary Committee

SP-5

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 Sacramento CA 95814  
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 (916) 448-4560 Fax

*Jodi*

May 4, 1999

MAY 04 1999

The Honorable Adam Schiff  
 Chairman, Senate Judiciary Committee  
 State Capitol  
 Sacramento, CA 95814

Re: SB 545 (Dunn), Preprinted check disclosure – SUPPORT

Dear Chairman Schiff:

The California Public Interest Research Group (CALPIRG), a statewide consumer and environmental watchdog organization with 60,000 members, supports SB 545 by Senator Joe Dunn. This bill will improve consumer disclosures for preprinted checks that are sold to customers by credit card issuers.

Credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. While the industry has devised a series of products, advertisements, and gimmicks aimed at luring in new customers, they have also invented new ways to charge their current customers more, and higher, interest rates and fees.

One of the most common new products that credit card issuers use to increase the revenue from their current customers is the preprinted check. These products, designed to look like checks, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase. But while these products will loudly and clearly specify that amount of cash that can be obtained with the product – “Get \$500 today by signing here” – the disclosures that explain the cost of using the product are often hidden or absent. Many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

SB 545 simply requires prominent disclosures that clearly explain the terms of the agreement on preprinted checks sold by credit card issuers. The bill fills a void of consumer protection today with which some credit issuers have filled with a deceptive product. At a minimum, the proper explanation to a consumer of what a product is and what it will ultimately cost them is a reasonable and necessary requirement of credit card issuers. Given the increased marketing of this product, requiring these disclosures is appropriate and needed now.

For these reasons, we urge your “Aye” vote on SB 545 when it is heard in the Senate Judiciary Committee later this month.

Thank you for your time and consideration.

Sincerely,

*Jon Golinger*  
 Jon Golinger  
 Consumer Program Director

Cc: All Members, Senate Judiciary Committee  
 Senator Joe Dunn

SP-6

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 San Diego, CA 92103  
 (619) 297-5512

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Publisher of Consumer Reports

MEMORANDUM

May 4, 1999

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HEARING: Tuesday, May 11, 1999

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cc: Counsel, Senate Judiciary Committee

SP-7



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May 4, 1999

The Honorable Adam Schiff  
 Chairman, Senate Judiciary Committee  
 State Capitol  
 Sacramento, CA 95814

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Sincerely,

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Cc: All Members, Senate Judiciary Committee  
 Senator Joe Dunn

SP-8

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California Bankers Association  
Established 1891

May 13, 1999

JK 545/0

The Honorable Joseph Dunn  
Member, California State Assembly  
State Capitol, Room 2068  
Sacramento, California 95814

**Re: SB 545: Oppose Unless Amended**

Dear Senator Dunn:

While the California Bankers Association (CBA) supports the concept of disclosure, we are opposed to your bill in its current form. We have discussed this issue with your staff on numerous occasions and have suggested amendments that would resolve our concerns with the bill. We had withheld writing a letter of opposition because we were hopeful that some agreement could be reached. Unfortunately, to date, no agreement has been reached and we must oppose this legislation when it is heard in the Senate Judiciary Committee next week.

The basis of our opposition to the bill is two-fold. First, our opposition is not to the issue of disclosure, but to the requirement that the disclosure be made on the check. Second, although unintended, the bill is anti-consumer.

*Method of disclosure:* As stated above, we have no problem with having a disclosure of the terms which apply accompany the checks. Our opposition is to requiring the disclosure to be included on the check. We believe that there is insufficient free room on the check for disclosure due to the Federal Reserve Board regulations governing the front and back of checks.

To expedite the check clearing process and the availability of funds for consumers, the Federal Reserve Board has promulgated Regulation CC. Appendix D of Regulation CC restricts the use of the back of the check to endorsements by the owner of the check and the endorsements of the financial institutions involved in routing the check. Furthermore, the Federal Reserve Board regulates the information on the front of the check as well. In Operating Circular No. 3, the board regulates what information must be placed on the front of the check and the placement of some of that information. If a check does not meet the specifications set forth by the Federal Reserve Board, the "Fed" will not accept the check (see attachments).

*Unintended Anti-Consumer Affect:* By mandating that the card issuer disclose the following statement "...endorsement or use of the device will be regarded by the credit card issuer as the acceptance of a loan subject to the terms of the cardholder's credit card agreement with the

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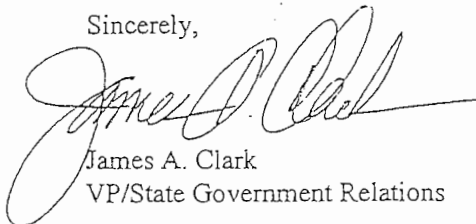
SP-9

*The Honorable Joseph Dunn*  
*SB 545: Oppose Unless Amended*  
*May 13, 1999*  
*Page 2*

*credit card issuer*" we believe that you are inadvertently restricting the use of a credit card check to the terms and conditions of the credit card agreement and eliminate the ability of the credit card issuer to offer promotional terms that are more beneficial to the consumer than those specified in the card agreement. Many credit card issuers will provide checks with promotional terms such as "no cash advance fee if used by..." or offer a lower annual percentage rate (APR) for a specified period of time or until the balance of the check generated transactions is paid off. Although it may not be your intent, we believe that the bill in its current form effectively prohibit the offering of promotional terms.

To summarize, we are not opposed to disclosure, only to the mandate that the disclosure be made on the check. If the bill is amended to permit the disclosure of terms to accompany the check, our opposition to the bill is removed and the unintended consumer consequence is resolved.

Sincerely,



James A. Clark  
VP/State Government Relations

JAC:yle

Enclosure(s)

cc. All Members, Senate Judiciary Committee  
Jodi Remke, Counsel, Senate Judiciary Committee  
Steve Trout, Consultant, Senate Republican Caucus

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LEGISLATIVE INTENT SERVICE



SP-10



California Bankers Association  
Established 1891

May 13, 1999

The Honorable Joseph Dunn  
Member, California State Assembly  
State Capitol, Room 2068  
Sacramento, California 95814

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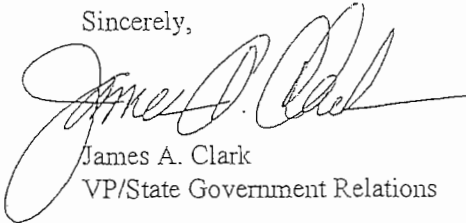
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*Page 2*

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VP/State Government Relations

JAC:yle

Enclosure(s)

cc. All Members, Senate Judiciary Committee  
Jodi Remke, Counsel, Senate Judiciary Committee  
Steve Trout, Consultant, Senate Republican Caucus



Operating  
Circular  
3

to the last collecting Reserve Bank, that we are willing to accept as cash items ("foreign cash items")<sup>3</sup>.

2.2 When we accept an instrument for credit to ourselves or another Reserve Bank, we handle the instrument as a cash item if it qualifies as a cash item even though it is sent to us by a person other than a "sender," as defined in Section 210.2 of Regulation J.

### 3.0 ITEMS WE DO NOT HANDLE AS CASH ITEMS

3.1 A sender should not send to us any item if:

(a) A passbook, certificate, or other document is attached to the item;

(b) Special instructions, including a request for special advice of payment or dishonor, accompany the item;

(c) The item consists of more than a single thickness of paper, but we do handle as a cash item a mutilated, erroneously-encoded, or other cash item contained in a carrier that qualifies for handling by high-speed check processing equipment, and we handle a photocopy as provided in paragraph 19;

(d) The item has not been preprinted or postcoded in accordance with the American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (May, 1990), before we receive it with: (i) the routing number<sup>4</sup> of the paying bank (or nonbank payor), and (ii) the dollar amount of the item (unless the sender has requested a special encoding service we provide). We handle such an item as a cash item, however, when we judge that special

circumstances justify such handling, and we handle a photocopy as provided in paragraph 19;

(e) The item does not (i) bear the routing number of the paying bank in fractional form in the upper right corner in at least 8-point type, or (ii) conform to the dimension standards of the American National Standard Specifications for Placement and Location of MICR Printing, X9.13 (May, 1990) (between 2 3/4 and 3 2/3 inches in width, and 6 and 8 3/4 inches in length). We handle such an item as a cash item, however, when we judge that special circumstances justify such handling, and we handle a photocopy as provided in paragraph 19; or

(f) The item has been dishonored two or more times.

3.2 We reserve the right to return an item if we judge that special conditions require that it not be handled as a cash item. We reserve the right to return an item payable by, at or through a bank that has been reported closed. We do not handle an item in the amount of \$100,000,000 or more, and we reserve the right to return items in amounts of less than \$100,000,000 that in our judgment are intended to avoid the \$100,000,000 limit.

3.3 If an item that we do not handle as a cash item is sent to us in a cash letter, we reserve the right, in our discretion, to charge it back and return it to the sender. We do not have any responsibility for delay in handling as a cash item an item that should not have been sent to us as a cash item. We also reserve the right to return and-charge back a cash letter that does not conform to the sorting requirements of this Circular.

3. Provisions governing the collection of foreign cash items, including Canadian postal money orders payable in U.S. funds, are contained in Appendix D of this Circular.

4. The term "routing number" means a nine-digit number authorized by the Routing Number Policy of the American Bankers Association.



## ADDRESS ON CASH ITEM

3.4 If we receive a cash item that does not state on its face the name and a city and state address of the paying bank consistent with the routing number on the item as provided in this paragraph, we reserve the right (i) to refuse to handle the item, and other items bearing the same routing number, or (ii) to present or send the item to any branch or office of the paying bank consistent with section 229.36(b) of Regulation CC. An address is consistent with a routing number if the address is both located in the same Reserve Bank check processing region as the address associated with the routing number in magnetic ink on the item and located in a Reserve Bank availability zone that provides the same (or slower) availability than the routing number address. We will give advance notice to a paying bank and to senders if we determine not to handle items under this paragraph, and we will give advance notice to a paying bank if we determine to present or send items to a branch or office address that is not associated with the routing number on the items.

## 4.0 DEFINITIVE SECURITIES; NONCASH ITEMS

4.1 Senders may send coupons from obligations of the United States and its agencies and instrumentalities to us for credit by us, as fiscal agent of the obligor, subject to final payment by the obligor. Senders may send coupons from obligations of the International Bank for Reconstruction and Development or the Inter-American Development Bank directly to the Federal Reserve Bank of New York for payment.

4.2 Reserve Banks do not generally collect noncash items, but certain Reserve Banks collect definitive securities as non-cash items. A sender may send definitive municipal securities to the Jacksonville Branch of the Federal Reserve Bank of Atlanta for collection as noncash items, pursuant to its operating circular regarding this service. If a sender desires that we handle a noncash item (other than a security), the sender must first obtain the prior

approval of an official of this Reserve Bank's securities services department and execute an appropriate agreement with us.

## 5.0 PREPARATION OF CASH LETTERS AND RETURN LETTERS

5.1 All cash items and returned checks sent to us may be listed by amount without further description in tape listings accompanying cash letters or return letters. All letters and tape listings should be dated and identified with the sender's (or paying or returning bank's) name and routing number, if any.

5.2 Each sender (or paying or returning bank) should keep records that permit it to identify its depositor or indorser on a cash item or returned check in case the item is lost or destroyed and charged back to it. We do not usually keep copies or descriptions of items. We are not responsible for keeping records of items in end-point-sorted (fine sort) cash letters or return letters that we handle without our indorsement. We have no responsibility for describing a lost or destroyed item that we charge back to a bank, or for maintaining insurance coverage or obtaining reimbursement from another person for a sender's (or paying or returning bank's) costs or other loss, except as provided in Appendix A concerning Government checks.

5.3 We may require that cash items be separately sorted from returned checks, except as otherwise provided in our procedures. We reserve the right to require banks located in a city, town or similar area to sort, list, and package cash items payable in the same area according to the office of the paying bank where the items are payable. We reserve the right to require categories of items to be sent to a specific office of this Reserve Bank. Our time schedules contain other instructions for sorting and listing items.

## INDORSEMENTS

5.4 All cash items and returned checks sent to us should be indorsed in accordance with the requirements of Section 229.35

Operating  
Circular  
3



Federal Reserve System

Pt. 229, App. D

C-15—One-Time Notice for Repeated Overdraft Exception Hold

Notice of Hold

Account Number: (number) Date of Notice: (date)

We are delaying the availability of checks deposited into your account due to repeated overdrafts of your account. For the next six months, deposits will generally be available on the (number) business day after the day of your deposit for checks drawn on (bank name), the (number) business day after the day of your deposit for local checks, and the (number) business day after the day of deposit for nonlocal checks. Checks (not drawn on us) that otherwise would have received next-day availability will be treated as either local or nonlocal checks depending on the location of the paying bank.

C-16—Case-by-Case Hold Notice

Notice of Hold

Account number: (number)  
Date of deposit: (date)

We are delaying the availability of \$(amount being held) from this deposit. These funds will be available on the (number) business day after the day of your deposit [(subject to our cash withdrawal limitation policy)].

If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, (description of procedure for obtaining refund.)

C-17—Notice at locations where employees accept consumer deposits

FUNDS AVAILABILITY POLICY

Description of deposit	When funds can be withdrawn by cash or check
Direct deposits .....	The day we receive the deposit
Cash, wire transfers, cashier's, certified, teller's, or government checks, checks on (bank name) (unless (any limitation related to branches in different check processing regions)), and the first \$100 of a day's deposits of other checks.	The first business day after the day of deposit.
Local checks .....	The second business day after the day of deposit.
Nonlocal checks .....	The fifth business day after the day of deposit.

C-18—Notice at locations where employees accept consumer deposits (case-by-case holds)

FUNDS AVAILABILITY POLICY

Our general policy is to allow you to withdraw funds deposited in your account on the (number) business day after the day we receive your deposit. Funds from electronic direct deposits will be available on the day we receive the deposit. In some cases, we may delay your ability to withdraw funds beyond the (number) business day. Then, the funds will generally be available by the fifth business day after the day of deposit.

C-19—Notice at Automated Teller Machines

AVAILABILITY OF DEPOSITS

Funds from deposits may not be available for immediate withdrawal. Please refer to your institution's rules governing funds availability for details.

C-20—Notice at Automated Teller Machines (Delayed Receipt)

NOTICE

Deposits at this ATM between (day) and (day) will not be considered received until (day). The availability of funds from the deposit may be delayed as a result.

C-21—Deposit Slip Notice

Deposits may not be available for immediate withdrawal.

[53 FR 19433, May 27, 1988, as amended at 53 FR 31293, Aug. 18, 1988; Reg. CC, 55 FR 21855, May 30, 1990; 55 FR 50818, Dec. 11, 1990; 56 FR 7802, Feb. 26, 1991; 57 FR 3280, Jan. 29, 1992; 60 FR 51671, Oct. 3, 1995; 62 FR 13811, Mar. 24, 1997; 62 FR 48752, Sept. 17, 1997]

APPENDIX D TO PART 229—INDORSEMENT STANDARDS

1. The depository bank shall indorse a check according to the following specifications:

- The indorsement shall contain—
  - The bank's nine-digit routing number, set off by arrows at each end of the number and pointing toward the number;
  - The bank's name/location; and
  - The indorsement date.
- The indorsement may also contain—
  - An optional branch identification;
  - An optional trace/sequence number;
  - An optional telephone number for receipt of notification of large-dollar returned checks; and
  - Other optional information provided that the inclusion of such information does not interfere with the readability of the indorsement.

