

AMENDED IN SENATE JANUARY 28, 2014

AMENDED IN SENATE MAY 24, 2013

AMENDED IN SENATE APRIL 1, 2013

**SENATE BILL**

**No. 383**

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**Introduced by Senator Jackson**

February 20, 2013

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An act to amend Sections 1747.02 and 1747.08 of the Civil Code, relating to credit cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 383, as amended, Jackson. Credit cards: personal information.

Existing state and federal law regulates the provision of credit and the use of credit cards. The Song-Beverly Credit Card Act of 1971 generally regulates credit card transactions and prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder write any personal identification information, as defined, upon the credit card transaction form or otherwise. Existing law prohibits a person or entity that accepts credit cards for the transaction of business from requesting, or requiring as a condition to accepting the credit card, that the cardholder provide his or her personal identification information to the person or entity to be written or caused to be written upon the credit card transaction form or otherwise. Notwithstanding those provisions, existing law authorizes a person or entity that accepts credit cards for the transaction of business to require the cardholder, as a condition to accepting the credit card, to provide reasonable forms of positive identification, which may include a driver's license or a California state identification card, provided that the information is not

written or recorded on the credit card transaction form or otherwise. Existing law authorizes the use of ZIP Code information in a sales transaction at a retail motor fuel dispenser or retail motor fuel payment island with an automated cashier that uses the ZIP Code information solely for prevention of fraud, theft, or identity theft.

This bill would authorize a person or entity that accepts credit cards in an online transaction *involving an electronic downloadable product*, as defined, to require a cardholder, as a condition to accepting a credit card as payment in full or in part for goods or services, *part, in an online transaction involving an electronic downloadable product*, to provide the billing ZIP Code and street address number associated with the credit card, if used solely for the *detection, investigation, or prevention of fraud, theft, or identity theft, or criminal activity, or enforcement of terms of sale*. The bill would authorize the person or entity accepting the credit card to require a cardholder, as a condition to accepting a credit card as payment in full or in part, in an online transaction *involving an electronic downloadable product*, to provide additional personal information, if it requires that information for the *detection, investigation, or prevention of fraud, theft, or identity theft, or criminal activity, or for enforcement of terms of sale*, and the additional personal information is used solely for the *prevention of fraud, theft, or identity theft those purposes*. The bill would require that person or entity to destroy or dispose of the ZIP Code, street address number, and any additional personal information it requires in a secure manner after it is no longer needed for the *prevention of fraud, theft, or identity theft those purposes*. The bill would further prohibit that person or entity from aggregating the ZIP Code, street address number, or additional personal information it requires with any other personal identification information, as defined, and from sharing the ZIP Code, street address number, or additional personal information it requires with any other person or ~~entity~~ *entity, as specified*. *The bill, notwithstanding the foregoing provisions, would also authorize a person or entity accepting a credit card in an online transaction involving an electronic downloadable product to request, but not require, personal information if the cardholder actively elects to provide the personal information by opting in to the collection of the information and specified conditions are met.*

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. (a) The Legislature finds and declares all of the  
2 following:

3 (1) The Song-Beverly Credit Card Act of 1971 establishes  
4 privacy and other protections for cardholders. These protections  
5 prohibit a person, firm, partnership, association, or corporation  
6 from requesting or requiring a cardholder to provide personal  
7 identification information in a credit card transaction, with  
8 specified, limited exceptions.

9 (2) The Song-Beverly Credit Card Act of 1971 applies to credit  
10 card transactions without reference to the method, platform, or  
11 technology used to process or to complete the transaction.

12 (3) The California Supreme Court, in *Apple Inc. v. Superior*  
13 *Court* (2013) 56 Cal.4th 128, declared the Song-Beverly Credit  
14 Card Act of 1971 not applicable to an online transaction involving  
15 a downloadable product. As a result, the privacy protections of the  
16 act do not apply to those transactions.

17 (b) It is the intent of the Legislature to ~~apply the provisions of~~  
18 ~~the Song-Beverly Credit Card Act of 1971 to all online credit card~~  
19 ~~transactions, including online transactions involving a~~  
20 ~~downloadable product~~ *advance privacy protections by limiting the*  
21 *scope of personally identifiable information that may be required*  
22 *to be collected for an online transaction involving an electronic*  
23 *downloadable product.*

24 SEC. 2. Section 1747.02 of the Civil Code is amended to read:  
25 1747.02. As used in this title:

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

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

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

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

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

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

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

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

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

1 oral or written notice from a cardholder indicating that ~~it~~ *the*  
2 *cardholder* wishes to terminate the authority of a previously  
3 authorized user of a credit card, the card issuer shall follow its  
4 usual procedures for precluding any further use of a credit card by  
5 an unauthorized person.

6 (g) “Inquiry” means a writing that is posted by mail to the  
7 address of the card issuer to which payments are normally tendered,  
8 unless another address is specifically indicated on the statement  
9 for that purpose, then to that other address, and that is received by  
10 the card issuer no later than 60 days after the card issuer transmitted  
11 the first periodic statement that reflects the alleged billing error,  
12 and that does all of the following:

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

15 (2) Sufficiently identifies the billing error.

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

18 (h) “Response” means a writing that is responsive to an inquiry  
19 and mailed to the cardholder’s address last known to the card  
20 issuer.

21 (i) “Timely response” means a response that is mailed within  
22 two complete billing cycles, but in no event later than 90 days,  
23 after the card issuer receives an inquiry.

