

## Truncation Now Required of Credit Card Data under FACTA *Plaintiff's Attorneys File Numerous Class Action Lawsuits*

In 2003, the Fair and Accurate Credit Transactions Act (FACTA) was passed to amend the Fair Credit Reporting Act (FCRA). One section was added regarding the truncation of credit card and debit card numbers on customer receipts, and the final phase-in of the effective date for compliance with that requirement was December 4, 2006. Immediately after the effective date, multiple class action lawsuits were filed against nationally-known retailers for noncompliance with the truncation requirements. The relevant section provides that "no person that accepts credit cards or debit cards for the transaction of business shall print more than the last 5 digits of the card number or the expiration date upon any receipt provided to the cardholder at the point of sale or transaction." (15 USC 1681c(g)(1)). This requirement only applies to receipts that are electronically printed, as opposed to handwritten receipts or imprinted receipts. (15 USC 1681c(g)(2)).

The truncation requirement had a two-part effective date. Cash registers or other machines that were put into service on or after January 1, 2005, were to be in compliance one year after the date of enactment. (15 USC 1681c(g)(3)(B)). Cash registers or other machines that electronically print receipts for credit cards or debit cards that were put into service before January 1, 2005, were to be in compliance three years after the date of enactment. (15 USC 1681c(g)(3)(A)). The compliance deadline was December 4, 2006. Thus, all businesses are required to fully comply with these requirements as of December 4, 2006.

Damages under FACTA have the potential to be debilitating. For negligent noncompliance, credit card and debit card users may only recover actual damages and reasonable attorney's fee. Loss must be proven in order to recover for negligent noncompliance. However, for willful noncompliance the standard is quite different. Even without proof of loss, credit card and debit card users may recover statutory damages in an amount not less than \$100 and not more than \$1,000 for each act of willful noncompliance. Statutory damages under FACTA are not capped. Thus, a retailer could be liable for up to \$1,000 per transaction even without any proof of loss by the customer. These damages for willful noncompliance are in addition to possible punitive damages, actual damages and attorney's fees.

Shortly after the final effective date on December 4, 2006, a number of class action lawsuits were filed mostly in the Central District of California. Most of the lawsuits were filed in California likely because the Ninth Circuit interpretation of "willful noncompliance" is that it can be established by a showing of "reckless disregard" for FCRA. (The Third Circuit has also upheld a "reckless disregard" standard when awarding punitive damages under FCRA). Other circuits have held that "willfulness" requires that the defendant had actual knowledge of and intentionally violated FCRA. This issue was argued in a case before the Supreme Court on January 16, 2007 (*Safeco v. Burr/GEICO v. Edo* (consolidated)). A final decision is expected in that case before the end of the term on June 30th. Regardless of the outcome of the Supreme Court case, however, all businesses that issue electronic receipts should ensure that they are complying with these requirements.

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