• The indorsement shall be written in dark purple or black ink.

• The indorsement shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.<sup>1</sup>

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- Including *only* its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;
- Using an ink color other than purple; and
- Indorsing in the area on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

3. Each returning bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

- Using an ink color other than purple;
- Staying clear of the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge of the check.

APPENDIX E TO PART 229—COMMENTARY

I. Introduction

A. Background

1. The Board interpretations, which are labeled "Commentary" and follow each section of Regulation CC (12 CFR Part 229), provide background material to explain the Board's intent in adopting a particular part of the regulation; the Commentary also provides examples to aid in understanding how a particular requirement is to work. Under section 611(e) of the Expedited Funds Availability Act (12 U.S.C. 4010(e)), no provision of section 611 imposing any liability shall apply to any act done or omitted in good faith conformity with any rule, regulation, or interpretation thereof by the Board of Governors of the Federal Reserve System, notwithstanding the fact that after such act or omission has occurred, such rule, regulation, or interpretation is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. The Commentary is an "interpretation" of a regulation by the Board within the meaning of section 611.

<sup>1</sup>The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Committee on Financial Services *Specification for the Placement and Location of MICR Printing*, X 9.13.

II. Section 229.2 Definitions

A. Background

1. Section 229.2 defines the terms used in the regulation. For the most part, terms are defined as they are in section 602 of the Expedited Funds Availability Act (12 U.S.C. 4001). The Board has made a number of changes for the sake of clarity, to conform the terminology to that which is familiar to the banking industry, to define terms that are not defined in the Act, and to carry out the purposes of the Act. The Board also has incorporated by reference the definitions of the Uniform Commercial Code where appropriate. Some of Regulation CC's definitions are self-explanatory and therefore are not discussed in this Commentary.

B. 229.2(a) Account

1. The Act defines account to mean "a demand deposit account or similar transaction account at a depository institution." The regulation defines account in terms of the definition of transaction account in the Board's Regulation D (12 CFR part 204). The definition of account in Regulation CC, however, excludes certain deposits, such as non-documentary obligations (see 12 CFR 204.2(a)(1)(vii)), that are covered under the definition of transaction account in Regulation D. The definition applies to accounts with general third party payment powers but does not cover time deposits or savings deposits, including money market deposit accounts, even though they may have limited third party payment powers. The Board believes that it is appropriate to exclude these accounts because of the reference to demand deposits in the Act, which suggests that the Act is intended to apply only to accounts that permit unlimited third party transfers.

2. The term account also differs from the definition of transaction account in Regulation D because the term account refers to accounts held at banks. Under Subparts A and C, the term bank includes not only any depository institution, as defined in the Act, but also any person engaged in the business of banking, such as a Federal Reserve Bank, a Federal Home Loan Bank, or a private banker that is not subject to Regulation D. Thus, accounts at these institutions benefit from the expeditious return requirements of Subpart C.

3. Interbank deposits, including accounts of offices of domestic banks or foreign banks located outside the United States, and direct and indirect accounts of the United States Treasury (including Treasury General Accounts and Treasury Tax and Loan Deposit Accounts) are exempt from Regulation CC.

C. 229.2(b) Automated Clearinghouse (ACH)

1. The Board has defined automated clearinghouse as a facility that processes debit

A Subsidiary of  
Household International

Regional Director  
Government Relations

Folsom, CA 95630

Fax 916.987.0799

April 30, 1999

The Honorable Adam Schiff  
California State Senate  
State Capitol Building, Room 5080  
Sacramento, California 95814

Household

RE: SB 545(Dunn) - As Amend on 4/29/99 - Oppose Unless Amended  
May 11, 1999 Hearing - Senate Judiciary Committee

Dear Senator Schiff:

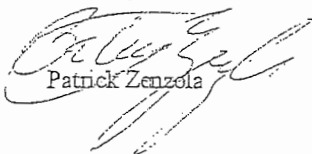
Household International, Inc., a diversified financial services corporation, provides credit to consumers and businesses across the nation and internationally. **Household supports ensuring that customers receive clear disclosures regarding the use of preprinted checks or similar devices but must oppose SB 545 unless it is amended because the bill requires the disclosures to occur on the actual checks or similar devices. We instead recommend that the disclosures are included in a mailing with the checks and not actually on the checks.**

The disclosures should not be included on the actual check, draft or similar device for several reasons. First, it serves the best interest of the customers using these checks for the checks to have the same appearance as normal checks. This is to ensure that merchants continue to accept the checks, and do not identify the customer's check as different than normal checks. Any confusion in this regard would only lead to the delay of processing the customer's transaction and/or to potential embarrassment for the customer. Second, customers using these checks do not typically want others to know that these checks are from a credit card account or have an interest rate or some other transaction fee attached. This information is relevant for both the customer and the credit card issuer, but has no relevance for any other party who may process or review the check. Customers desiring to make the merchant or other third party aware that they are using a credit card account will actually use a credit card and not the checks. Finally, the information on the front and back of checks is already heavily regulated, leaving very little space for additional disclosures/information.

We do not oppose the concept of providing customers with the type of disclosures detailed in SB 545 but recommend that the disclosures are included in a mailing with the checks and not actually on the checks, as is required in SB 545.

Household Financial Group respectfully asks for your "No" vote on SB 545 when it is heard in the Senate Judiciary Committee on May 11, 1999 unless the recommended changes as detailed above are made.

Sincerely,

  
Patrick Zenzola

cc: All members, Senate Judiciary Committee

LEGISLATIVE INTENT SERVICE (800) 666-1917

SP-17

SENATE COMMITTEE ON JUDICIARY  
Adam Schiff, CHAIRMAN

BACKGROUND INFORMATION REQUEST

Measure: SB 545

Author : Senator Dunn

1. Origin of the bill:

- a. Who is the source of the bill? What person, organization, or governmental entity requested introduction?

Author

- b. Has a similar bill been before either this session or a previous session of the legislature? If so, please identify the session, bill number and disposition of the bill.

NO

- c. Has there been an interim committee report on the bill? If so, please identify the report.

NO

2. What is the problem or deficiency in the present law which this bill seeks to remedy?

Attached

3. Please attach copies of any background material in explanation of the bill, or state where such material is available for reference by committee staff.

4. Please attach copies of letters of support or opposition from any group, organization, or governmental agency who has contacted you either in support or opposition to the bill.

5. If you plan substantive amendments to this bill prior to the hearing, please explain briefly the substance of the amendments to be prepared.

attached

6. List the witnesses you plan to have testify.

RETURN THIS FORM TO: SENATE COMMITTEE ON JUDICIARY  
Phone (916) 445-5957

STAFF PERSON TO CONTACT:

Ronke Paschal

322-5801

SP-18

SENATE BILL 545 (DUNN)

Frequently consumers find checks in their mail issued from their credit card companies or other financial institutions. These checks can be issued blank or in varying dollar amounts. Credit card and finance companies claim the checks are a convenient method to make purchases, get cash or transfer balances.

The information sent to the customer regarding finance charges and interest rates associated with use of the checks varies from company to company. Certainly some disclosures are more easily understood than others. Often, however, consumers find out after using the check the interest rate was much higher than expected. In cases where a check is made out in a dollar amount to the customer, it is unclear that cashing the check is a loan or extension of credit.

SB 545 would make it very apparent to the consumer that cashing the check or using it for purchases constitutes the acceptance of a loan by printing words to that effect clearly and conspicuously on the front of the check.



# SACRAMENTO BEE

Thursday, August 28, 1997  
Business Section F-2

## That check in the mail costly to consumers

By Marcy Gordon  
Associated Press

WASHINGTON — Victor and Debra Goldberg of Ithaca, N.Y., were astonished to receive a \$7,500 check in the mail made out to Debra — for a loan she had never sought.

Such loans, in the form of unsolicited, "live" checks, are a new marketing tool for some financial institutions. One bank says it has signed up nearly \$1 billion.

But critics say they're a rip-off because of high interest rates and also could lead to fraud if someone else diverts and cashes them. They want such checks banned.

"That was our biggest concern, that the check would be diverted," said Victor Goldberg, a software engineer at Cornell University.

The "Instant Loan" check in Mrs. Goldberg's name came from Virginia-based Signet Banking Corp. — with which the couple had never had any dealings. The interest rate if signed: 13.99 percent annually over 60 months.

Because he's from New York City, where Social Security checks "are ripped off all the time," Victor Goldberg said he was especially wary.

"This is a real check — cash it for an instant loan!" beckons a letter to other consumers from a regional division of Beneficial Corp., a major consumer-finance company. "Just sign the back of this check and cash it for an instant loan. That's all you have to do to get \$(amount of loan). No forms to fill out, not even a phone call. ... And you can pay it back in convenient monthly installments."

Convenient, perhaps, but also expensive.

The annual percentage rate for a \$2,566 loan over 36 months, for example, is a hefty 25.71 percent, bringing the total repayment to \$3,708.

Lenders say they solicit people with good credit histories. They defend the check-loans, calling them a convenience to consumers, and argue they contain enough protections to ensure a consumer isn't penalized if someone else cashes the check.

The Goldbergs, however, complained to their congressman, Rep. Maurice Hinchey, a Democrat on the House Banking Committee.

Hinchey proposed a bill that would ban the loans.

"Banks should not be sending unsolicited loans through the mail where anyone can get their hands on them," the lawmaker said. "Even if the loan check reaches its target, a trusting individual could sign it and wind up liable for an exorbitant amount."

Because the check-loans are fairly new, it's difficult to determine how widespread they are. But Signet signed up nearly \$1 billion in the past 18 months, said Kitty Griffith, a spokeswoman at the bank's Virginia headquarters.

The advocacy group Consumers Union says it has concerns about the practice. But spokeswoman Michelle Meier says the group has just begun to look into the matter and can't comment further.



LOS ANGELES TIMES  
SUNDAY, AUGUST 24, 1997

# 'Instant Loans' by Mail Stir Controversy

**Finance:** Such offers are legal, but the unsolicited checks skirt a law limiting interest rates on loans under \$2,500.

By KENNETH REICH  
TIMES STAFF WRITER

First, there was a telephone call out of the blue, saying a check was in the mail. "Look out for it," the caller advised.

Two days later, it arrived—a check for a cool \$2,525, ready to sign, deposit and spend.

But this was no ordinary windfall from an unexpected benefactor. As the accompanying letter pointed out, the check, once endorsed, would become an "instant loan" from Beneficial California Inc., a finance company. The annual interest rate, 26.2%.

Such "unsolicited, live checks," say state officials, are not uncommon these days, as mail marketers make it ever easier to get instant credit.

The offers particularly appeal to impulsive people, eager for quick cash and perhaps unaware there are less expensive ways of getting it.

Dale Jucar, chief examiner for the state Department of Corporations, says most of the offers in the mail are designed to narrowly skirt a

state law limiting interest rates on loans under \$2,500. "I get them from finance companies and I just review them and tear them up," he said.

By making the loan amount any interest rate it wants, Lucas said: Had the company sent out a check for \$2,495, it would have been limited by state law to charging about 24% interest. Efforts in the legislature to place limits on loans over \$2,500 have been unsuccessful.

The letter, accompanying the Beneficial check contained a warning: "Be sure to read the Disclosure of Credit Costs, the Supplemental Loan Agreement, and the Copy of your records."

In addition to revealing the annual interest rate of 26.2%—well above most credit card interest charges on unpaid balances—the letter said that the \$2,525 would cost \$3,672 to repay, in 30 monthly installments of \$102.

Jaime Ospina, manager of the Palomares City office, one of Beneficial's 1,100 outlets nationwide, said "many" unsolicited checks had gone out and "quite often" they are cashed. He said the checks go out to past Beneficial customers and to people that have good credit ratings. He referred other questions to Beneficial's parent firm in New Jersey.

Denise Foy, an assistant vice president there, said the company

would not reveal how many \$2,525 checks it has been sending out, where they are concentrated, or what the rate of acceptance is.

"We consider our information proprietary," she said, meaning that for competition reasons the company does not answer such queries.

She emphasized that people who default on the unsecured loans would not risk losing their house or other property.

"With all our unsecured products, we have no recourse to put a lien on a home or personal property," she said. "So in the case of nonpayment, we would first make every effort to work with the customer to obtain payment. We would send them a notice of call them."

Eventually, if they wouldn't pay, the customer's credit report would be adversely affected. And then, at the end of the line, the company would either file a judgment against the individual in court or charge off the loan as uncollectable.

"What's built into these deals is an interest rate so high that they can afford to have quite a few people take the cash and never repay it," said consumer advocate Harvey L. Sussfeld. "Lending \$2,500 in front of many people in this state is just too tempting. But this is unscrupulous."

Carl Hillebrand of the Consumers Union said the main thing for consumers to remember is that "finance company credit is often more expen-

sive than bank credit." "Besides, credit is something that should be extended on request. You don't want a live check floating through the postal system, going to who knows where."

The same point was made by Steven Sakhana, a Los Angeles representative of the Better Business Bureau.

"You would be liable if someone else did cash the check made out to you," Sakhana said.

But Foy, the Beneficial spokeswoman, said the company has a policy for fairly dealing with such cases.

"In the rare event that fraud does occur, someone cashing the check other than the person in question, and we are notified, we immediately send out an affidavit to their home and ask them to do us a sign that and return that to us, and they can be assured they will have no liability," she said.

Meanwhile, a call to the Palomares City office indicated that many people may be able to secure a loan at a much lower rate than 26%, even from Beneficial.

When the caller said that 26% seemed quite high, the Beneficial employee who answered promptly replied:

"Are you a homeowner? We have equity loans for only 10.5%."





California Alliance for Consumer Protection

1808 Sherwood Ave. • Sacramento, California 95822 • (916) 456-7311 • mross@calweb.com • fax (916) 456-9551 • www.consumers.com

*"Going Where No Consumer Advocacy Group Has Gone Before"*

March 10, 1999

Honorable Joe Dunn  
Member of the Senate  
State Capitol  
Sacramento, CA 95814

Dear Senator Dunn:

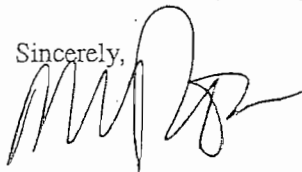
RE: SB 545 - SUPPORT

On behalf of the California Alliance For Consumer Protection, we would like to go on record as supporting SB 545.

We support your measure because we believe it addresses a growing consumer concern: Fees collected by those who extend credit in new and unique methods and how they notify consumers of those fees/charges.

In closing, I look forward to working with you as the Bill winds its way through the legislative process.

Sincerely,



MICHAEL C. ROSS  
Consumer Advocate

# Legislative Counsel of California

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Sacramento, California

May 5, 1999

State Capitol, Suite 3021  
Sacramento, CA 95814-4996  
(916) 445-3057  
Telecopier: (916) 322-0769

Honorable Joseph Dunn  
2068 State Capitol

State Regulation of Consumer Credit  
Disclosures (S.B. 545) - #9857

Dear Senator Dunn:

## QUESTION

Would the provisions of Senate Bill No. 545 of the 1999-2000 Regular Session, as introduced, which would require a credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar credit device to include a specified notice on that device, be preempted by federal law and, if not, would they be enforceable against credit card issuers located outside of California with respect to cardholders located within California?

