

# Morrison & Foerster Client Alert.

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## PII at the Pump: California Now Allows Retail Gas Stations to Collect ZIP Codes for Fraud Prevention

By **Purvi G. Patel and Megan T. Low**

California recently passed Assembly Bill No. 1219, which amends the state's Song-Beverly Credit Card Act of 1971 to create a limited exception to the Act for retail gas stations. The Act prohibits businesses from requesting that cardholders provide "personal identification information" (PII) during credit card transactions and then recording that information. In February 2011, the California Supreme Court concluded in *Pineda v. Williams-Sonoma Stores, Inc.* that a retailer who requests and records a customer's ZIP code during a credit card transaction violates the Act.<sup>1</sup>

Although retailers have been defending lawsuits alleging violations of the Act based on collection of ZIP codes since before the *Pineda* decision, the number of these lawsuits was somewhat limited by the existence of two contrary Court of Appeal decisions that held ZIP codes are not PII. Following *Pineda*, more than 200 lawsuits were filed, and many hoped for a legislative "fix" to make *Pineda* apply prospectively only or to create an exception for fraud.

Existing law already provides certain exceptions under which a business may collect PII, including when the person or entity accepting a credit card is contractually obligated to provide PII in order to complete the transaction or if the information is requested for a special purpose incidental but related to the credit card transaction, such as shipping, delivery, servicing, or installation.<sup>2</sup> This new exception applies to credit card sales transactions at a "retail motor fuel dispenser" or "retail motor fuel payment island automated cashier" when the ZIP code information is used "solely for prevention of fraud, theft, or identity theft."<sup>3</sup>

<sup>1</sup> *Pineda v. Williams-Sonoma Stores, Inc.*, 246 P.3d 612, 614 (Cal. 2011). Please see [here](#) for additional background about the Song-Beverly Act and *Pineda* decision.

<sup>2</sup> Cal. Civ. Code § 1747.08(c).

<sup>3</sup> Cal. Civ. Code § 1747.08(c)(3)(B).

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Despite being classified as an urgency statute necessary to “prevent potential disruption of gasoline station services throughout the state,”<sup>4</sup> the amendment does little more than officially sanction a relatively unchallenged practice. Indeed, the post-*Pineda* litigation climate corroborates this observation—we are aware of only one lawsuit that was filed after *Pineda* against retail gas stations as compared to the over 200 lawsuits filed against brick and mortar businesses and online retailers.

Unfortunately, this relatively straightforward amendment does little to elucidate the scope of the Act following the California Supreme Court’s decision in *Pineda*, and practically speaking, does little to change the post-*Pineda* landscape.

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<sup>4</sup> AB 1219 (Cal. 2011).