

Retailers Beware: FACTA Spurs a Wave of Class Action Filings

Article By:

Privately Owned Businesses at Much

Hundreds of class action lawsuits have recently been filed against retailers under the Fair and Accurate Credit Transactions Act (FACTA). The law, which added new sections to the Fair Credit Reporting Act (FCRA), was designed to minimize the risk of identity theft to consumers by requiring retailers to truncate credit and debit card information on receipts. If your business accepts credit or debit cards and issues printed receipts to customers, you should take steps to ensure that you are in compliance with the statute.

Under FACTA, the credit card number shown on the customer copy of an electronically generated receipt must be truncated and the expiration date must be omitted. The statute, enacted in 2004, became effective in phases. Immediate compliance was required for receipt machines put into use after January 1, 2005. However, for machines put into use before that date, the law required compliance by December 4, 2006. If you have one or more older machines, beware. The delay in FACTA's effective date has caught some retailers unaware.

Negligent FACTA violations are subject to an award of actual damages, attorneys fees and costs. Willful violations, on the other hand, are subject to an award of between \$100 and \$1,000 per violation plus attorneys fees, costs and punitive damages.

With astronomical recoveries as an enticement, it is not surprising that, most—if not all—of the class action cases that have been filed seek recovery for willful violations. With credit and debit card transactions by individual retailers numbering in the thousands per week, potential liability under the statute can quickly reach many millions of dollars for noncompliant retailers. As if class action suits were not enough, violators may also be subject to federal regulatory actions. In addition, credit card companies have reportedly begun to impose obligations on merchants to comply with FACTA, or else face steep fines.

It is a good idea to confirm, through a comprehensive internal audit, that credit card machines in use comply with the statute. If you find that changes need to be made, quick compliance is the key to reducing the amount of potential liability.

If you have questions about FACTA compliance or would like additional information on the recent class action filings, please contact Melinda Morales or your Much Shelist attorney.

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