## OPINION

The provisions of Senate Bill No. 545 of the 1999-2000 Regular Session, as introduced, which would require a credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar credit device to include a specified notice on that device, would not be preempted by federal law and would be enforceable against credit card issuers located outside of California with respect to cardholders located within California.

## ANALYSIS

Senate Bill No. 545 of the 1999-2000 Regular Session, as introduced (hereafter S.B. 545), would add Section 1748.9 to the Civil Code, to read:

SP-23

"1748.9. A credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar credit device shall clearly and conspicuously note on the check, draft, or similar device that the endorsement or use of the device will be regarded by the credit card issuer as either a charge on the cardholder's credit account if the device is endorsed or used to purchase goods or services or as a cash advance and that the same finance charges or transaction fees may be charged against the account that would be charged if the cardholder had used the credit card to purchase the goods or services or obtain a cash advance."

Thus, this section, if enacted by the Legislature, would impose a new disclosure requirement upon issuers of credit cards when they propose to extend credit through the use of a preprinted check, draft, or similar credit device.

Generally, the Legislature, as an "indispensable prerogative of sovereignty," has the power to enact laws for the protection of the health, safety, morals, or general welfare of society. (In re Rameriz (1924) 193 Cal. 633, 649-650; Miller v. Board of Public Works (1925) 195 Cal. 477, 484). This power, generally known as "police power," is not, however, without limitation. Specifically, exercise of the power must be reasonably necessary for the attainment of its intended objective. The courts have said, in this regard, that the Legislature is vested with considerable discretion as to the necessity for a particular enactment, and that only where it appears that a "measure has not real or substantial relation to the public health, safety, morals, or general welfare ... will it be nullified ..." (Miller v. Board of Public Works, supra, at pp. 484, 490).

The police power is also subject to the limitation that its exercise cannot obstruct or impede the federal government in the exercise of any power that has been vested in it (see McCulloch v. Maryland (1819) 4 L.Ed. 579, 609; see also authorities collected in 15 Am. Jur. 2d, Commerce, Sec. 68 and following; and 16 Am. Jur. 2d, Constitutional Law, Sec. 276). In view of the supremacy clause of the United States Constitution (para. 2, Art. VI, U.S. Const.) providing that the Constitution and law of the United States "... shall be the supreme law of the land," any state action otherwise sustainable under the police power must give way when in conflict with the United States Constitution or laws validly enacted by Congress (see, generally, authorities collected at 16 Am. Jur. 2d, Constitutional Law, Sec. 285). Stated another way, "it has been settled that state law that conflicts with federal law is without effect" (Cipollone v. Liggett Group, Inc. (1992) 120 L.Ed.2d 407, 422; hereafter Cipollone).



Whether federal law preempts state law "fundamentally is a question of congressional intent ..." (English v. General Electric Co. (1990) 110 L.Ed.2d 65, 74; hereafter English). Such preemption is found in three circumstances:

"First, Congress can define explicitly the extent to which its enactments pre-empt state law. . . . Second, in the absence of explicit statutory language, state law is pre-empted where it regulates conduct in a field that Congress intended the Federal Government to occupy exclusively. . . . Finally, state law is pre-empted to the extent that it actually conflicts with federal law" (English, supra, at p. 74).

However, "[c]onsideration of issues arising under the Supremacy Clause 'start[s] with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.' [citation omitted]" (Cipollone, supra, at p. 422).

Turning now to the question before us, the statute proposed by S.B. 545 would impose new disclosure requirements on issuers of credit cards to consumers. This subject is currently dealt with in the federal Truth in Lending Act (15 U.S.C.A. Secs. 1601 and following;<sup>1</sup> hereafter the act). According to its terms, the purpose of the act is to foster the informed use of credit by consumers through assuring meaningful disclosure of credit terms, so that consumers might more readily compare the various credit terms available (Sec. 1601). The act applies to each individual or business that offers credit when certain conditions are met. Specifically, the credit must be offered or extended to consumers regularly, the credit must be subject to a finance charge or be payable by a written instrument in more than four installments, and the credit must be primarily for personal, family, or household purposes (12 C.F.R. 226.1(c)(1)).

In adopting the act, Congress expressly provided that the act does not annul, alter, or affect state laws relating to disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the act, and then only to the extent of the inconsistency (subd. (a), Sec. 1610). Likewise, the act does not otherwise annul, alter, or affect the meaning, scope, or applicability of state laws, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does the act extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply (subd. (b), Sec. 1610). Finally, the act

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<sup>1</sup> All further statutory references are to Title 15 of the United State Code Annotated, unless otherwise indicated.



provides that the Federal Reserve Board must exempt any class of credit transactions within any state from the disclosure requirements of the act if it determines that, under the law of the state, that class of transactions is subject to disclosure requirements substantially similar to those imposed by the act, and that there is adequate provision for enforcement (Sec. 1633). Based on these expressions of Congress' intent, neither the first nor the second test of federal preemption set out by the court in English, supra, at page 74, are satisfied and, thus, the act does not completely preempt state regulation in the field (see McCrae v. Commercial Credit Corp. (M.D. Ala. 1995) 892 F.Supp. 1385).

The third test of preemption under English requires an examination of the specific state law in question and a determination of whether an actual conflict between the state and federal law exists.

The proposed state law in question here would require a credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar credit device to include a specified notice on that device. This requirement, if enacted, would become part of the Song-Beverly Credit Card Act of 1971 (Title 1.3 (commencing with Sec. 1747), Pt. 4, Div. 3, Civ. C.). With respect to the provisions of that title, the Legislature has stated:

"It is the intent of the Legislature that the provisions of this title as to which there are similar provision in the federal Truth in Lending Act, as amended (15 U.S.C. 1601, et seq.), essentially conform, and be interpreted by anyone construing the provisions of this title to so conform, to the Truth in Lending Act and any rule, regulation, or interpretation promulgated thereunder by the Board of Governors of the Federal Reserve System, and any interpretation issued by an official or employee of the Federal Reserve System duly authorized to issue such interpretation."  
(Sec. 1747.01, Civ. C.)

Thus, assuming that this new state requirement is intended to conform, and will be interpreted in a manner so as to conform, with the federal act, the question remains whether the new state requirement, by its terms, actually conflicts with the federal act.

As described above, the federal act provides for the full disclosure of credit terms to consumers. In that regard, subsection (e) of Section 1610 provides:

"The provisions of subsection (c) of section 1632 of this title and subsections (c), (d), (e), and (f) of section 1637 of this title shall supersede any provision of the law of any State

relating to the disclosure of information in any credit or charge card application or solicitation which is subject to the requirements of section 1637(c) of this title or any renewal notice which is subject to the requirements of section 1637(d) of this title, except that any State may employ or establish State laws for the purpose of enforcing the requirements of such sections."

The provisions of the act referenced in the foregoing section deal with disclosures that are required to be included in the billing statement for an open end consumer credit plan (Sec. 1637(b)); disclosures that must be made in applications and solicitations to open credit or charge card accounts by direct mail, telephone, and other means and the required format for certain of those disclosures (Sec. 1637(c), Sec. 1632(c)); disclosures that must be made at least 30 days prior to the scheduled renewal date of the consumer's credit or charge card account (Sec. 1637(d)); disclosures relating to fees determined on the basis of a percentage of another amount (Sec. 1637(c)); and requirements regarding disclosures of a range of fees when amount of a fee varies from state to state (Sec. 1637(f)).

The act further requires that all information required by the act must be disclosed clearly and conspicuously, in accordance with regulations of the Federal Reserve Board, and the terms "annual percentage rate" and "finance charge" must be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction (Sec. 1632(a)). In any consumer credit transaction in which a security interest is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, wherein a right of rescission exists in the obligor, that right of rescission must be clearly and conspicuously disclosed by the creditor (Sec. 1635(a)). Finally, the act provides that a creditor may supply additional information or explanations along with the disclosures required under the act, as long as the required disclosures are conspicuously segregated from such other information (Sec. 1632(b)).

In short, the requirements of the act deal generally with disclosures to be made prior to the opening of new accounts and disclosures to be made in periodic billing statements of existing accounts. The act does not address disclosures to be made by card issuers with respect to the use of a preprinted check, draft, or similar credit device. Hence, we do not think that an actual conflict exists between the proposed state law and federal law and, under the third test of English, the proposed state law would not, we think, be subject to federal preemption.

Having reached the foregoing conclusion regarding the state's power to impose the requirements in question here, we will now examine whether out-of-state card issuers would be subject to those requirements with respect to California cardholders.

As mentioned above, the police power of the state is subject to the limitation that its exercise cannot obstruct or impede the federal government in the exercise of any power that has been vested in it (see M'Culloch v. Maryland, supra).

In this regard, the commerce clause of the United States Constitution vests in Congress the power "... to regulate commerce with foreign nations, and among the several states, and with the Indian tribes; ..." (cl. 3, Sec. 8, Art. I, U. S. Const.). It has been held, however, that the police power of the states was not surrendered when general power to regulate commerce among the several states was conferred upon Congress (Boston & Maine R. Co. v. Armburg (1932) 76 L.Ed. 729, 735). Thus, in the absence of conflicting federal legislation, the states, in the exercise of their police power, may enact nondiscriminatory statutes and ordinances to protect the public health, morals, safety, and convenience, provided these laws or ordinances are local in their character and affect interstate commerce only incidentally or indirectly, and do not conflict with the provisions of federal legislation or the United States Constitution (Huron Portland Cement Co. v. Detroit (1960) 4 L.Ed.2d 852, 856; Cooley v. Board of Wardens of the Port of Philadelphia et al. (1851) 13 L.Ed. 996, 1005-1006).

The United States Supreme Court, in Lilly & Co. v. Sav-on-Drugs (1961) 6 L.Ed.2d 288, held that a state may regulate businesses conducting both an interstate and an intrastate business, the intrastate business being a matter of local concern. And, more recently, the courts have recognized that the "historic police powers of the States" extend to consumer protection and to banking (see, Smiley v. Citibank (1995) 11 Cal.4th 138, 147, citing, for example, California v. ARC America Corp. (1989) 490 U.S. 93, 101 and National State Bank, Elizabeth N. J. v. Long (3rd Cir. 1980) 630 F.2d 981, 985).

This analysis of the state's powers under the commerce clause leads to a related issue; that is, the extent of the powers of the state to subject an out-of-state person or entity to its laws under the due process clause of the Fourteenth Amendment of the United States Constitution. This issue has been discussed at length by the United States Supreme Court in International Shoe Co. v. Washington (1945) 90 L.Ed. 95 and its progeny. In International Shoe, the question was whether, within the limitations of the due process clause of the Fourteenth Amendment, a Delaware corporation had, by its activities in the State of Washington, rendered itself subject to the state unemployment compensation law and amenable to proceedings in the courts of that state to recover unpaid contributions under that law. The Court found that, on the issue of the state court's jurisdiction, due process requires only that a defendant "have certain minimum contacts with the state such that the maintenance of suit does not offend 'traditional notions of fair play and substantial justice' [citations omitted]" (Id., at p. 102). The Court then declared:

"Whether due process is satisfied must depend rather on the quality and nature of the activity in relation to the fair and orderly administration of the laws which it was the purpose of the due process clause to insure . . . .

"... [T]o the extent that a corporation exercises the privilege of conducting activities within a state, it enjoys the benefits and protection of the laws of that state. The exercise of that privilege may give rise to obligations, and, so far as those obligations arise out of or are connected with the activities within the state, a procedure which requires the corporation to respond to a suit brought to enforce them can, in most instances, hardly be said to be undue" (Id., at p. 104).

Then, with respect to the constitutionality of the unemployment compensation statute itself, as it applied to the out-of-state corporation, the Court summarily concluded:

"The state ... has constitutional power to lay the tax and to subject appellant to a suit to recover it. The activities which establish its 'presence' subject it alike to taxation by the state and to suit to recover the tax." (Id. at p. 105.)

In dealing with these issues under the commerce clause and the due process clause, the California courts appear to have taken a broad view of what constitutes intrastate business for purposes of applying state regulations to foreign business entities. For example, in People v. Fairfax Family Fund, Inc. (1964) 235 Cal.App.2d 881 (hereafter Fairfax), the defendant was a Kentucky corporation engaged in the business of making small loans by mail to residents of California and 31 other states. A person desiring a loan would execute and return by mail a loan application and promissory note. The corporation would secure a California independent contractor to conduct a local credit investigation. If the loan was approved, a check would be mailed to the borrower and all payments would be made by mail to Kentucky. The corporation maintained no office in California. On these facts, the court held that the corporation was engaged in the small loan business in this state and was required to be licensed under then-Section 24200 of the Financial Code.<sup>2</sup> The court also noted that, under the "minimum contact rule" of International Shoe Co. v. Washington, supra, the California courts could, in all probability, obtain personal jurisdiction of the corporation (Fairfax, supra, at p. 885).

<sup>2</sup> See Section 22100 and following of the Financial Code.



Similarly, the case of People v. United National Life Ins. Co. (1967) 66 Cal.2d 577 (hereafter United National), involved the question of whether California could constitutionally, under the commerce clause and under the due process clause of the Fourteenth Amendment, regulate insurance transactions of foreign insurance companies which, although they have no agents in this state, solicit and negotiate such transactions with California residents exclusively by mail from offices outside this state. In finding that California has this power, the court stated, at page 593:

"Applying due process criteria which give substantial recognition to the substantial interest of the regulating state in the insurance transactions involved, we are satisfied that in the instant cases there are sufficient contacts to justify regulation. The insureds are, of course, residents of California. The solicitation of insurance actually takes place in California where the advertising material and other forms are received by the individual addressees. . . . In response to this solicitation, California residents complete and sign in this state the applications for insurance . . . . In all instances payment of premiums is made by California residents from funds or bank accounts located in California. It is clear that any claims made under the policies will most likely be investigated in this state and that any litigation in connection with the policies will undoubtedly be commenced in California courts. It is also foreseeable that should defendants for any reason fail to perform their obligations in accordance with the policies, California might be called upon to provide assistance for the persons within its borders who were intended to be financially assisted by the benefits under the policies."

On these facts, the court found that the defendants "'realistically entered the state looking for and obtaining business'; the main aspects of their insurance transactions are in this state; and to say that they are not doing business here is 'to completely ignore the facts of life and reality' [citing Fairfax, supra, at p. 885]. We think the substantial interest of California in these transactions is obvious." (Ibid.)

Based on the holdings of these cases, we think that, in the absence of conflicting federal legislation, out-of-state credit card issuers who issue credit cards and engage in credit transactions with California consumers are, like the lender in Fairfax and the insurance company in United National, engaged in sufficient "localized activities" and have sufficient "minimum contacts" that they are subject to the powers of the state to

regulate those activities. Accordingly, we think the statute in question here as applied to out-of-state credit card issuers, would not be violative of either the commerce clause or the due process clause of the United States Constitution.

