

HOUSE BILL REPORT

HB 1212

As Reported by House Committee On:
Business & Financial Services

Title: An act relating to prohibiting retail businesses from recording consumer identification information during transactions.

Brief Description: Prohibiting retail businesses from recording consumer identification information during transactions.

Sponsors: Representatives G. Hunt, Goodman, Blake, Wilcox, Lytton, Taylor, Scott, Shea, Young and McCaslin.

Brief History:

Committee Activity:

Business & Financial Services: 1/28/15, 2/13/15 [DPS].

Brief Summary of Substitute Bill

- Prohibits a retailer from copying or recording a customer's personal information during a transaction for the purchase or return of goods or services, except in certain circumstances.
- Provides that a violation of this act is a violation of the Consumer Protection Act.
- Provides that a violation of this act is a violation against privacy.

HOUSE COMMITTEE ON BUSINESS & FINANCIAL SERVICES

Majority Report: The substitute bill be substituted therefor and the substitute bill do pass. Signed by 10 members: Representatives Kirby, Chair; Ryu, Vice Chair; Vick, Ranking Member; Blake, G. Hunt, Hurst, Kochmar, McCabe, Santos and Stanford.

Staff: Linda Merelle (786-7092).

Background:

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Under some agreements between credit card companies and retailers, the retailer may not make a customer's presentation of his or her identification a condition of acceptance for purchase. Under Washington law, provisions of an agreement that prohibit the retailer from verifying the identity of a customer who offers to pay for goods or services with a credit card are void for violation of public policy. Retailers, however, are not compelled to verify identification, and owners and managers may make and enforce their own policies regarding verification of identification.

Several states have enacted legislation that makes it unlawful for a merchant or retailer to write or copy a cardholder's personal identification information, such as an address or phone number, on a sales receipt in the course of a transaction to purchase goods or services.

Consumer Protection Act.

The Consumer Protection Act (CPA) prohibits unfair methods of competition and unfair or deceptive practices in commerce. The act may be enforced by private legal action, or through a civil action brought by the Office of the Attorney General. A court may award private individuals injured by an unfair or deceptive practice actual damages, court costs, and additional damages up to triple the actual damages amount. In addition, a court may enjoin a business from conducting further unfair practices.

Right of Privacy.

Any person whose statutory right of privacy is violated may bring a legal action for damages for injury to his or her business, person, or reputation. If the person has demonstrated that he or she is injured, then the person is entitled to actual damages, which include mental pain and suffering endured on account of the violation and reasonable attorneys' fees and other costs of litigation. As an alternative to actual damages, the person may receive liquidated damages, computed at a rate of \$100 per day for each day of the violation. The amount of liquidated damages awarded may not exceed \$1,000.

Summary of Substitute Bill:

An owner or manager of a retail store may make and enforce policies regarding verification of identification of customers, except that an owner, manager, or employee may not copy or record a customer's personal information contained in a photo or other identification unless:

- the information is required to complete the transaction, such as for shipping purposes, check verification, or other reason that the identity of the customer must be established;
- state or federal law requires the retail store or chain to obtain a consumer's personal information when completing a sale; or
- a consumer's personal information is necessary for prevention of fraud, theft, identity theft, or other criminal activity.

The provisions of this bill apply to both purchases and returns. Transactions where the consumer voluntarily provides information to receive a benefit or service are exempt.

Examples would include an application for a credit or debit card, a club card, or rewards card offered by the retailer.

A violation of the provisions of this act is a per se violation of the CPA and a violation of the statutory right of privacy.

Substitute Bill Compared to Original Bill:

The substitute bill clarified that the provisions of the bill applied to both purchases and returns. Pursuant to the substitute bill, the store owner or manager may check identification to prevent other criminal activity in addition to express crimes of theft, identity theft, and fraud. An exemption from the requirements of the bill is allowed where a customer voluntarily provides information for a benefit or service offered by the retailer.

Violations of the provisions of this act is a per se violation of the CPA and a violation of the statutory right of privacy.

Appropriation: None.

Fiscal Note: Available.

Effective Date of Substitute Bill: The bill takes effect 90 days after adjournment of the session in which the bill is passed.

Staff Summary of Public Testimony:

(In support) This bill is important in light of recent data breaches of retailers and the access to customer information. Some retailers require a valid identification when a customer is returning an item, and they store that information. In most cases, taking and storing the information on a customer's driver's license is unnecessary. There are circumstances where information must be obtained from a customer in order to enforce the transaction, and a proposed amendment is offered to address those circumstances.

(In support with amendment(s)) There are circumstances where information must be obtained to enforce the transaction, and a potential amendment would address those circumstances.

(Opposed) None.

Persons Testifying: (In support) Representative G. Hunt, prime sponsor.

(In support with amendment(s)) Cliff Webster, Consumer Data Industry Association.

Persons Signed In To Testify But Not Testifying: None.