

Credit Card Privacy Rules Deadline Approaching

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Every retail store, restaurant, hotel or other business that issues credit card receipts to customers has an impending deadline looming on January 1, 2004. In order to prepare, now is the time to take a close look at the receipts you give to your customers. Do they conform to the privacy requirements of the Song-Beverly Credit Card Act, which were enacted to help prevent credit card fraud and identity theft? Failure to comply could leave your business at risk to a potential lawsuit.

According to consumer advocates, criminals assume the identity of hundreds of thousands of people each year. The term "identity theft" refers to the practice of fraudulently obtaining goods and services, such as credit, loans, and long distance phone service, in another person's name. This is accomplished through a variety of means, including assumption of identification, theft of identifying information (such as social security numbers, PIN codes and credit card numbers), and fraudulent changes of address.

The Song-Beverly Response

Concerned about the risk of identity theft, the California Legislature in 1999 revised the Song-Beverly Credit Card Act, which

requires any person or entity that accepts credit cards for a business transaction to guard the privacy of the cardholder. Specifically, the Legislature added Civil Code § 1747.9, which provides that the electronically generated receipts given to customers cannot include more than the last five digits of the cards' account numbers and cannot list the cards' expiration dates.

Receipts retained by merchants and not provided to customers can include full card account numbers and expiration dates. Section 1747.9 only applies to electronically printed receipts and does not apply to handwritten receipts or other means that imprint or copy the credit card, such as the carbon copy receipts produced by a manual credit card imprinter.

The new requirements of Section 1747.9 already apply to all cash registers and machines that commenced operation after January 1, 2001. Therefore, if you bought brand new equipment within the past couple of years, you are already subject to the privacy requirements. Any equipment in use prior to January 1, 2001 must comply with the requirements before January 1, 2004. That means older machines will soon no longer be exempt or "grandfathered" from these new privacy laws.

What Could Happen?

Although Song-Beverly does not include a specific penalty for violation of the new requirements, violating the act exposes a person or business to liability under California's Unfair Competition Law (Business & Professions Code §§ 17200-17209). The Unfair Competition Law authorizes both governmental agencies and private parties to sue to prevent any person or business from committing an unlawful, unfair or fraudulent business act or practice. Many state and local government officials, including the California attorney general, county district attorneys, and city attorneys, can bring enforcement actions on behalf of the government. A private party also can initiate an enforcement action, either on its own behalf or as a private attorney general on behalf of the general public.

A suit under the Unfair Competition Law can seek an injunction to stop the continued violation of the law and restitution to return all money and property that has been unlawfully acquired by the business. In addition, governmental agencies are

authorized to seek civil penalties of up to \$2,500 for each violation of law. The agency that brings the enforcement action may keep at least a portion of the civil penalties awarded, potentially providing a financial incentive for governmental enforcement.

Finally, a party filing a suit as a private attorney general may also be eligible to collect its attorneys' fees incurred in the enforcement action, with the potential award of such fees providing incentive for private enforcement.

The Bottom Line

As with most things in life, an ounce of prevention is worth a pound of cure. Take a close look at your customer credit card receipts and make sure that they conform to the new guidelines. If your machines still print the full credit card account numbers and expiration dates, it's time to update your equipment before the January 1 deadline. By fully embracing these changes to the law, businesses not only reduce their exposure to potential lawsuits, but help create a safer purchasing environment for consumers.

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