Finally, a question may be raised whether an out-of-state credit card issuer could avoid the disclosure requirements of the proposed statute by a choice-of-law provision in its contract with the cardholder that expressly invokes the substantive law of another state or jurisdiction. California courts will generally uphold a choice-of-law provision in a contract only if the transaction bears a natural and substantial relationship to the chosen forum (Nedlloyd Lines B.V. v. Superior Court (1992) 3 Cal.4th 459, 466). Further, California courts will not enforce a choice-of-law provision where the application of another jurisdiction's law would violate a fundamental policy of the state (Id.; see also Restatement (Second) of Conflict of Laws, Sec. 187(2)). Thus, because California has a strong public policy in favor of protecting consumers, we think a court in this state would decline to enforce a choice-of-law provision in this context (see Sec. 301, B. & P.C.; Vasquez v. Superior Court of San Francisco (1971) 4 Cal.3d 800, 808).

Accordingly, it is our opinion that the provisions of Senate Bill No. 545 of the 1999-2000 Regular Session, as introduced, which would require a credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar credit device to include a specified notice on that device, would not be preempted by federal law and would be enforceable against credit card issuers located outside of California with respect to cardholders located within California.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

By *Cindy M. Cardullo*  
Cindy M. Cardullo  
Deputy Legislative Counsel

CMC:sjm



SENATE RULES COMMITTEE	SB 545
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

THIRD READING

Bill No: SB 545  
 Author: Dunn (D)  
 Amended: 5/25/99  
 Vote: 21

SENATE JUDICIARY COMMITTEE : 6-1, 5/18/99  
 AYES: Burton, Escutia, O'Connell, Peace, Sher, Schiff  
 NOES: Wright  
 NOT VOTING: Haynes, Morrow

SUBJECT : Disclosures regarding checks issued by credit card issuers

SOURCE : Author

DIGEST : This bill requires any credit card issuer that extends credit to a cardholder through the use of a preprinted check, draft, or similar device, to provide specified disclosures directly on the device and in the accompanying material that explain the terms and conditions of using the device.

ANALYSIS : Existing law, under the Areias-Robbins Credit Card Full Disclosure Act of 1986, requires that any application form or preapproved written solicitation for an open-end credit card account shall contain or be accompanied by certain disclosures, including: (1) any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates; (2) any membership fee that may be imposed; and (3) any per transaction fee that may be imposed on purchases. (Civil

CONTINUED

□

SB 545



Code Section 1748.11. All further references are to the Civil Code unless otherwise indicated.)

The bill also would require the credit card issuer to print on an attachment that is affixed, or perforation or other means, to each preprinted check, draft, or similar credit device that is offered, in no less than nine point font size, "Use of this check, draft, or credit device constitutes a charge against your credit account and may subject you to immediate finance charges."

The bill would also require the credit card issuer to disclose, in addition to any other information required by law, the interest rate and the calculation of finance charges associated with the use of a preprinted check, draft, or similar device in clear, conspicuous language, separate from and in larger font size than the rest of the text, whenever it provides a cardholder with a preprinted check, draft, or similar credit device.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No Local: No

SUPPORT : (Verified 5/26/99)

CALPIRG  
Consumers Union  
California Alliance for Consumer Protection

ARGUMENTS IN SUPPORT : Proponents of this bill assert that credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. Proponents argue that one of the most common new products that credit card issuers use to increase the revenue from their current customer base is the preprinted check. Proponents contend that these products, designed to look like checks from a consumer's checking account, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase or to make payments on other debts.

According to proponents, the problem with these products is that while they clearly specify the amount of cash that can

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be obtained with the product ("Get \$500 today!"), the disclosures that explain the cost of using the product are



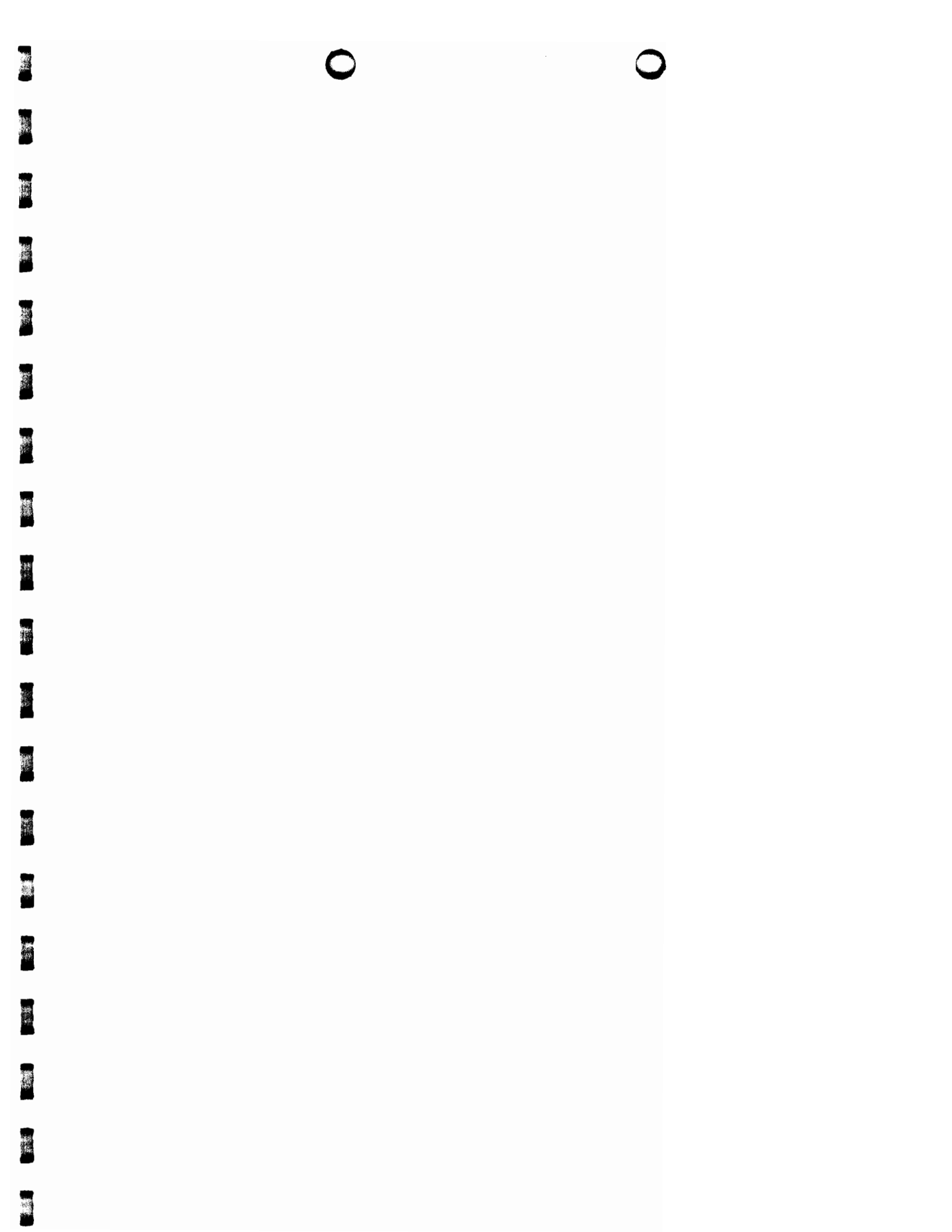
often hidden or absent. Proponents believe that many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

RJG:jk 5/26/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*





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SB 545  
Page 1

Date of Hearing: June 28, 1999

ASSEMBLY COMMITTEE ON BANKING AND FINANCE  
Louis J. Papan, Chair  
SB 545 (Dunn) – As Amended: June 24, 1999

SENATE VOTE: 23-11

SUBJECT: Credit Card Company Issued checks or drafts constituting a charge against the cardholders account.

SUMMARY: Requires disclosure requirements for Credit Card Company Issued checks or drafts constituting a charge against the cardholders account. Specifically, this bill:

- 1) Requires a credit card issuer who extends credit to a cardholder through a preprinted check or draft to provide disclosures on a perforated attachment to the check regarding: a) use of the check is a charge against the account; b) interest rate and finance charges computed according to 12 CFR 226.16; and c) whether finance charges are triggered immediately upon use of the draft.
- 2) Provides for the law to become effective July 1, 2000

FISCAL EFFECT: None

COMMENTS: The bill requires disclosures according to 12 CFR 226.16 but it would seem a more appropriate section of Regulation Z would be the initial disclosure requirements of 12 CFR 226.6 a portion of which is set forth as follows:

Sec. 226.6 Initial disclosure statement.

"The creditor shall disclose to the consumer, in terminology consistent with that to be used on the periodic statement, each of the following items, to the extent applicable:

(a) Finance charge. The circumstances under which a finance charge will be imposed and an explanation of how it will be determined, as follows:

(1) A statement of when finance charges begin to accrue, including an explanation of whether or not any time period exists within which any credit extended may be repaid without incurring a finance charge. If such a time period is provided, a creditor may, at its option and without disclosure, impose no finance charge when payment is received after the time period's expiration.

(2) A disclosure of each periodic rate that may be used to compute the finance charge, the range of balances to which it is applicable, and the corresponding annual percentage rate. When different periodic rates apply to different types of transactions, the types of transactions to which the periodic rates apply shall also be disclosed."



See also the disclosures required under Civil Code §§ 1748.10-1748.12, the "Areias-Robbins Credit Card Full Disclosure Act Of 1986." Shouldn't these bill's provisions be incorporated in that act since this is a "credit" as opposed to a "debit" transaction?

Apparently during this bill's legislative journey there was a desire to place the disclosure information on the reverse side of the checks. For those interested in things dealing with the reverse sides of checks, please see Exhibit "A" attached to the analysis.

REGISTERED SUPPORT / OPPOSITION:

Support

CALPIRG  
Consumers Union  
Consumer Federation of California

Opposition

None received

Analysis Prepared by: William C. George / B. & F. / (916) 319-3081



EXHIBIT A TO SB 545

FEDERAL REGULATION CC DEFINITION OF CHECK AND INDORSEMENT STANDARDS  
FROM 12 CFR PART 229

DEFINITION OF CHECK 12 CFR 229.2 (k)

(k) Check means--

- (1) A negotiable demand draft drawn on or payable through or at an office of a bank;
- (2) A negotiable demand draft drawn on a Federal Reserve Bank or a Federal Home Loan Bank;
- (3) A negotiable demand draft drawn on the Treasury of the United States;
- (4) A demand draft drawn on a state government or unit of general local government that is not payable through or at a bank;
- (5) A United States Postal Service money order; or
- (6) A traveler's check drawn on or payable through or at a bank.

The term check does not include a noncash item or an item payable in a medium other than United States money. A draft may be a check even though it is described on its face by another term, such as money order.

For purposes of subpart C, and in connection therewith, subpart A, of this part, the term check also includes a demand draft of the type described above that is nonnegotiable.

INDORSEMENT STANDARDS

The following is from 12 CFR Part 229, Appendix D relating to *bank* indorsements on the reverse side of checks. Assuming the average personal check is 7 inches long, the available portion of the check for other than bank or payee indorsements is anything left over from the space available for the first bank's 2.5 inches or the subsequent collecting banks' 3 inches from the leading edge.

According to the Federal Regulations:

The indorsement shall be placed on the back of the check so that the routing number is wholly contained in the area 3.0 inches from the leading edge of the check to 1.5 inches from the trailing edge of the check.\1\

\1\ The leading edge is defined as the right side of the check looking at it from the front. The trailing edge is defined as the left side of the check looking at it from the front. See American National Standards Committee on Financial Services Specification for the Placement and Location of MICR Printing, X 9.13.

2. Each subsequent collecting bank indorser shall protect the identifiability and legibility of the depository bank indorsement by:

Including only its nine-digit routing number (without arrows), the indorsement date, and an optional trace/sequence number;

Using an ink color other than purple; and

Indorsing in the area on the back of the check from 0.0 inches to 3.0 inches from the leading edge of the check.

3. Each returning bank indorser shall protect the identifiability and legibility of the depositary bank indorsement by:

Using an ink color other than purple;

Staying clear of the area on the back of the check from 3.0 inches from the leading edge of the check to the trailing edge of the check.







Publisher of Consumer Reports

June 23, 1999

TO: Members, Assembly Banking & Finance Committee  
FROM: Earl Lui, Senior Attorney  
RE: SB 545 (Dunn), as amended May 25: SUPPORT  
HEARING: Monday, June 28, 1999

---

Consumers Union, the nonprofit publisher of *Consumer Reports* magazine, urges you to support SB 545 (Dunn) when it is heard in the Assembly Banking & Finance Committee. This bill adds a simple, clear disclosure to unsolicited preprinted "checks" sent to consumers by their credit card issuers.

Such checks are in reality loans (or "cash advances") drawn on the consumer's available credit line. This bill would require a disclosure that "Use of this check constitutes acceptance of a loan." Such a disclosure would make it clear to consumers that they are taking out a loan. In addition, the bill would require a more conspicuous disclosure on the interest rate and charges each time the credit card issuer sends out the unsolicited check. By accompanying the check, this disclosure will provide better notice to consumers about the costs of using the check.

For these reasons, we support SB 545 and urge an "Aye" vote.

cc: Senator Dunn  
Consultant, Assembly Banking & Finance Committee

7



Howard Owens  
Executive Director

1228 N Street, Suite 29  
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(800) 547-3715  
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**Consumer Federation of California**

Albin Gruhn, President  
Matthew McKinnon, Vice President  
Regene Mitchell, Vice President  
Patricia Garcia, Vice President  
James Gordon, Jr., Treasurer  
Dora "Mitz" Rodriguez, Secretary

To: Members of the Assembly Banking and Finance Committee

From: Howard Owens, Executive Director  
Contact: Laura Strand

✓ 6/24

Date: June 23, 1999

Re: SB 545 (Dunn)--SUPPORT

The Consumer Federation of California is in support of SB 545, authored by Senator Joe Dunn.

This bill would require that credit issuers who provide their customers with an extension of credit in the form of a check, draft, or similar device, disclose in a clear and conspicuous manner on the face of the instrument that endorsement and use of such an instrument will be regarded by the issuer as a charge on the holder's account.

The problem that SB 545 addresses is that many credit issuers will send customers a check with a specified amount, or a number of blank checks for use by the customer. Use of such an instrument is often regarded by the issuer as a cash advance rather than a purchase of goods using a charge card. Generally, a cash advance is subject to a higher rate of interest than a purchase using a charge card.

By providing clear notice on the face of the instrument a consumer can determine the cost of using the instrument. It is the opinion of the Consumer Federation of California that all material information should be made available to the consumer in order to make sound financial decisions.

We urge you to vote "aye" on SB 545.

Cc. Senator Dunn



AP-2





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June 22, 1999

JUN 23 1999

LJP \_\_\_\_\_ BG \_\_\_\_\_  
 ER \_\_\_\_\_ MS \_\_\_\_\_  
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The Honorable Lou Papan  
 Chairman, Assembly Banking and Finance Committee  
 California State Capitol  
 Sacramento, CA 95814

Re: SB 545 (Dunn), Preprinted check disclosure – SUPPORT

Dear Chairman Papan:

The California Public Interest Research Group (CALPIRG), a statewide consumer and environmental watchdog organization with 60,000 members, supports SB 545 by Senator Joe Dunn. This bill will improve consumer disclosures for preprinted checks that are sold to customers by credit card issuers.

Credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. While the industry has devised a series of products, advertisements, and gimmicks aimed at luring in new customers, they have also invented new ways to charge their current customers more, and higher, interest rates and fees.

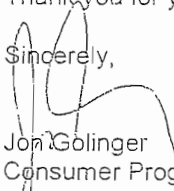
One of the most common new products that credit card issuers use to increase the revenue from their current customers is the preprinted check. These products, designed to look like checks, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase. But while these products will loudly and clearly specify that amount of cash that can be obtained with the product – “Get \$500 today by signing here” – the disclosures that explain the cost of using the product are often hidden or absent. Many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

SB 545 simply requires prominent disclosures that clearly explain the terms of the agreement on preprinted checks sold by credit card issuers. The bill fills a void of consumer protection today with which some credit issuers have filled with a deceptive product. At a minimum, the proper explanation to a consumer of what a product is and what it will ultimately cost them is a reasonable and necessary requirement of credit card issuers. Given the increased marketing of this product, requiring these disclosures is appropriate and needed now.

For these reasons, we urge your “Aye” vote on SB 545 when it is heard in the Assembly Banking and Finance Committee later this month.

Thank you for your time and consideration.

Sincerely,

  
 Jon Golinger  
 Consumer Program Director

Cc: All Members, Assembly Banking and Finance Committee  
 Senator Joe Dunn

AP-3

Berkeley  
 15 Shattuck Square #210  
 Berkeley, CA 94704  
 (510) 644-3454

San Francisco  
 116 New Montgomery St. #530  
 San Francisco, CA 94105  
 (415) 543-9184  
 (415) 543-1480 Fax

Santa Cruz  
 185 Walnut Ave.  
 Santa Cruz, CA 95060  
 (408) 459-0553



Santa Barbara  
 1129 State St. #10-B  
 Santa Barbara, CA 93101  
 (805) 564-1207  
 (805) 965-8939 Fax

San Diego  
 3960 Park Blvd. Ste. A  
 San Diego, CA 92103  
 (619) 297-5512

LEGISLATIVE INTENT SERVICE (800) 666-1917



Publisher of Consumer Reports

June 23, 1999

TO: Members, Assembly Banking & Finance Committee

FROM: Earl Lui, Senior Attorney

RE: SB 545 (Dunn), as amended May 25: SUPPORT

HEARING: Monday, June 28, 1999

Consumers Union, the nonprofit publisher of *Consumer Reports* magazine, urges you to support SB 545 (Dunn) when it is heard in the Assembly Banking & Finance Committee. This bill adds a simple, clear disclosure to unsolicited preprinted "checks" sent to consumers by their credit card issuers.

Such checks are in reality loans (or "cash advances") drawn on the consumer's available credit line. This bill would require a disclosure that "Use of this check constitutes acceptance of a loan." Such a disclosure would make it clear to consumers that they are taking out a loan. In addition, the bill would require a more conspicuous disclosure on the interest rate and charges each time the credit card issuer sends out the unsolicited check. By accompanying the check, this disclosure will provide better notice to consumers about the costs of using the check.

For these reasons, we support SB 545 and urge an "Aye" vote.

cc: Senator Dunn  
 Consultant, Assembly Banking & Finance Committee

AP-A





DISCOVER FINANCIAL SERVICES

June 24, 1999

Senator Joseph Dunn  
State Capitol  
Room 2068  
Sacramento, CA 95814

Re: SB 545 (Pre-printed check disclosures)

Dear Senator Dunn:

I am writing to you with respect to issues of concern relating to SB 545 that would require specified disclosures to be made in connection with the distribution of pre-printed checks to cardholders. Morgan Stanley Dean Witter & Co. ("MSDW"), a diversified financial services company, is the parent of Discover Financial Services, Inc., the operating company for Discover Card.

MSDW is opposed to your bill as amended on May 25, 1999 for a number of reasons. We already provide disclosures to our cardholders who receive preprinted checks that inform them that there may be fees related to their use of the checks. We do not believe the new disclosures that would be required by this legislation would substantially increase our customers' awareness of these fees. Accordingly, we recommend that your bill be revised to allow credit card issuers the ability to decide where to place disclosure information, and the form and type size of fee disclosures. We believe that a separate general disclosure would provide the cardholder with meaningful fee information. In addition, compliance with the new disclosure requirements would create substantial operational requirements with little additional consumer benefit, particularly for credit card issuers that have small programs, because of the additional costs to maintain separate supplies of checks with this California-mandated disclosure. Since these new disclosure requirements are not required in other states, this legislation may have the unintended effect of adversely impacting California residents by reducing their ability to make purchases at places that do not accept credit cards, but would accept a check.

Our specific concerns with the legislation include the following:

Section 1(a) would mandate the specific language, method and type size of the California disclosure that must be affixed to each preprinted check. The language presently requires the specific disclosure that the use of a check "may subject you to immediate finance charges." This may not be true in all instances. For example, a credit card issuer may provide for a grace period or waive the cash advance

Senator Joseph Dunn  
June 24, 1999  
Page Two

transaction fee. Therefore, the required disclosure is not generally applicable to all credit card programs.

In addition, this subsection would require the notice to be printed on "an attachment that is affixed, by perforation or other means, to each preprinted check". This is not our current practice. We inform our customers at the time they receive the preprinted checks that there may be a fee involved, which allows them to make an informed decision on the use of the checks. However, we include this information in the material that accompanies the check, although it is not affixed to each check as would be required for compliance with the proposed legislation. We believe the dissemination of information in this way adequately informs the consumer that there are costs associated with the use of the checks. Moreover, the elimination of the affixation requirement would allow credit card issuers the flexibility to create special promotional offers for cardholders for cash advance transactions, the terms of which would be disclosed in the materials accompanying the checks. These special offers, e.g. lower promotional rates for a specified period of time, would benefit cardholders who use the checks.

Section 1(b) would require the credit card issuer to disclose the interest rate and the calculation of finance charges associated with the use of a preprinted check in language that is separate from, and in larger font size, than the rest of the text. Disclosure of the calculation method is complex and does not necessarily give the consumer valuable information needed to make a meaningful decision, since all creditors use similar methods of calculating finance charges. In fact, the lengthy description of the calculation methodology may discourage cardholders from reading the disclosure at all. We recommend that this requirement be deleted. We again suggest that a more appropriate disclosure would be whether there is a fee or cost for using the check and that the credit card issuer be allowed to determine the location and form of this disclosure to accompany the checks.

Thank you for your thoughtful review of our concerns. We look forward to working with you on this important issue. If you have any questions, we would be

AP-6



Senator Joseph Dunn  
June 24, 1999  
Page Three

happy to discuss them with you. Our lobbyist, Jim Bruner, will follow-up with you.

Sincerely,



J.A. Yob  
Executive Vice President

cc: AssemblyMember Lou Papan, Chair, Assembly Banking and Finance Committee  
Mr. Bill George, Chief Consultant

F:\LAW\_USER\DEBE3556\LC\1999\Dunn letter1.doc

(800) 666-1917

LEGISLATIVE INTENT SERVICE



AP-7

ASSEMBLY BANKING AND FINANCE COMMITTEE  
LOUIS J. PAPAN, CHAIRMAN

RECEIVED

BACKGROUND INFORMATION SHEET

JUN 22 1989

MEASURE:

AB 545

AUTHOR:

Dunn

ASSEMBLY BANKING/FINANCE  
COMMITTEE

This measure has been referred to the Assembly Banking and Finance Committee. Please return this form to the Committee, Room 3173, WITHIN ONE WEEK of receipt. Please call the Committee if you have any questions at 319-3081. Thank you.

- 1) Who is the source of the bill? What person, organization or entity requested introduction?

Author

- 2) What does your bill do?

see attached

- 3) Describe existing law on this issue.

see attached

- 4) What is wrong with existing law? Why is this bill needed?

see attached



5) Has a similar bill been introduced either this session or during a previous legislative session?        If yes, please identify the bill, the legislative session, and the bill's disposition, and include any bill analyses related to the prior legislation

6) Has there been an interim committee hearing/report on the bill or on the topic of the bill? no If yes, please provide the hearing transcript and/or report.

7) Please provide all letters of support and opposition to the bill.

8) Who is the sponsor of the bill? Please provide a sponsor contact and phone number, (if not the author).

na

9) Please provide the name and phone number of your legislative staff contact for this bill.

Randy Paschal 332-5801 or 445-5831

10) Will the author be offering any amendments at the committee hearing? no If yes, please describe the amendments.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AMENDMENTS WILL BE ACCEPTED UP TO  
ONE WEEK PRIOR TO THE BILL'S HEARING DATE

PLEASE RETURN THIS COMPLETED FORM AND ANY ATTACHMENTS TO:

Assembly Banking and Finance Committee  
State Capitol, Room 3173  
319-3081

AP-9



SENATE BILL 545  
CREDIT CARD CHECK DISCLOSURES

In recent years, credit card issuers have become more aggressive in their marketing practices. One of the most common techniques utilized with existing customers is the issuance of pre-printed checks.

In some instances, the checks are made out to the cardholder in a dollar amount. It is not clear from the check's appearance and fine print if this is part of a "cash-back bonus" program or a charge against the cardholder's account with varying finance charges.

However, the most commonly used marketing device is a blank pre-printed check which appears very similar to a check from a cardholder's personal checking account.

Industry claims these checks are "convenient", "easy to use," a way to "save money now." Credit card issuers claim these checks are just as easy and convenient to use as a personal check when paying bills or making purchases.

It may be just as easy to write out one of these pre-printed checks as a personal check, but it is not the same as using a personal check. In fact, it may not be the same as making a charge to your credit account. In many instances, a cardholder will begin to accrue finance charges from the date the checks are used rather than having a grace period as is common with credit card charges.

SB 545 simply requires:

1) an attachment that is affixed by perforation or other means to each preprinted check to alert the consumer to potential finance charges.

2) Additionally, it requires a clear and prominent disclosure in the accompanying materials detailing the terms of any finance charges associated with the use of the checks.

There may be consumers who find these checks to be a convenient service offered by their credit card companies. This bill does not limit or ban the use of these checks.

The bill simply alerts consumers in an easily understood manner the potential for charges and hidden fees associated with use of these checks.

SUPPORT

Cal-PIRG  
Consumers Union  
CA Alliance for Consumer Protection

OPPOSE

None reported

Note: Amendments taken in the Senate Judiciary committee addressed the opponents concern that the disclosure appear on the face of the check





STATE OFFICE  
Los Angeles  
11965 Venice Blvd, #408  
Los Angeles, CA 90066  
(310) 397-3404  
(310) 391-0053 Fax  
<http://www.org.org/pirg/>

LEGISLATIVE OFFICE  
Sacramento  
226 J St, #713  
Sacramento CA 95814  
(916) 446-4516  
(916) 446-4560 Fax

May 4, 1999

The Honorable Adam Schiff  
Chairman, Senate Judiciary Committee  
State Capitol  
Sacramento, CA 95814

Re: SB 545 (Dunn), Preprinted check disclosure - SUPPORT

Dear Chairman Schiff:

The California Public Interest Research Group (CALPIRG), a statewide consumer and environmental watchdog organization with 60,000 members, supports SB 545 by Senator Joe Dunn. This bill will improve consumer disclosures for preprinted checks that are sold to customers by credit card issuers.

Credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. While the industry has devised a series of products, advertisements, and gimmicks aimed at luring in new customers, they have also invented new ways to charge their current customers more, and higher, interest rates and fees.

One of the most common new products that credit card issuers use to increase the revenue from their current customers is the preprinted check. These products, designed to look like checks, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase. But while these products will loudly and clearly specify that amount of cash that can be obtained with the product - "Get \$500 today by signing here" - the disclosures that explain the cost of using the product are often hidden or absent. Many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

SB 545 simply requires prominent disclosures that clearly explain the terms of the agreement on preprinted checks sold by credit card issuers. The bill fills a void of consumer protection today with which some credit issuers have filled with a deceptive product. At a minimum, the proper explanation to a consumer of what a product is and what it will ultimately cost them is a reasonable and necessary requirement of credit card issuers. Given the increased marketing of this product, requiring these disclosures is appropriate and needed now.

For these reasons, we urge your "Aye" vote on SB 545 when it is heard in the Senate Judiciary Committee later this month.

Thank you for your time and consideration.

Sincerely,

  
Jon Gottinger  
Consumer Program Director

Cc: All Members, Senate Judiciary Committee  
Senator Joe Dunn

Berkeley  
15 Shattuck Square #210  
Berkeley, CA 94704  
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San Francisco  
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415 543-1480 Fax

Santa Cruz  
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Santa Cruz, CA 95060  
(408) 459-0553

Santa Barbara  
1129 State St. #10-B  
Santa Barbara, CA 93101  
(805) 564-1207  
(805) 965-8939 Fax

San Diego  
3960 Park Blvd. Ste. A  
San Diego, CA 92103  
619 297-5512



AP-11



Publisher of Consumer Reports

MEMORANDUM

May 4, 1999

TO: Members, Senate Judiciary Committee
FROM: Earl Lui, Senior Attorney
RE: SB 545 (Dunn), as amended April 29: SLIPPER
HEARING: Tuesday, May 11, 1999

Consumers Union, the nonprofit publisher of Consumer Reports magazine, urges you to support SB 545 (Dunn) when it is heard in the Senate Judiciary Committee. This bill adds a simple, clear disclosure to unsolicited preprinted "checks" sent to consumers by their credit card issuers.

Such checks are in reality loans (or "cash advances") drawn on the consumer's available credit line. This bill would require a disclosure that "Use of this check constitutes acceptance of a loan." Such a disclosure would make it clear to consumers that they are taking out a loan. In addition, the bill would require a disclosure on the interest rate and charges each time the credit card issuer sends out the unsolicited check. Current law does not require such a disclosure. By accompanying the check, this disclosure will provide better notice to consumers about the costs of using the check.

For these reasons, we support SB 545 and urge an "Aye" vote.

cc: Counsel, Senate Judiciary Committee

AP-17

LEGISLATIVE INTENT SERVICE (800) 666-1917



2065

## California Alliance for Consumer Protection

1808 Sherwood Ave. • Sacramento, California 95822 • (916) 456-7311 • [mross@calweb.com](mailto:mross@calweb.com) • fax (916) 456-9551 • [www.consumers.com](http://www.consumers.com)

*"Going Where No Consumer Advocacy Group Has Gone Before"*

March 10, 1999

Honorable Joe Dunn  
Member of the Senate  
State Capitol  
Sacramento, CA 95814

Dear Senator Dunn:

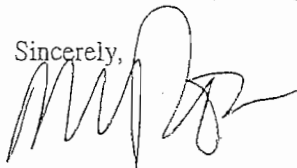
RE: SB 545 - SUPPORT

On behalf of the California Alliance For Consumer Protection, we would like to go on record as supporting SB 545.

We support your measure because we believe it addresses a growing consumer concern: Fees collected by those who extend credit in new and unique methods and how they notify consumers of those fees/charges.

In closing, I look forward to working with you as the Bill winds its way through the legislative process.

