

The Senate Judiciary Committee offered the following substitute to HB 213:

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 15 of Title 10 of the Official Code of Georgia Annotated, relating to
2 business administration, so as to change certain definitions; to provide for restrictions on
3 information which may be printed on receipts for certain payment card transactions; to
4 clarify the administrator's duties and powers and procedure related to enforcement of this
5 chapter; to provide for civil and criminal penalties; to provide for related matters; to repeal
6 conflicting laws; and for other purposes.

7 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

SECTION 1.

8 Chapter 15 of Title 10 of the Official Code of Georgia Annotated, relating to business
9 administration, is amended in Code Section 10-15-1, relating to definitions, by striking the
10 Code section and inserting in lieu thereof the following:
11

12 "10-15-1.

13 As used in this chapter, the term:

14 (1) 'Administrator' means the administrator of the 'Fair Business Practices Act of 1975'
15 appointed pursuant to subsection (a) of Code Section 10-1-395, or the administrator's
16 designee.

17 ~~(1)~~(2) 'Business' means a sole proprietorship, partnership, corporation, association, or
18 other group, however organized and whether or not organized to operate at a profit. The
19 term includes a financial institution organized, chartered, or holding a license or
20 authorization certificate under the laws of this state, any other state, the United States, or
21 any other country, or the parent or the subsidiary of any such financial institution. The
22 term also includes an entity that destroys records. However, for purposes of this chapter,
23 the term shall not include any bank or financial institution that is subject to the privacy
24 and security provisions of the Gramm-Leach-Bliley Act, 15 U.S.C. 6801, et seq., as
25 amended, and as it existed on January 31, 2002, nor shall it include any hospital or health

1 care institution licensed under Title 31 which is subject to the privacy and security
2 provisions of the federal Health Insurance Portability and Accountability Act of 1996,
3 P.L. 104-191, nor any other entity which is governed by federal law, provided that the
4 federal law governing the business requires the business to discard a record containing
5 personal information in the same manner as Code Section 10-15-2.

6 (3) 'Cardholder' means any person or organization named on the face of a payment card
7 to whom or for whose benefit the payment card is issued.

8 ~~(2)~~(4) 'Customer' means an individual who provides personal information to a business
9 for the purpose of purchasing or leasing a product or obtaining a service from the
10 business.

11 ~~(3)~~(5) 'Discard' means to throw away, get rid of, or eliminate.

12 ~~(4)~~(6) 'Dispose' means the sale or transfer of a record for value to a company or business
13 engaged in the business of record destruction.

14 (7) 'Merchant' means any person or governmental entity which receives from a
15 cardholder a payment card or information from a payment card as the instrument for
16 obtaining, purchasing, or receiving goods, services, money, or anything else of value
17 from a person or governmental entity.

18 (8) 'Payment card' means a credit card, charge card, debit card, or any other card that is
19 issued to a cardholder and that allows the cardholder to obtain, purchase, or receive
20 goods, services, money, or anything else of value from a merchant.

21 ~~(5)~~(9) 'Personal information' means:

22 (A) Personally identifiable data about a customer's medical condition, if the data are
23 not generally considered to be public knowledge;

24 (B) Personally identifiable data which contain a customer's account or identification
25 number, account balance, balance owing, credit balance, or credit limit, if the data
26 relate to a customer's account or transaction with a business;

27 (C) Personally identifiable data provided by a customer to a business upon opening an
28 account or applying for a loan or credit; or

29 (D) Personally identifiable data about a customer's federal, state, or local income tax
30 return.

31 ~~(6)~~(10)(A) 'Personally identifiable' means capable of being associated with a particular
32 customer through one or more identifiers, including, but not limited to, a customer's
33 fingerprint, photograph, or computerized image, social security number, passport
34 number, driver identification number, personal identification card number, date of birth,
35 medical information, or disability information.

(B) A customer's name, address, and telephone number shall not be considered personally identifiable data unless one or more of them are used in conjunction with one or more of the identifiers listed in subparagraph (A) of this paragraph.

~~(7)~~(11) 'Record' means any material on which written, drawn, printed, spoken, visual, or electromagnetic information is recorded or preserved, regardless of physical form or characteristics.

(12) 'Reencoder' means an electronic device that places encoded information from the magnetic strip or stripe of a payment card onto the magnetic strip or stripe of a different payment card.

(13) 'Scanning device' means a scanner, reader, or any other electronic device that is used to access, read, scan, obtain, memorize, or store, temporarily or permanently, information encoded on the magnetic strip or stripe of a payment card."

SECTION 2.

Said chapter is further amended by striking Code Sections 10-15-3 and 10-15-4, relating to the penalty for violation of Code Section 10-15-2, and inserting in lieu thereof the following:

~~"10-15-3.~~

~~Reserved.~~

~~10-15-4.~~

~~A business that violates Code Section 10-15-2 may be fined by the administrator appointed pursuant to Code Section 10-1-395 not more than \$500.00 for each customer's record that contains personal information that is wrongfully disposed of or discarded; provided, however, in no event shall the total fine levied by the administrator exceed \$10,000.00. Notwithstanding anything to the contrary contained in this Code section, it shall be an affirmative defense to the wrongful disposing of or discarding of a customer's record that contains personal information if the business can show that it used due diligence in its attempt to properly dispose of or discard such records.~~

10-15-3.

