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COMMERCE AND TRADE

Selling and Other Trade Practices: Prohibit Requested Information as a Condition of Sale

CODE SECTIONS: O.C.G.A. §§ 10-1-393.3 (new), 10-1-397
(amended)

BILL NUMBER: SB 39

ACT NUMBER: 456

SUMMARY: The Act prohibits merchants from compelling a purchaser to disclose the purchaser's phone number as a contingency of a credit card sale. Merchants, as a condition of accepting a check or draft, are prohibited from imprinting the information from a purchaser's credit card on the check or draft, or in any way transcribing the purchaser's credit card number. The Act provides for acceptable business practices regarding a purchaser's telephone number or credit card number. A violator, or prospective violator, of the Act's provisions is subject to a cease and desist order or a civil penalty.

EFFECTIVE DATE: July 1, 1991

History

Commonly, merchants require purchasers using a credit card to write their phone number on the credit card receipt as a condition of completing the sale. Similarly, merchants often would not cash or accept a check unless the purchaser allowed the merchant to record the purchaser's credit card number on the check. Merchants explained the practices as an effort to ensure that they had a means of contacting the purchaser should the credit card or check prove insufficient.¹ Additionally, many merchants believed that such requirements hinder check or credit card

1. Telephone Interview with Sen. Loyce Turner, Senate District No. 8 (Mar. 29, 1991) [hereinafter Turner Interview]. Sen. Turner is the Chairman of the Senate Banking and Financial Institutions Committee and cosponsor of SB 39.

fraud.² Although the justifications initially seemed compelling, the requirements threatened the privacy of consumers.³ Women, in particular, felt uncomfortable disclosing their phone numbers for fear of harassment.⁴ Consumers did not want to reveal unnecessary information which could make them vulnerable to fraud.⁵ In response to these competing concerns, the General Assembly adopted SB 39 which prohibits certain intrusive purchase requirements and clarifies acceptable credit card and check related practices.⁶

SB 39

The Act amends the Fair Business Practices Act of 1975⁷ by adding Code section 10-1-393.3.⁸ This section attempts to formulate a balance between merchant and consumer demands by prohibiting purchasing requirements that encroach upon a consumer's right to privacy, yet permitting merchants to obtain essential information in certain circumstances.⁹

The Act's first subsection defines the scope of affected participants.¹⁰ A merchant is defined as a "person who offers goods, wares, merchandise, or services for sale" and includes the merchant's employee(s).¹¹ In order for a sale to be subject to the Act, it must have been made to the "public."¹²

The primary purpose for adopting the Act was the potential for fraud to be perpetrated upon a consumer.¹³ Revealing a credit card number, and allowing it to be transcribed on a check, subjects the cardholder

2. *Id.*

3. *Id.*

4. Sen. Turner remarked, "[a]lot of ladies in particular that go into a store and make a purchase don't want to give their phone number out." *Law Makers '91: Legislative Day 7* (WGTV television broadcast, Jan. 29, 1991) [hereinafter *Law Makers Day 7*] (videotape on file at Georgia State University College of Law Library).

5. *Id.*

6. O.C.G.A. § 10-1-393.3 (Supp. 1991).

7. 1975 Ga. Laws 376 (formerly found at O.C.G.A. §§ 10-1-390 to -407 (1989 & Supp. 1990)).

8. *See* O.C.G.A. § 10-1-393.3 (Supp. 1991).

9. *Id.* Sen. Turner explained that the bill would safeguard consumer privacy without obstructing bank attempts to avoid fraud. Charles Walston, *Bill Would Protect Privacy of Consumers*, ATLANTA J. & CONST., Jan. 30, 1991, at B3 (referring to SB 39, as introduced, 1991 Ga. Gen. Assem.).

10. *See* O.C.G.A. § 10-1-393.3(a) (Supp. 1991).

11. *Id.*

12. *Id.* Sen. Turner disregarded the possibility of a private transaction and classified all sales as "public," *see* Turner Interview, *supra* note 1; however, a situation may arise regarding sales from wholesalers not amenable to the general public that could be interpreted as a "private" transaction not subject to the Act. In such a case, it is not clear whether the Act's proscriptions apply.

13. Turner Interview, *supra* note 1.

to potential fraud committed by others using the number for unwarranted purchases.¹⁴ The Act, therefore, prohibits a merchant from requiring a purchaser to disclose the purchaser's credit card number as a contingency of accepting the check.¹⁵ Specifically, a merchant cannot use the card to imprint credit card information on the check,¹⁶ or to record the credit card number "in any manner."¹⁷

Cognizant of certain business necessities, the General Assembly included certain practices regarding credit card information.¹⁸ If a credit card issuer has guaranteed a merchant that it will pay for any check accepted or cashed by the merchant, the Act permits the merchant to record the credit card number and its expiration date.¹⁹ Additionally, the merchant can ask to see a credit card "as a means of identification, or as an indication of credit worthiness or financial responsibility,"²⁰ and is permitted to record the kind of such card and its expiration date.²¹ The merchant is not prohibited from requiring a phone number as a condition of accepting or cashing a check so that the merchant can contact the purchaser should the check prove insufficient.²² These measures evidence an effort to refrain from intruding upon the way a merchant does business.²³