Sincerely,



MICHAEL C. ROSS  
Consumer Advocate





SENATE THIRD READING  
SB 545 (Dunn)  
As Amended June 24, 1999  
Majority vote

SENATE VOTE: 23-11

BANKING AND FINANCE 12-0

Ayes: Papan, Cox, Alquist, Campbell,  
Cardenas, Florez, Frusetta, Gallegos,  
Machado, Mazzoni, Pescetti, Washington

SENATE VOTE: 23-11

SUMMARY: Requires disclosure requirements for Credit Card Company Issued checks or drafts constituting a charge against the cardholders account. Specifically, this bill:

- 1) Requires a credit card issuer who extends credit to a cardholder through a preprinted check or draft to provide disclosures on a perforated attachment to the check regarding: a) use of the check is a charge against the account; b) interest rate and finance charges computed according to 12 CFR 226.16; and c) whether finance charges are triggered immediately upon use of the draft.
- 2) Provides for the law to become effective July 1, 2000.

FISCAL EFFECT: None

COMMENTS: The bill requires disclosures according to Federal Regulation Z "advertising" a portion of which is set forth as follows:

"Advertising.

(a) Actually available terms. If an advertisement for credit states specific credit terms, it shall state only those terms that actually are or will be arranged or offered by the creditor.

(b) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under Sec. 226.6 is set forth in an advertisement, the advertisement shall also clearly and conspicuously set forth the following:

- (1) Any minimum, fixed, transaction, activity or similar charge that could be imposed.
- (2) Any periodic rate that may be applied expressed as an annual percentage rate as determined under Sec. 226.14(b). If the plan provides for a variable periodic rate, that fact shall be disclosed.
- (3) Any membership or participation fee that could be imposed.

(c) Catalogs and multiple-page advertisements.



(1) If a catalog or other multiple-page advertisement gives information in a table or schedule in sufficient detail to permit determination of the disclosures required by paragraph (b) of this section, it shall be considered a single advertisement if:

- (i) The table or schedule is clearly and conspicuously set forth; and
- (ii) Any statement of terms set forth in Sec. 226.6 appearing anywhere else in the catalog or advertisement clearly refers to that page on which the table or schedule begins.

(2) A catalog or multiple-page advertisement complies with this paragraph if the table or schedule of terms includes all appropriate disclosures for a representative scale of amounts up to the level of the more commonly sold higher-priced property or services offered.

(d) Additional requirements for home equity plans—

(1) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under Sec. 226.6(a) or (b) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of Sec. 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

- (i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.
- (ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under section Sec. 226.14(b).
- (iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) Discounted and premium rates. If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) Balloon payment. If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.

(4) Tax implications. An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) Misleading terms. An advertisement may not refer to a home equity plan as "free money" or contain a similarly misleading term."

See also the disclosures required under the "Areias-Robbins Credit Card Full Disclosure Act Of 1986." Shouldn't these bill's provisions be incorporated in that act since this is a "credit" as opposed to a "debit" transaction?

Analysis Prepared by: William C. George / B. & F. / (916) 319-3081

FN: 0001882





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SENATE RULES COMMITTEE

SB 545

Office of Senate Floor Analyses  
1020 N Street, Suite 524  
(916) 445-6614 Fax: (916) 327-4478

---

UNFINISHED BUSINESS

---

Bill No: SB 545  
Author: Dunn (D)  
Amended: 6/24/99  
Vote: 21

---

SENATE JUDICIARY COMMITTEE: 6-1, 5/18/99  
AYES: Burton, Escutia, O'Connell, Peace, Sher, Schiff  
NOES: Wright  
NOT VOTING: Haynes, Morrow

SENATE FLOOR: 23-11, 5/27/99  
AYES: Alarcon, Alpert, Baca, Bowen, Burton, Chesbro, Costa, Dunn,  
Escutia, Figueroa, Hayden, Hughes, Johnston, Karmette, Murray,  
O'Connell, Ortiz, Perata, Polanco, Schiff, Sher, Solis, Speier  
NOES: Brulte, Johannessen, Kelley, Knight, Leslie, Monteith, Morrow,  
Mountjoy, Poochigian, Rainey, Wright  
NOT VOTING: Haynes, Johnson, Lewis, McPherson, Peace, Vasconcellos

ASSEMBLY FLOOR: 53-17, 7/6/99 - See last page for vote

---

SUBJECT: Disclosures regarding checks issued by credit card issuers

SOURCE: Author

---

DIGEST: This bill requires any credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft to provide specified disclosures directly attached to the check or draft that explains the terms and conditions of using the check or draft.



Assembly Amendments:

1. Limit application to a check or draft.
2. Amend the technical language to be attached to the check or draft, including Regulation Z language.
3. Make provisions operative on July 1, 2000.

ANALYSIS: Existing law, under the Areias-Robbins Credit Card Full Disclosure Act of 1986, requires that any application form or preapproved written solicitation for an open-end credit card account shall contain or be accompanied by certain disclosures, including: (1) any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates; (2) any membership fee that may be imposed; and (3) any per transaction fee that may be imposed on purchases. (Civil Code Section 1748.11. All further references are to the Civil Code unless otherwise indicated.)

The bill, operative on July 1, 2000, would require the credit card issuer to print on an attachment that is affixed, or perforation or other means, to each preprinted check or draft in conspicuous language:

1. "Use of the attached check or draft will constitute a charge against your credit account and may subject you to immediate finance charges".
2. The annual percentage rate and the calculation of finance charges, as required by Section 226.16 of Regulation Z of the Code of Federal Regulations, associated with the use of the attached check or draft.
3. Whether the finance charges are triggered immediately upon the use of the check or draft.

FISCAL EFFECT: Appropriation: No Fiscal Com.: No Local: No

SUPPORT: (Verified 7/7/99)

CALPIRG  
Consumers Union  
California Alliance for Consumer Protection  
Consumer Federation of California

CONTINUED

ARGUMENTS IN SUPPORT: Proponents of this bill assert that credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. Proponents argue that one of the most common new products that credit card issuers use to increase the revenue from their current customer base is the preprinted check. Proponents contend that these products, designed to look like checks from a consumer's checking account, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase or to make payments on other debts.

According to proponents, the problem with these products is that while they clearly specify the amount of cash that can be obtained with the product ("Get \$500 today!"), the disclosures that explain the cost of using the product are often hidden or absent. Proponents believe that many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

ASSEMBLY FLOOR:

AYES: Aanestad, Alquist, Aroner, Bock, Brewer, Calderon, Campbell, Corbett, Correa, Cox, Cunneen, Davis, Ducheny, Dutra, Firebaugh, Florez, Floyd, Frusetta, Gallegos, Havice, Hertzberg, Honda, Jackson, Keeley, Knox, Kuehl, Leach, Longville, Lowenthal, Maldonado, Mazzone, Migden, Nakano, Rod Pacheco, Pescetti, Reyes, Romero, Scott, Shelley, Soto, Steinberg, Strickland, Strom-Martin, Thomson, Torlakson, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Villaraigosa

NOES: Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Briggs, Granlund, House, Leonard, Maddox, Margett, McClintock, Olberg, Oller, Runner, Thompson

NOT VOTING: Cardenas, Cardoza, Cedillo, Dickerson, Kaloogian, Lempert, Machado, Robert Pacheco, Papan, Vincent

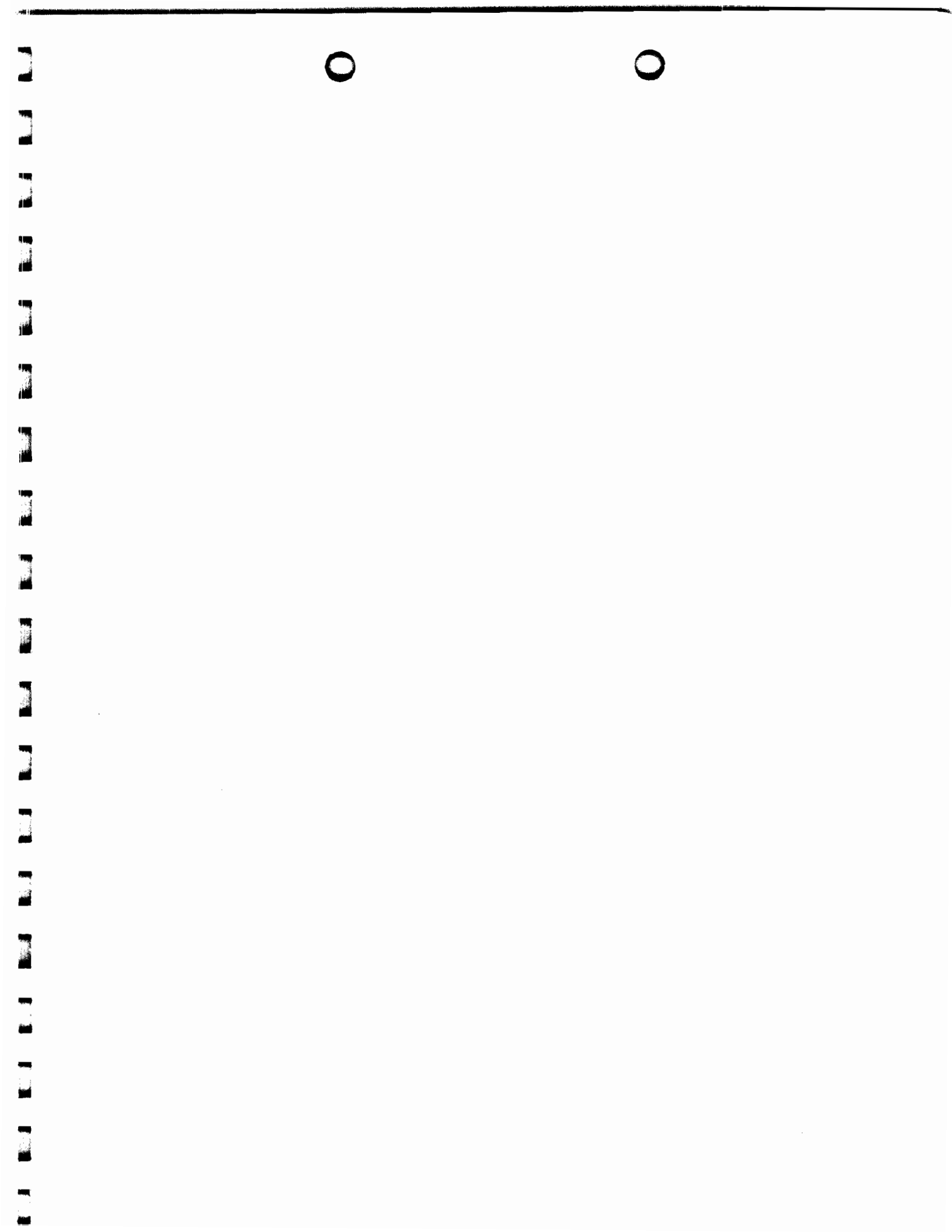
RJG:sl 7/7/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*







SENATE BILL NO. 545 19 99 REGULAR SESSION CHAPTER 111

MSC 5821 V

AUTHOR	<u>Dunn</u>	LC	IR	PUC
		BTH	LEGAL	DPA
		CAL-EPA	OPR	CD&ED
		FIN	RES	T&C
		F&A	SCS	
		H&W	YAC	
		DIR	OCJP	

DATE RECEIVED July 16 19 99

LAST DAY TO ACT July 28 19 99

\_\_\_\_\_ VETO RECEIPT \_\_\_\_\_ INITIALS

SB 545

ACTION OF GOVERNOR July 28 19 99

1999 CHAPTER 111

0

PE-1



# California State Senate

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Measure Vote

Measure: SB 545  
Author: Dunn  
Topic: Credit notice.  
Date: 07/12/99  
Location: SEN. FLOOR  
Motion: Unfinished Business SB545 Dunn  
(AYES 21. NOES 15.) (PASS)

### AYES \*\*\*\*

Alarcon Alpert Baca Bowen Burton Chesbro Costa Dunn Escutia Figueroa Hayden  
Hughes Johnston Karnette Murray O'Connell Ortiz Perata Polanco Sher Vasconcellos

### NOES \*\*\*\*

Bruite Haynes Johannessen Johnson Kelley Knight Leslie Lewis McPherson Monteith  
Morrow Mountjoy Poochigian Rainey Wright

### ABSENT, ABSTAINING, OR NOT VOTING \*\*\*\*\*

Peace Schiff Solis Speier

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PE-7

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Measure Vote

Measure: SB 545

Author: Dunn

Topic: Credit: notice.

Date: 07/06/99

Location: ASM. FLOOR

Motion: SB 545 DUNN THIRD READING BY DAVIS  
(AYES 53, NOES 17.) (PASS)

### AYES

\*\*\*\*

Aanestad Alquist Aroner Bock Brewer Calderon Campbell Corbett Correa Cox  
Cunneen Davis Ducheny Dutra Firebaugh Florez Floyd Frusetta Gallegos Havice  
Hertzberg Honda Jackson Keeley Knox Kuehl Leach Longville Lowenthal Maldonado  
Mazzoni Migden Nakano Rod Pacheco Pescetti Reyes Romero Scott Shelley Soto  
Steinberg Strickland Strom-Martin Thomson Torlakson Washington Wayne Wesson  
Wiggins Wildman Wright Zettel Villaraigosa

### NOES

\*\*\*\*

Ackerman Ashburn Baldwin Bates Battin Baugh Briggs Granlund House Leonard  
Maddox Margett McClintock Olberg Oller Runner Thompson

### ABSENT, ABSTAINING, OR NOT VOTING

\*\*\*\*\*

Cardenas Cardoza Cedillo Dickerson Kaloogian Lempert Machado Robert Pacheco  
Papan Vincent

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LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-3

ENROLLED BILL MEMORANDUM TO GOVERNOR

BILL NO: SB 545

AUTHOR: Dunn

DATE: July 22, 1999

SENATE: 21-15 (see vote sheet)

ASSEMBLY: 53-17 (see vote sheet)

This bill would require a credit card issuer to disclose specified information on an attachment affixed to a pre-printed check or draft. The disclosures would notify credit cardholders that the use of the check or draft will constitute a charge on the cardholder's credit account.

SPONSOR: Author

SUPPORT: State and Consumer Services Agency  
Department of Consumer Affairs  
Consumer Federation of California

OPPOSITION: No expressed opposition.

STATE FISCAL IMPACT: No state fiscal impact.

ARGUMENTS IN SUPPORT: Proponents contend that credit card companies issue pre-printed checks to cardholders with disclosures that are difficult for consumers to read, which often leads to cardholders being charged high interest rates without the cardholder's knowledge. Proponents argue that this bill would aid cardholders in learning the interest rates for pre-printed checks and drafts by requiring credit card issuers to disclose the interest rate and the calculations of finance charges associated with the use of a preprinted check or draft on an attachment affixed to each credit device.

ARGUMENTS IN OPPOSITION: No substantive opposition arguments.

BACKGROUND INFORMATION: Existing federal law requires that when a credit card company issues a consumer a check, the credit card issuer must disclose to the cardholder that use of the check will result in a charge to the cardholder's account with a specified interest rate. In addition, current state law requires a credit card issuer to disclose any periodic rate or rates that may be applied to a customer's account, expressed as an annual percentage rate or rates.

According to the author, credit card companies issue pre-printed checks to consumers, and consumers typically "assume" that these checks will have a similar interest rate as their credit card; however, in actuality, these pre-printed checks often have a higher interest rate than credit cards. Although current law requires credit card issuers to disclose the interest rate, consumers still do not read the "fine print."

