

## What You Need to Know About FACTA

(the Fair and Accurate Credit Transaction Act )

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FACTA is the Fair and Accurate Credit Transaction Act (Pub. L. 108-159, 111 Stat. 1952), a law designed to reduce the risk of consumer fraud and identity theft created by improper use or disposal of consumer credit information. FACTA amended the consumer protection provisions already present in the Fair Credit Reporting Act (15 U.S.C. §§ 1681-1681u) ("FCRA"). FACTA applies to every person and business in the United States. It requires the destruction of consumer information before it is discarded, and requires merchants who use credit card machines to ensure print-outs contain no more than the last five digits of the credit or debit card and to exclude the card's expiration date. (California's equivalent of these provisions is found in Civil Code section 1747.09).

Part of FACTA enforces the proper destruction of consumer information, such as name, address, social security number, and credit information. Also included in FACTA is the requirement to properly destroy data compiled from this information. Anyone in possession of any such information must take "reasonable measures" to protect against unauthorized access or use of the information in connection with its disposal. The Federal Trade Commission defines "reasonable measures" in this context to mean "burning, pulverizing, or shredding of papers containing consumer information" or entering into "a contract with another party engaged in the business of record destruction to dispose of material,

specifically identified as consumer information, in a manner consistent with this rule."

Another part of FACTA prohibits any person who accepts credit or debit cards from printing the expiration date or more than the last five digits of the card on any terminal-generated receipt provided to the cardholder at the point of sale. Excluded from FACTA are transactions in which the sole means of recording the person's credit or debit card number is by handwriting or by an imprint or copy of the card. The legislative history for these provisions states the truncation provision was designed to protect consumers by limiting "the number of opportunities for identity thieves 'to pick off' key card account information."

Failure to comply with the law, even if unintentional, can subject the violator to substantial penalties and civil exposure. In some cases, consumers may be entitled to their actual damages as a result of a violation of the Act, as well as statutory damages of up to \$1,000 for each consumer affected by the violation of the Act. Additionally, class actions may be brought to enforce the provisions of the Act, in which the consumers seek massive statutory damages. Statutory provisions also allow for the imposition of punitive damages, and recovery of attorney fees and costs by successful plaintiffs.

Although the law was signed by President George Bush on December 4, 2003,

different sections have had different effective dates. **The most important FACTA provision as it applies to merchants is that machine generated debit or credit card receipts printed after December 4<sup>th</sup>, 2006 cannot contain more than the last 5 digits of the card, nor can they show the expiration date of the card.**

With the December 4, 2006, deadline having just recently passed, counsel for plaintiffs have wasted no time in filing lawsuits alleging violations of the FACTA amendments. Several class action lawsuits have been filed in California against business for alleged violations of FACTA. As of the date of publication businesses sued include FedEx Kinko's in the Central District Court in Orange County, and the

Northern District Court in San Francisco. In-N-Out Burger and Bristol Farms Market in the Central District Court. Various theatre circuits have also been sued. All of these lawsuits allege the retailers provided plaintiffs with electronically printed receipts on which was printed more than the last five digits of the respective plaintiffs' credit or debit card numbers, and/or the expiration dates of the cards. **These claims are not limited to retailers, and any business that uses machine generated debit or credit card receipts can be subjected to these suits.** GT is working with several retailers nationwide on the FACTA requirements, and where necessary is helping businesses defend against these suits. ▼

Ms. Finnerty and her colleagues specialize in defending federal class action claims and have extensive experience advising and defending businesses from consumer claims brought under the Fair Credit Reporting Act and similar statutes.