(a) A merchant who accepts a payment card for the transaction of business shall not print more than five digits of the payment card's account number or print the payment card's expiration date on a receipt provided to the cardholder. This subsection applies only to receipts described in subsection (b) of this Code section and does not apply to a transaction in which the sole means of recording the payment card's account number or expiration date is by handwriting or by an imprint or copy of the payment card.

1 (b)(1) Effective July 1, 2004, subsection (a) of this Code section applies to receipts that
2 are electronically transferred by a payment card processor and printed using a cash
3 register or other machine or device that is first used on or after July 1, 2004.

4 (2) Effective July 1, 2006, subsection (a) of this Code section applies to all receipts that
5 are electronically transferred by a payment card processor and printed, including those
6 printed using a cash register or other machine or device that is first used before July 1,
7 2004.

8 10-15-4.

9 (a) No person shall use a scanning device to access, read, obtain, memorize, or store,
10 temporarily or permanently, information encoded on the magnetic strip or stripe of a
11 payment card with the intent to defraud the authorized user, the issuer of the authorized
12 user's payment card, or a merchant.

13 (b) No person shall use a reencoder to place information encoded on the magnetic strip or
14 stripe of a payment card onto the magnetic strip or stripe of a different card with the intent
15 to defraud the authorized user, the issuer of the authorized user's payment card, or a
16 merchant.

17 10-15-5.

18 (a) The administrator shall be authorized to enforce the provisions of this chapter.

19 (b) The administrator shall have the authority to investigate alleged violations of this
20 chapter, including all investigative powers available under the 'Fair Business Practices Act
21 of 1975,' Code Section 10-1-390, et seq., including, but not limited to, the power to issue
22 investigative demands and subpoenas as provided in Code Sections 10-1-403 and 10-1-404.

23 (c) Nothing contained in this Code section precludes law enforcement or prosecutorial
24 agencies from investigating violations of Code Section 10-15-4.

25 10-15-6.

26 (a) If the administrator determines, after notice and hearing, that a business has violated
27 Code Section 10-15-2, the administrator may issue an administrative order imposing a
28 penalty of not more than \$500.00 for each customer's record that contains personal
29 information that is wrongfully disposed of or discarded; provided, however, in no event
30 shall the total fine levied by the administrator exceed \$10,000.00. It shall be an affirmative
31 defense to the wrongful disposing of or discarding of a customer's record that contains
32 personal information if the business can show that it used due diligence in its attempt to
33 properly dispose of or discard such records.

1 (b) If the administrator determines, after notice and hearing, that a business has violated
2 Code Section 10-15-3, the administrator may issue an administrative order imposing a
3 penalty of not more than \$250.00 for the first violation of Code Section 10-15-3, and a
4 penalty of \$1,000.00 for a second or subsequent violation of Code Section 10-15-3.

5 (c) The hearing and any administrative review in connection with alleged violations of
6 Code Section 10-15-2 or 10-15-3 shall be conducted in accordance with the procedure for
7 contested cases pursuant to the 'Georgia Administrative Procedures Act,' Code Section
8 50-13-1 et seq. Any person who has exhausted all administrative remedies available and
9 who is aggrieved or adversely affected by a final order or action of the administrator shall
10 have the right of judicial review in accordance with the 'Georgia Administrative Procedures
11 Act.'

12 (d) The administrator may file in the superior court of the county in which the person
13 under an order resides, or if the person is a corporation, in the superior court of the county
14 in which the corporation under an order maintains its principal place of business, a certified
15 copy of or the final order of the administrator, whether or not the order was appealed.
16 Thereafter the court shall render a judgment in accordance with the order and notify the
17 parties. The judgment shall have the same effect as a judgment rendered by the court.

18 10-15-7.

19 (a) A violation of Code Section 10-15-4 shall be punishable by imprisonment for not less
20 than one nor more than three years or a fine not to exceed \$10,000.00, or both. Any person
21 who commits a violation for the second or any subsequent offense shall be punished by
22 imprisonment for not less than three nor more than ten years or a fine not to exceed
23 \$50,000.00, or both.

24 (b) Any person found guilty of a violation of this chapter may be ordered by the court to
25 make restitution to any consumer victim or any business victim of the fraud.

26 (c) Each violation of this chapter shall constitute a separate offense.

27 (d) The Attorney General and prosecuting attorneys shall have the authority to conduct the
28 prosecution for a violation of Code Section 10-15-4.

29 (e) Upon a violation of this chapter, the court may issue any order necessary to correct a
30 public record that contains false information resulting from the actions which resulted in
31 the violation."

32 SECTION 3.

33 All laws and parts of laws in conflict with this Act are repealed.