Recommendation:  
APPROVE

Legislative Secretary:

Chief of Staff:



SACRAMENTO OFFICE  
STATE CAPITOL, ROOM 2068  
SACRAMENTO, CA 95814-4906  
(916) 445-5831

RICK BATTSON  
CHIEF OF STAFF

DISTRICT OFFICE  
12397 LEWIS STREET, SUITE 103  
GARDEN GROVE, CA 92840-4965  
(714) 705-1580

CHARLOTTE FINKLEA  
DISTRICT COORDINATOR

## California State Senate

SENATOR  
JOSEPH L. DUNN  
THIRTY-FOURTH SENATORIAL DISTRICT



July 13, 1999

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VETERANS AFFAIRS

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MOBILE & MANUFACTURED  
HOMES, CHAIR

JOINT COMMITTEE:  
JOINT RULES

The Honorable Gray Davis  
Governor, State of California  
State Capitol  
Sacramento, CA 95814

Dear Governor:

I respectfully ask that you sign Senate Bill 545, which addresses disclosure requirements for pre-printed credit card checks.

In recent years, credit card issuers have become increasingly aggressive in their marketing practices. Credit card companies currently offer an array of services to their existing customers to entice them to transfer balances from other credit cards. One of the most common devices sent to cardholders is the pre-printed check. Industry claims these checks are "convenient," "easy to use" and a way to "save money now." However, the fine print detailing the finance and interest charges can be confusing and it is frequently unclear when these charges commence.

SB 545 simply requires an attachment to the front of the check(s) that clearly and conspicuously details the annual percentage rate and finance charges associated with the use of the checks and whether these charges are triggered immediately. It has an effective date of July 1, 2000, to give industry ample time to comply with these requirements.

The disclosure required by SB 545 alerts consumers in an easily understood manner to the potential for charges and hidden fees associated with the use of these checks. The bill is supported by consumer advocates and has no known opposition.

I appreciate your consideration.

Very truly yours,

A handwritten signature in dark ink, appearing to read "Joe L. Dunn", written over a faint circular stamp.

JOSEPH L. DUNN  
Senator, 34<sup>th</sup> District

JLD/tp

(800) 666-1917

LEGISLATIVE INTENT SERVICE



PE-5

# FIRST USA.

201 N. Walnut Street  
Wilmington, Delaware 19801-2940

Richard J. Battson  
9257 Cadenza Ct  
Sacramento, CA 95826-4144



*Just use the enclosed checks  
before March 20, 1999.*

## Take advantage of special savings

Dear Richard J. Battson:

Your status as a First USA MasterCard<sup>®</sup> cardholder entitles you to some significant privileges. Take the enclosed checks, for example. They come with the same rate you already enjoy with your card.† They're ready to use right now, too.

### Start saving today!

Your checks are good for almost everything. Use them just like personal checks. Write one to consolidate your bills ... go on a winter getaway ... sign and give one as a gift ... or write one to "cash" for some extra spending money. Write them for any amount — up to your full available cash advance line — for anything you want.

### Use these checks to start saving right away.

Chances are you have a credit card that charges a higher rate than your First USA MasterCard card. Now consider the advantage of paying off that higher-rate card — and any others — with the enclosed checks. They carry the competitive Annual Percentage Rate (APR) of your First USA MasterCard account. That's probably lower than what a lot of other cards can offer. Say "goodbye" to high interest rates right now. Grab a pen, write a check, and cash in on the savings.

Sincerely,

Randy Christofferson  
President, First USA Bank, N.A.

P.S. Your checks are only good for a limited time. So the sooner you start using the enclosed checks, the sooner you can start saving.

†The Transaction Finance Charge for these Convenience Checks is equal to the greater of \$5 or 3% of the amount of the purchase or check with a maximum charge of \$50. Under certain circumstances First USA may decline to process a Convenience Check or full or partial Balance Transfer, in which case you will be notified.

© MasterCard is a federally registered service mark of MasterCard International, Inc., used pursuant to license.  
© First USA is a registered service mark of Bank One Corporation

005-H-N-N-Y-01-0004909-1-5X

See the reverse side for important account information.

LAC11077

LEGISLATIVE INTENT SERVICE (800) 666-1917



PE-6

CHECK NUMBER: 213

PAID TO: \_\_\_\_\_  
AMOUNT: \$ \_\_\_\_\_  
DATE: \_\_\_\_\_

Richard J. Battson Use this check by March 20, 1999 213  
9257 Cadenza Ct 65-7198/2550  
Sacramento, CA 95826-4144

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

VOID

Payable through: First USA Bank, N.A. J-005 5422702028389716  
Wilmington, DE 19801

MEMO \_\_\_\_\_ SIGNATURE \_\_\_\_\_

⑆03⑆⑆00393⑆900099742⑆ 213

CHECK NUMBER: 214

PAID TO: \_\_\_\_\_  
AMOUNT: \$ \_\_\_\_\_  
DATE: \_\_\_\_\_

Richard J. Battson Use this check by March 20, 1999 214  
9257 Cadenza Ct 65-7198/2550  
Sacramento, CA 95826-4144

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

VOID

Payable through: First USA Bank, N.A. J-005 5422702028389716  
Wilmington, DE 19801

MEMO \_\_\_\_\_ SIGNATURE \_\_\_\_\_

⑆03⑆⑆00393⑆900099742⑆ 214

CHECK NUMBER: 215

PAID TO: \_\_\_\_\_  
AMOUNT: \$ \_\_\_\_\_  
DATE: \_\_\_\_\_

Richard J. Battson Use this check by March 20, 1999 215  
9257 Cadenza Ct 65-7198/2550  
Sacramento, CA 95826-4144

PAY TO THE ORDER OF \_\_\_\_\_ \$ \_\_\_\_\_

VOID

Payable through: First USA Bank, N.A. J-005 5422702028389716  
Wilmington, DE 19801

MEMO \_\_\_\_\_ SIGNATURE \_\_\_\_\_

⑆03⑆⑆00393⑆900099742⑆ 215





Legislative Counsel  
of California

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Jack G. Zorman

Deputies

Sacramento, California

July 16, 1999

Honorable Gray Davis  
Governor of California  
Sacramento, CA 95814

Senate Bill No. 545

Dear Governor Davis:

Pursuant to your request, we have reviewed the above-numbered bill authored by Senator Dunn and, in our opinion, the title and form are sufficient and the bill, if chaptered, will be constitutional. The digest on the printed bill as adopted correctly reflects the views of this office.

Very truly yours,

Bion M. Gregory  
Legislative Counsel

By *John T. Studebaker*  
John T. Studebaker  
Principal Deputy

JTS:sjm

Two copies to Honorable Joseph Dunn pursuant to Joint Rule 34.

LEGISLATIVE INTENT SERVICE (800) 666-1917

PE-8

STATE AND CONSUMER SERVICES AGENCY

ENROLLED BILL REPORT

DEPARTMENT Consumer Affairs	AUTHOR Dunn	BILL NUMBER SB 545
SPONSOR Author	RELATED BILLS	
SUBJECT Credit: Notice		

BILL SUMMARY:

This bill would require a credit card issuer to disclose specified information on an attachment affixed to a preprinted check or draft. The disclosures would notify credit cardholders that the use of the check or draft will constitute a charge on the cardholder's credit account.

Existing federal law:

- Requires that when a credit card company issues a cardholder a pre-printed check, the credit card issuer must disclose to the cardholder that use of the check will result in a charge to the cardholder's account with a specified interest rate.

Existing state law, known as the Areias-Robbins Credit Card Full Disclosure Act of 1986, requires:

- A credit card issuer to disclose any periodic rate or rates that may be applied to a customer's account, expressed as an annual percentage rate or rates.

This bill would:

- Require a credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft to disclose the following information:
  - use of the check or draft will constitute a charge against the cardholder's credit account;
  - the annual percentage rate and the calculation of finance charges associated with the use of the attached check or draft; and,
  - whether the finance charge is triggered immediately upon use of the check or draft.
- Require the aforementioned to become effective July 1, 2000.

LEGISLATIVE HISTORY:

Existing federal law requires that when a credit card company issues a consumer a check, the credit card issuer must disclose to the cardholder that use of the check will result in a charge to

VOTE: Assembly Floor: Aye <u>53</u> No <u>17</u> Policy Committee: Aye <u>12</u> No <u>0</u> Fiscal Committee: Aye <u>   </u> No <u>   </u>	VOTE: Senate Floor: Aye <u>21</u> No <u>15</u> Policy Committee: Aye <u>6</u> No <u>1</u> Fiscal Committee: Aye <u>   </u> No <u>   </u>
RECOMMENDATION TO GOVERNOR: SIGN <u>X</u> VETO <u>   </u>	DEFER TO OTHER AGENCY
DEPARTMENT DIRECTOR <i>Catella Smith</i> DATE: <u>7-15-99</u>	AGENCY SECRETARY <i>[Signature]</i> DATE: <u>7-15-99</u>

the cardholder's account with a specified interest rate. In addition, current state law requires a credit card issuer to disclose any periodic rate or rates that may be applied to a customer's account, expressed as an annual percentage rate or rates.

PROGRAM HISTORY:

This bill does not pertain to any program under the Department of Consumer Affairs.

SPECIFIC FINDINGS:

According to the author's office, credit card companies issue pre-printed checks to consumers, and consumers typically "assume" that these checks will have a similar interest rate as their credit card; however, in actuality, these pre-printed checks often have a higher interest rate than credit cards. Although current law requires credit card issuers to disclose the interest rate, consumers still do not read the "fine print". The author's office notes that often times credit card issuers provide the disclosure information in a devious manner, which prevents consumers from knowing the interest rates for using the checks.

This bill seeks to aid consumers in learning the interest rates for pre-printed checks issued by credit card companies by requiring credit card issuers to disclose the interest rate and the calculations of finance charges associated with the use of a preprinted check or draft in clear conspicuous language on an attachment affixed to each credit device.

REGULATIONS: N/A

LEGISLATIVELY MANDATED REPORTS: N/A

COMMISSIONS AND BOARDS: N/A

FISCAL IMPACT:

This bill would have no fiscal impact on the Department of Consumer Affairs.

PRO AND CON ARGUMENTS:

Arguments in Support of the Bill:

Proponents contend that credit card companies issue pre-printed checks to cardholders with disclosures that are difficult for consumers to read, which often leads to cardholders being charged high interest rates without the cardholder's knowledge. Proponents argue that this bill would aid cardholders in learning the interest rates for pre-printed checks and drafts by requiring credit card issuers to disclose the interest rate and the calculations of finance charges associated with the use of a preprinted check or draft on an attachment affixed to each credit device.

Arguments in Opposition to the Bill:

There is no known opposition to this bill.

PE-10

PROPOSERS/OPPONENTS:

Support:

California Alliance for Consumer Protection  
California Public Interest Research Group  
Consumer Federation of California  
Consumers Union

Opposition:

None on file.

Sponsor:

Author

Support:

California Alliance for Consumer Protection  
California Public Interest Research Group  
Consumers Union

Opposition:

There is no known opposition.

SIGNIFICANT VOTE COUNT:

The votes on this bill were strongly partisan (all of the NO votes were Republican). The Senate Minority Whip's analysis, in part, argued that

Proponents proceed from the fiction that there are large numbers of people who use these instruments because it is not clear that they come from the card issuer, even though they are contained in an envelope with the card issuer's business name and are included with a letter that explains what the check is. For people like that, no amount of disclosure will help them understand.

We were unable to obtain comments from the Assembly Republican Caucus, but expect that the Assembly Republicans voted against the bill for similar reasons.

We note that there is no opposition on file for this bill.

RECOMMENDATION:

Since this bill would help protect consumers by requiring credit card issuers to disclose the interest rate of preprinted check and drafts on an attachment affixed to each credit device, the Department of Consumer Affairs recommends that this bill be SIGNED.

PE-11



Tara Powers  
Department Analyst  
Office: 323-5450  
Pager:  
Home: 7-

LYNN MORRIS  
Assistant Deputy Director  
Office: 3 )  
Pager: 9  
Cellular: 1 3  
Home: 42

HAPPY CHASTAIN  
Deputy Secretary, Legislation  
Office: 6  
Pager: 2  
Cellular: 1  
Home: 44



VETO MESSAGE

SB 545 , As Amended on June 24, 1999

I am returning SB 545 without my signature. This bill would require a credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft to disclose the following information: use of the check or draft will constitute a charge against the cardholder's credit account; the annual percentage rate and the calculation of finance charges associated with the use of the attached check or draft; and, whether the finance charge is triggered immediately upon use of the check or draft.

Existing federal law already requires that when a credit card company issues a cardholder a pre-printed check, the credit card issuer must disclose to the card holder that use of the check will result in a charge to the cardholder's account with a specified interest rate. This bill would only create additional regulations that are unnecessary because federal law already requires a card issuer to disclose the interest rate of preprinted checks and drafts to the cardholder.

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ANALYSIS

SENATE RULES COMMITTEE	SB 545
Office of Senate Floor Analyses	
1020 N Street, Suite 524	
(916) 445-6614	Fax: (916)
327-4478	

### UNFINISHED BUSINESS

Bill No: SB 545  
 Author: Dunn (D)  
 Amended: 6/24/99  
 Vote: 21

SENATE JUDICIARY COMMITTEE : 6-1, 5/18/99  
 AYES: Burton, Escutia, O'Connell, Peace, Sher, Schiff  
 NOES: Wright  
 NOT VOTING: Haynes, Morrow

SENATE FLOOR : 23-11, 5/27/99  
 AYES: Alarcon, Alpert, Baca, Bowen, Burton, Chesbro,  
 Costa, Dunn, Escutia, Figueroa, Hayden, Hughes, Johnston,  
 Karnette, Murray, O'Connell, Ortiz, Perata, Polanco,  
 Schiff, Sher, Solis, Speier  
 NOES: Brulte, Johannessen, Kelley, Knight, Leslie,  
 Monteith, Morrow, Mountjoy, Poochigian, Rainey, Wright  
 NOT VOTING: Haynes, Johnson, Lewis, McPherson, Peace,  
 Vasconcellos

ASSEMBLY FLOOR : 53-17, 7/6/99 - See last page for vote

SUBJECT : Disclosures regarding checks issued by credit card issuers

PE-1A

SOURCE : Author

DIGEST : This bill requires any credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft to provide specified disclosures directly attached to the check or draft that explains the  
CONTINUED

SB 545  
Page

2

terms and conditions of using the check or draft.

Assembly Amendments :

1. Limit application to a check or draft.
2. Amend the technical language to be attached to the check or draft, including Regulation 2 language.
3. Make provisions operative on July 1, 2000.

ANALYSIS : Existing law, under the Areias-Robbins Credit Card Full Disclosure Act of 1986, requires that any application form or preapproved written solicitation for an open-end credit card account shall contain or be accompanied by certain disclosures, including: (1) any periodic rate or rates that may be applied to the account, expressed as an annual percentage rate or rates; (2) any membership fee that may be imposed; and (3) any per transaction fee that may be imposed on purchases. (Civil Code Section 1748.11. All further references are to the Civil Code unless otherwise indicated.)