14. *Id.*

15. O.C.G.A. § 10-1-393.3(c) (Supp. 1991). Merchants have expressed support for the bill because it actually helps them. Walston, *supra* note 9. The bill aids merchants in adequately processing credit cards, and protects them from possible liability if a credit card number the merchant recorded on a check is fraudulently used by another. *Law Makers Day 7*, *supra* note 4; *see also* Walston, *supra* note 9 ("retail merchants ... have ... expressed support for the bill").

16. O.C.G.A. § 10-1-393.3(a) (Supp. 1991).

17. O.C.G.A. § 10-1-393.3(d) (Supp. 1991). The House Committee on Industry offered a substitute adding the limitation that the credit card number could not be recorded "on a check or draft." SB 39 (HCS), 1991 Ga. Gen. Assem. The Act deletes this language, illustrating an attempt not to limit subsection (d). *See* O.C.G.A. § 10-1-393.3(d) (Supp. 1991). As adopted, the Act restricts such recording "in any manner" and seemingly on any medium. *Id.*

18. *See* O.C.G.A. § 10-1-393.3(f)(1)-(3) (Supp. 1991). In introducing the bill to the Senate, Sen. Turner explained that the bill would not disrupt legitimate business practices; he stated the bill was a "middle of the road bill which allows flexibility." *Law Makers Day 7*, *supra* note 4.

19. O.C.G.A. § 10-1-393.3(f)(1) (Supp. 1991); *see also* Turner Interview, *supra* note 1.

20. O.C.G.A. § 10-1-393.3(f)(2) (Supp. 1991). Even if a credit card is presented, the merchant is not required to accept a check or draft. O.C.G.A. § 10-1-393.3(g) (Supp. 1991).

21. O.C.G.A. § 10-1-393.3(f)(3) (Supp. 1991).

22. *Law Makers Day 7*, *supra* note 4.

23. *Id.* Although the bill passed the Senate 51-1, one senator was concerned about the effect upon business practices. Sen. Judy Moye, voting against the bill, expressed her belief that merchants may have problems collecting bad checks if the information they can obtain is limited. *Id.* Sen. Turner, on the other hand, felt that allowing a merchant to record a phone number on a check is sufficient, and a credit card number is both unnecessary and intrusive. *Id.*

The second reason urging the Act's adoption was concern regarding consumer privacy.²⁴ Merchants often required a telephone number as a condition of a credit card purchase. Consumers, particularly women, felt that this information was unnecessary and made them vulnerable to harassment.²⁵ In response, the Act prohibits merchants from conditioning a credit card sale upon the disclosure of a telephone number.²⁶ The merchant has no need for a telephone number because the merchant can electronically check the validity of the card at the time of purchase,²⁷ and will be paid by the card issuer regardless of whether a phone number is included on the receipt.²⁸

The Act remains flexible by allowing a merchant to record the purchaser's address or telephone number if necessary for delivery, special orders, or post-sale services.²⁹

Finally, the Act indirectly provides sanctions for violations of its provisions. A merchant who violates the Act is subject to cease and desist orders and civil penalties issued by the Governor's Office of Consumer Affairs.³⁰ The maximum fine is \$2000, but the General Assembly did not want to incorporate a cash amount into the Act for fear of creating an unworkable provision.³¹ Although the fine may be imposed, the Office of Consumer Affairs has usually issued compliance orders in the past.³²

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24. Turner Interview, *supra* note 1.

25. *Id.* "A lot of ladies in particular . . . don't want to give their phone numbers out . . . and I don't blame them." Walston, *supra* note 9.

26. O.C.G.A. § 10-1-393.3(b) (Supp. 1991).

27. *Law Makers '91: Legislative Day 36* (WGTV television broadcast, Mar. 8, 1991) (videotape on file at Georgia State University College of Law Library) (Rep. Roger Byrd presenting SB 39 to the House).

28. *Law Makers Day 7*, *supra* note 4.

29. O.C.G.A. § 10-1-393.3(f)(4) (Supp. 1991).

30. O.C.G.A. § 10-1-393.3(e) (Supp. 1991), referring to amended O.C.G.A. § 10-1-397 (Supp. 1991). Section 397 gives authority to the administrator to issue cease and desist orders or issue civil penalties. See O.C.G.A. § 10-1-397 (Supp. 1991). The administrator, as defined in section 392(a)(1), is the director of the Governor's Office of Consumer Affairs. O.C.G.A. § 10-1-392(a)(1) (1989).

31. *Law Makers Day 7*, *supra* note 4.

32. Walston, *supra* note 9.