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Beware of Class Action Lawsuits under Section 1747.8 of the California Civil Code

Businesses who accept credit cards should be mindful of the restrictions under Section 1747.8 of the California Civil Code. Section 1747.8 prohibits retailers from requiring or even asking for personal identification information (e.g. home address, home telephone number) in connection with a credit card sale. The relevant portions of this statute reads as follows:

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

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

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

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

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

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

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

(2) Cash advance transactions.

(3) When the person, firm, partnership, association, or corporation accepting the credit card is contractually obligated to provide personal identification information in order to complete the credit card transaction or is obligated to collect and record the personal identification information by federal law or regulation.

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

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

(e) Any person who violates this section shall be subject in a civil penalty not to exceed two hundred fifty dollars (\$250) for the first violation and on thousand dollars (\$1000) for each subsequent violation to be assessed and collected in a civil action brought by the person paying with a credit card, by the Attorney General, or by the district attorney or city attorney of the county or city in which the violation occurred. However, no civil penalty shall be assessed for a violation of this section if the defendant shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error made notwithstanding the defendant's maintenance or procedures reasonably adopted to avoid such an error. When collected, the civil penalty shall be payable, as appropriate, to the person paying with a credit card who brought the action, or to the general fund of whichever governmental entity brought the action to assess civil penalty.

Hence, if a business is unfamiliar with Section 1747.8 and has a practice of asking for its customer's address and telephone number when a customer presents a credit card for purchase, the business is potentially subjecting itself to liability of \$250 for the first violation and \$1,000 for each violation thereafter. Given the number of credit card transactions that retailers process every day, the aggregate liability over time is enormous.

The real impact of Section 1747.8 is felt when claims are prosecuted on a class basis. There have been a number of class action lawsuits filed recently in California under Section 1747.8. For example, if a retailer processes 100,000 credit card transactions every year and requests personal identification information for each of these transactions, the potential liability for the class of individuals affected by this practice is \$100,000,000.00 (One Hundred Million Dollars).

Businesses would be well advised to become familiar with Section 1747.8 and implement written policies designed to prevent violations of Section 1747.8.

The foregoing is for informational purposes only and does not constitute legal advice. Because different situations may require different courses of action, the foregoing should not be relied upon without consulting competent legal counsel regarding the subject matter set forth herein.