The bill, operative on July 1, 2000, would require the credit card issuer to print on an attachment that is affixed, or perforation or other means, to each preprinted check or draft in conspicuous language:

1. "Use of the attached check or draft will constitute a charge against your credit account and may subject you to immediate finance charges".
2. The annual percentage rate and the calculation of finance charges, as required by Section 226.16 of Regulation 2 of the Code of Federal Regulations, associated with the use of the attached check or draft.
3. Whether the finance charges are triggered immediately upon the use of the check or draft.

FISCAL EFFECT : Appropriation: No Fiscal Com.: No  
Local: No

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PL-15



SB 545

Page

3

SUPPORT (Verified 7/7/99)CALPIRG

Consumers Union  
 California Alliance for Consumer Protection  
 Consumer Federation of California

ARGUMENTS IN SUPPORT : Proponents of this bill assert that credit card issuers have become increasingly aggressive over the last decade in their marketing of products and services. Proponents argue that one of the most common new products that credit card issuers use to increase the revenue from their current customer base is the preprinted check. Proponents contend that these products, designed to look like checks from a consumer's checking account, are sent mostly to existing credit cardholders and are packaged as a quick, easy way to obtain cash for a necessary purchase or to make payments on other debts.

According to proponents, the problem with these products is that while they clearly specify the amount of cash that can be obtained with the product ("Get \$500 today!"), the disclosures that explain the cost of using the product are often hidden or absent. Proponents believe that many consumers are sold on these products without understanding the transaction fees and high interest rates they may be forced to pay later.

ASSEMBLY FLOOR :

AYES: Aanestad, Alquist, Aroner, Bock, Brewer, Calderon, Campbell, Corbett, Correa, Cox, Cunneen, Davis, Ducheny, Dutra, Firebaugh, Florez, Floyd, Frusetta, Gallegos, Havice, Hertzberg, Honda, Jackson, Keeley, Knox, Kuehl, Leach, Longville, Lowenthal, Maldonado, Mazzoni, Migden, Nakano, Rod Pacheco, Pescetti, Reyes, Romero, Scott, Shelley, Soto, Steinberg, Strickland, Strom-Martin, Thomson, Torlakson, Washington, Wayne, Wesson, Wiggins, Wildman, Wright, Zettel, Villaraigosa

NOES: Ackerman, Ashburn, Baldwin, Bates, Battin, Baugh, Briggs, Granlund, House, Leonard, Maddox, Margett, McClintock, Olberg, Oller, Runner, Thompson

SB 545

Page

Pt-16

4

NOT VOTING: Cardenas, Cardoza, Cedillo, Dickerson,  
Kaloogian, Lempert, Machado, Robert Pacheco, Papan,  
Vincent

RJG:s1 7/7/99 Senate Floor Analyses

SUPPORT/OPPOSITION: SEE ABOVE

\*\*\*\* END \*\*\*\*

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Measure: SB 545

Author: Dunn

Topic: Credit notice.

Date: 07/12/99

Location: SEN. FLOOR

Motion: Unfinished Business SB545 Dunn

(AYES 21. NOES 15.) (PASS)

### AYES

\*\*\*\*

Alarcon Alpert Baca Bowen Burton Chesbro Costa Dunn Escutia Figueroa Hayden  
Hughes Johnston Karnette Murray O'Connell Ortiz Perata Polanco Sher Vasconcellos

### NOES

\*\*\*\*

Brulte Haynes Johannessen Johnson Kelley Knight Leslie Lewis McPherson Monteith  
Morrow Mountjoy Poochigian Rainey Wright

### ABSENT, ABSTAINING, OR NOT VOTING

\*\*\*\*\*

Peace Schiff Solis Speier

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PE 18

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Measure: SB 545

Author: Dunn

Topic: Credit: notice.

Date: 07/06/99

Location: ASM. FLOOR

Motion: SB 545 DUNN THIRD READING BY DAVIS  
(AYES 53. NOES 17.) (PASS)

### AYES

\*\*\*\*

Aanestad Alquist Aroner Bock Brewer Calderon Campbell Corbett Correa Cox  
Cunneen Davis Ducheny Dutra Firebaugh Florez Floyd Frusetta Gallegos Havice  
Hertzberg Honda Jackson Keeley Knox Kuehl Leach Longville Lowenthal Maldonado  
Mazzoni Migden Nakano Rod Pacheco Pescetti Reyes Romero Scott Shelley Soto  
Steinberg Strickland Strom-Martin Thomson Torlakson Washington Wayne Wesson  
Wiggins Wildman Wright Zettel Villaraigosa

### NOES

\*\*\*\*

Ackerman Ashburn Baldwin Bates Battin Baugh Briggs Granlund House Leonard  
Maddox Margett McClintock Olberg Oller Runner Thompson

### ABSENT, ABSTAINING, OR NOT VOTING

\*\*\*\*\*

Cardenas Cardoza Cedillo Dickerson Kaloogian Lempert Machado Robert Pacheco  
Papan Vincent

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PE-19

Howard Owens  
Executive Director

1228 N Street, Suite 29  
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## Consumer Federation of California

Albin Gruhn, President  
Matthew McKinnon, Vice President  
Regene Mitchell, Vice President  
Patricia Garcia, Vice President  
James Gordon, Jr., Treasurer  
Dora "Miz" Rodriguez, Secretary

To: Honorable Gray Davis,  
Governor of the State of California

From: Howard Owens, Executive Director

Date: July 20, 1999

Re: SB 545 (Dunn)—SUPPORT

Dear Governor Davis, on behalf of the Consumer Federation of California we respectfully request that you sign SB 545 into law.

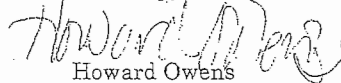
It is a current practice of credit issuers to include a number of blank draft instruments along with a payment notification. Customers are urged to use these instruments for any number of uses. Often, there is no information that would inform a customer that using such a check constitutes a charge against the person's credit account. Additionally, using such a check is characterized as a cash advance which is subject to a much higher interest rate than a purchase made by a credit card to the same account.

SB 545 requires that a credit issuer affix the proper notification of all material information that a consumer would need to determine if using such a draft instrument is in their best interest. This bill is a reasonable response to the concerns raised by aggressive marketing of credit and other financial services and products.

The Consumer Federation of California applauds the efforts of Senator Joe Dunn to provide consumers with the necessary information to ensure the responsible use of credit. Knowledge is power!

We therefore ask that you sign SB 545 into law.

Sincerely,

  
Howard Owens

Cc. Senator Joe Dunn

(800) 666-1917

LEGISLATIVE INTENT SERVICE



7/20



[Please click here to return to the previous page.](#)

## Press Release



OFFICE OF THE GOVERNOR

L99:068

FOR IMMEDIATE RELEASE

July 26, 1999

# GOVERNOR DAVIS SIGNS CONSUMER CREDIT PROTECTION LEGISLATION

*Bill Requires Disclosure On Checks Issued By Credit Card Companies*

SACRAMENTO—Governor Gray Davis signed legislation, **Senate Bill 545** by **Senator Joe Dunn (D-Santa Ana)**, requiring any credit card issuer that extends credit to a cardholder through the use of a preprinted check or draft to provide specific information attached directly to the check or draft, explaining the terms and conditions of use.

"This is a common sense bill that that will help consumers make fully informed choices when considering credit options," said Michael Bustamante, Press Secretary for Governor Davis.

Existing federal law requires that when a credit card company issues a check to a consumer, the company must disclose that the use of the check will result in a charge to the cardholder's account with a specified interest rate. In addition, current state law requires that a credit card issuer must disclose any periodic rate or rates that may be applied to a customer's account, expressed as an annual percentage rate.

However, the pre-printed checks issued to consumers by credit card companies often have a higher interest rate than credit cards. Although current law requires credit card issuers to disclose the interest rate, the information is often in fine print.

SB 545 will require that the following information must be clearly disclosed and attached directly to a check or draft issued by a credit card company:

The language, "Use of the attached check or draft will constitute a charge against your account."

The annual percentage rate and the calculation of finance charges associated with the use of the attached check or draft.

An indication whether the finance chares are triggered immediately upon the use of the check or draft.

SB 545 shall become operative on July 1, 2000.

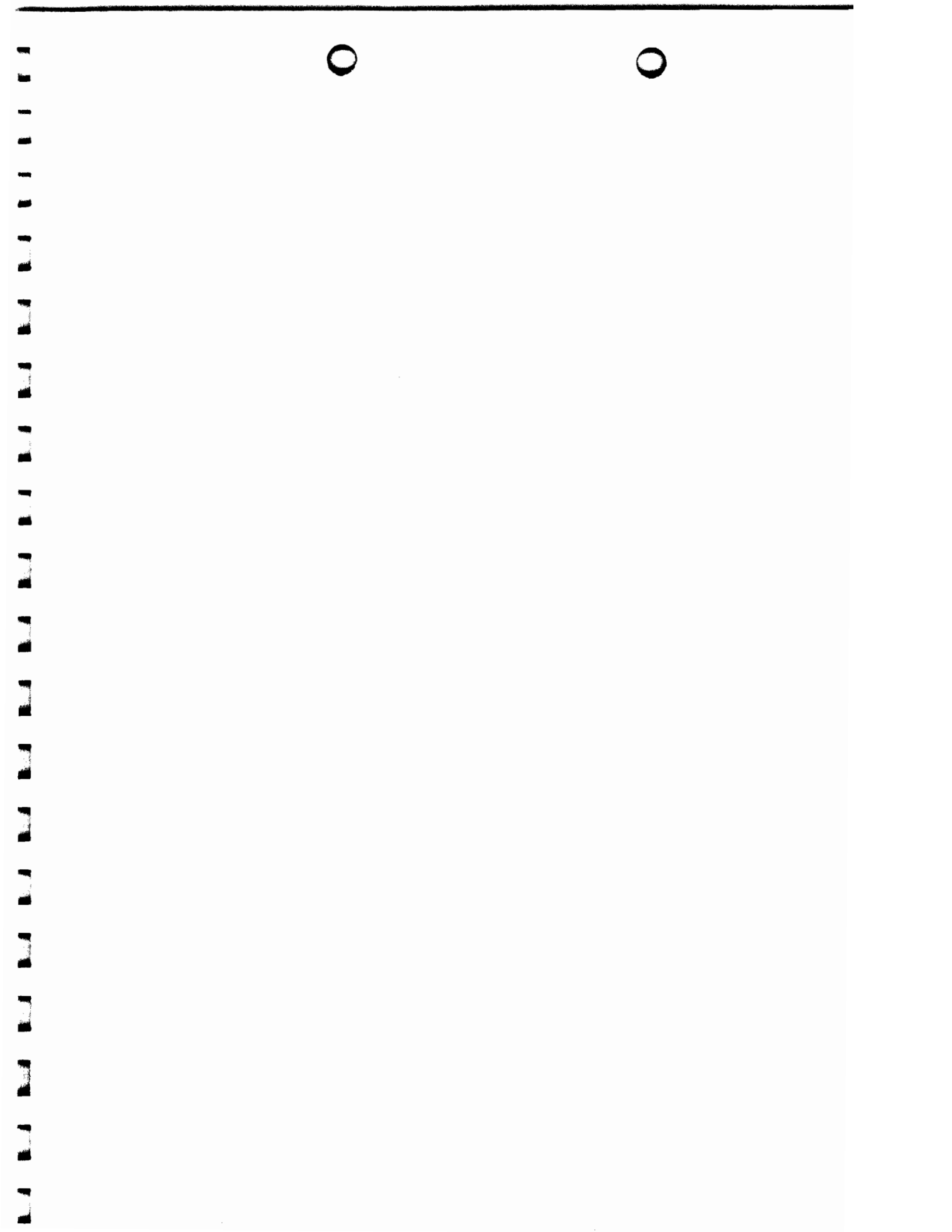
[Back to Top of Page](#)

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# 1999 DIGEST OF LEGISLATION

DECEMBER 7, 1998 THROUGH SEPTEMBER 10, 1999

## VOLUME I

### NOVEMBER 1999

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12



Table of Contents

Volume I

I.	<b>Agriculture And Water Resources</b>	3
	Farm Labor	5
	Pests And Pesticides	8
	General Agriculture	11
	Water Resources	21
II.	<b>Business And Labor</b>	43
	Economic Development	45
	World Trade And Tourism	58
	Small Business	62
	Labor Relations	64
	Workers' Compensation	74
	Unemployment Insurance	79
	Financial Institutions	82
	Miscellaneous	86
III.	<b>Consumerism</b>	99
	Consumerism Legislation	101
IV.	<b>Criminal Justice And Judiciary</b>	111
	Death Penalty	113
	Domestic Violence	115
	Gang Violence	119
	Child Abuse	120
	Sex Offenders	125
	Controlled Substances	128
	Drunk Driving/Vehicle Code	132
	Other Crimes And Sentencing	137
	Procedural	151
	Juries	155
	Juvenile Justice	156
	Victims' Rights	164
	Prisons And Prisoners	166
	Weapons	175
	Attorneys	184
	Courts And Judges	188
	Law Enforcement	196
	Family Law	211
	Civil Law	222



Consumerism: Consumerism Legislation

SB 417 (Bowen-D) Supermarket club cards

Enacts the Supermarket Club Card Privacy Act of 1999, requiring, on and after July 1, 2000, any application form or written solicitation for a supermarket club card account to be used for personal, family, or household purposes which is obtained on or after July 1, 2000, by a consumer residing in this state and issued by or on behalf of a supermarket, to contain or be accompanied by certain disclosures, except as specified. Requires a specified notice to be provided to all persons who obtained a supermarket club card prior to that date. Provides that a violation of these provisions constitutes "unfair competition" and is subject to specified civil penalties.

*(Failed passage in Assembly Appropriations Committee; reconsideration granted)*

SB 419 (Speier-D) Dairy products: milk price surveys

Requires the Department of Food and Agriculture, over the next two years, to conduct statewide monthly retail milk price surveys and a public information program that provides the survey's findings, and to report to the Legislature by June 30, 2001 on the program.

*Chapter 682, Statutes of 1999*

SB 545 (Dunn-D) Credit: notice

Requires disclosure requirements for credit card company issued checks or drafts constituting a charge against the cardholder's account.

*Chapter 171, Statutes of 1999*

SB 556 (Peace-D) Unsolicited commerce

Revises the law pertaining to contractual agreements for goods or services shipped or provided consumers through the mail by repealing the use of the so-called "negative option" contract--where the company will ship the monthly item unless the consumer notifies the company that he or she does not want the item by sending a "negative option" notice in a timely manner.

*(Failed passage in Senate Judiciary Committee; reconsideration granted)*

SB 820 (Sher-D) Electronic transactions

Enacts the Uniform Electronic Transactions Act. Generally applies to all transactions in which records or signatures are transmitted electronically, but excludes from coverage transactions subject to laws on wills, codicils or testamentary trusts and other specified transactions. Establishes rules and procedures for the sending and receiving of electronic record and signatures, the formation of contracts using electronic records, the making and retention of electronic records and signatures, and the procedures governing changes and errors in electronically transmitted records. Establishes the validity of transactions formed, transmitted and recorded electronically, and establishes the admissibility of electronic records in a legal proceeding.

*Chapter 428, Statutes of 1999*