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

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

34 (l) “Secured credit card” means any credit card issued under an  
35 agreement or other instrument that pledges, hypothecates, or places  
36 a lien on real property or money or other personal property to  
37 secure the cardholder’s obligations to the card issuer.

38 (m) “Student credit card” means any credit card that is provided  
39 to a student at a public or private college or university and is  
40 provided to that student solely based on his or her enrollment in a

1 public or private university, or is provided to a student who would  
2 not otherwise qualify for that credit card on the basis of his or her  
3 income. A “student credit card” does not include a credit card  
4 issued to a student who has a cocardholder or cosigner who would  
5 otherwise qualify for a credit card other than a student credit card.

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

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

17 (p) “Online transaction *involving an electronic downloadable*  
18 *product*” means a credit card transaction for a product, service,  
19 subscription, or any other consideration, in which the product,  
20 service, subscription, or consideration is ~~transacted~~ *provided* by  
21 means of a *download to a computer, telephone, or other electronic*  
22 *device*.

23 SEC. 3. Section 1747.08 of the Civil Code is amended to read:

24 1747.08. (a) Except as provided in subdivision (c), a person,  
25 firm, partnership, association, or corporation that accepts credit  
26 cards for the transaction of business shall not do any of the  
27 following:

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

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

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

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

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

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

8 (2) Cash advance transactions.

9 (3) If any of the following applies:

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

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

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

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

28 (d) (1) This section does not prohibit any person, firm,  
29 partnership, association, or corporation from requiring the  
30 cardholder, as a condition to accepting the credit card as payment  
31 in full or in part, for goods or services, to provide reasonable forms  
32 of positive identification, which may include a driver’s license or  
33 a California state identification card, or where one of these is not  
34 available, another form of photo identification, provided that none  
35 of the information contained thereon is written or recorded on the  
36 credit card transaction form or otherwise. If the cardholder pays  
37 for the transaction with a credit card number and does not make  
38 the credit card available upon request to verify the number, the  
39 cardholder’s driver’s license number or identification card number  
40 may be recorded on the credit card transaction form or otherwise.

1 (2) Notwithstanding subdivision (a), a person, firm, partnership,  
2 association, or corporation accepting the credit card may require  
3 a cardholder, as a condition to accepting a credit card as payment  
4 in full or in ~~part~~ *part*, in an online ~~transaction~~, *transaction involving*  
5 *an electronic downloadable product*, to provide the billing ZIP  
6 Code number and numerical portion of the street address associated  
7 with the credit card, if used solely for the *detection, investigation,*  
8 *or prevention of fraud, theft, or identity theft, or criminal activity,*  
9 *or for enforcement of terms of sale.* The person, firm, partnership,  
10 association, or corporation accepting the credit card may require  
11 a cardholder, as a condition to accepting a credit card as payment  
12 in full or in part, in an online transaction *involving an electronic*  
13 *downloadable product*, to provide additional personal information,  
14 if it requires that information for the *detection, investigation, or*  
15 *prevention of fraud, theft, or identity theft, or criminal activity, or*  
16 *for enforcement of terms of sale*, and the additional personal  
17 information is used solely for the *detection, investigation, or*  
18 *prevention of fraud, theft, or identity theft, or criminal activity, or*  
19 *for enforcement of terms of sale.* The person, firm, partnership,  
20 association, or corporation accepting the credit card shall destroy  
21 or dispose of the ZIP Code, street address number, and any  
22 additional personal information it requires pursuant to this  
23 subdivision in a secure manner after it is no longer needed for the  
24 *detection, investigation, or prevention of fraud, theft, or identity*  
25 *theft, or criminal activity, or for enforcement of terms of sale.* The  
26 person, firm, partnership, association, or corporation accepting the  
27 credit card shall not aggregate the ZIP Code, street address number,  
28 or additional personal information it requires pursuant to this  
29 subdivision with any other personal identification information and  
30 shall not share the ZIP Code, street address number, or additional  
31 personal information it requires pursuant to this subdivision with  
32 any other person, firm, partnership, association, or corporation  
33 *unless it is required to do so by state or federal law, or is*  
34 *contractually obligated to share the information with another*  
35 *entity to verify the information, complete the transaction, or for*  
36 *the detection, investigation, or prevention of fraud, theft, identity*  
37 *theft, or criminal activity, or for enforcement of terms of sale.*  
38 (3) (A) Notwithstanding subdivision (a), a person, firm,  
39 partnership, association, or corporation may request, but not  
40 require, personal information from a cardholder as part of an

1 *online transaction involving an electronic downloadable product,*  
2 *as long as the cardholder actively elects to provide the personal*  
3 *information by opting in to the collection of the information and*  
4 *is contemporaneously notified of all of the following:*

5 *(i) That providing the information is not required to complete*  
6 *the transaction.*

7 *(ii) The purpose of the request.*

8 *(iii) The intended use of the information.*

9 *(B) A cardholder shall be provided with an additional*  
10 *opportunity to opt out of the collection of the information before*  
11 *the online transaction involving an electronic downloadable*  
12 *product is completed.*

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

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

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

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

6 (h) The changes made to this section by Chapter 458 of the  
7 Statutes of 1995 apply only to credit card transactions entered into  
8 on and after January 1, 1996. Nothing in those changes shall be  
9 construed to affect any civil action that was filed before January  
10 1, 1996.