



RETAILERS

Retailers and Restaurants Must Limit Information on Electronically Printed Credit and Debit Card Receipts or Risk Massive Liability for Noncompliance

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In an effort to reduce the risk of identity theft, the United States Congress passed the Fair and Accurate Credit Transactions Act of 2003, 15 U.S.C. § 1681 *et. seq.* ("FACTA"). FACTA contains numerous financial privacy protections for American consumers, including a provision requiring every business that accepts credit or debit cards to "truncate" information shown on electronically printed receipts.

In short, FACTA prohibits including the expiration date or more than the last five digits of the card number on an electronically printed credit or debit card receipt. Although there is some debate as to whether a receipt may include an expiration date instead of any portion of the card number, the more conservative interpretation is that a receipt should never include the expiration date.

The truncation requirement became effective in two phases. With respect to any cash register or other machine that electronically prints receipts for credit or debit card transactions in use prior to January 1, 2005, compliance was required as of December 4, 2006. With respect to any machine first put into use after January 1, 2005, compliance was required as of the date of first use.

Potential damage awards for violation of the law can be massive. Willful noncompliance with the statute is subject to civil liability for actual damages or for statutory damages of \$100-\$1,000 for each offending receipt, plus punitive damages as determined by the court and attorneys' fees.

Since FACTA became effective for existing card machines on December 4, 2006, over 70 nationwide class actions alleging violations of the truncation law have been filed in federal court against a wide array of retailers and restaurants. Potential damage awards in some of these class actions could run into the billions of dollars.

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A case pending in the Supreme Court on a related issue is expected to determine whether a failure to take action to comply with the law after notice constitutes "willful noncompliance." A decision in that case is likely to be issued by the end of June 2007 and will have a significant effect on the burgeoning number of class actions filed with respect to the truncation requirements of FACTA - for better or worse.

Every retail business must ensure that its electronically printed credit and debit card receipts contain no more than the last five digits of the card number. If you discover that your machines need to be reprogrammed to comply with the law, corrective action should be taken immediately. Immediate action may limit potential liability, while continued failure to comply with the law could increase the risk of a potential lawsuit.

If you have any questions about the truncation requirements of the federal law, or if you are served with a lawsuit for violation of the law and would like assistance in responding to the complaint, please contact your Brown Rudnick attorney or one of the following attorneys:

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