

Supreme Court Hacks Credit Card Privacy

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**2012 CONSUMER
SCORECARD**
for State Lawmakers

4-3 MAJORITY KILLS CONSUMER PRIVACY FOR ONLINE PURCHASES

The Consumer Federation of California is sponsoring legislation to restore privacy protection for online credit card purchases, which was recently eliminated by a bad California Supreme Court decision.

In February, a 4-3 Supreme Court majority ruled merchants can require consumers to furnish personal information including address, phone number, and other data in order to make credit card purchases. This means that the Song Beverly Credit Card Act, which prohibits retailers from collecting and recording a customer's personal identifying information as a condi-

tion of accepting payment by credit card, does not apply to transactions relating to the multibillion-dollar online commerce world, only to brick-and-mortar establishments.

SB 383 (Jackson) would prohibit online merchants from requesting or requiring a phone number, address or other information from customer using a credit card to purchase a downloadable product – with tightly limited exceptions for the purpose of preventing fraud or identity theft.

A DIVIDED CALIFORNIA SUPREME COURT

The case is Apple Inc. v. Superior Court of Los Angeles County, arising from a law-

suit filed by David Krescent, who alleged that Apple had violated his privacy when it required his telephone number and address to complete credit card purchases of downloadable audio and video files. Lower courts ruled against Apple.

The 4-3 Court majority rewrote history, and concluded that because online commerce did not exist when the Song Beverly Act was adopted, the law cannot apply to online transactions. Without weighing evidence, the Court assumed that online purchases open new opportunities for fraud or identity theft. But instead of carving out a narrow privacy exception for fraud prevention, the Court majority gave online businesses a license to collect all sorts of personal data, with no limitation on how the data may be used.



...retailers don't have the right to gather personal information from credit card users for marketing purposes. This has been California law for more than two decades...

This decision retreated from the ardent pro-consumer construction the Court had given the Song Beverly Act in 2011 in *Piñeda v. Williams-Sonoma Stores*. In that case a unanimous Supreme Court ruled the retail chain violated the Song Beverly Act by collecting ZIP codes from customers. The Consumer Federation of California filed an amicus brief in that case – and the California Supreme Court sided with consumers.

This new ruling flies in the face of the clear language of the Act, which covers all credit card transactions, not only in-person transactions.

The three justices that dissented warned that the decision erodes privacy protections for consumers online. Justice Baxter pointed out in his dissenting opinion that “there is nothing in the re-

cord” of this case to discern that Apple needed the cardholder’s address and phone number to prevent fraud or identity theft. Justice Joyce Kennard wrote, “The majority’s decision is a major win for (merchants), but a major loss for consumers, who in their online activities already face an ever-increasing encroachment upon their privacy.”

SB 383 (Jackson) would make it clear that the credit card privacy law applies to all transactions, regardless of the technology used to complete the transaction. It would allow online merchants to collect a cardholder’s zip code and numerical portion of the street address, only if it is required for fraud prevention or to process the transaction, and only if the data was not aggregated with other cardholder information, sold or shared

with strangers, used for marketing and was destroyed once the fraud prevention need was concluded.

The California Legislature long ago recognized that retailers don’t have the right to gather personal information from credit card users for marketing purposes. This has been California law for more than two decades and the Supreme Court’s recent opinion is a gift to online businesses, many of which have demonstrated a callous disregard for customer privacy.

SB 383 is co-sponsored by the United Food and Commercial Workers. We anticipate that a hearing on SB 383 will be held in the Senate Judiciary Committee in April.

BY RICHARD HOLOBER,
CFC EXECUTIVE DIRECTOR

New Flame Retardant Standard: A Win for Fire Safety, Health, and the Environment



California regulators held a public hearing on March 26 to mark the end of a comment period for updating their 38-year old furniture flammability regulation, TB 117, that has been the focus

of scientists, firefighters, health advocates and consumers worldwide.

The Consumer Federation of California, along with public health, environmental, social justice, labor, and

firefighter organizations testified and submitted more than 87,000 signatures from people in every state to support the revision. Public interest organizations from 36 countries also sent letters, urging California to quickly move forward for improved fire safety without relying on the toxic and ineffective flame-retardant chemicals in TB 117, which are linked to lower IQs in children, infertility and cancer.

For nearly four decades, flame retardant chemical manufacturers have reaped billions in profits at consumers’ expense. It took us six years of battle with the chemical industry to finally win this breakthrough for our health and safety. The new draft, TB 117-2013, follows the advice of safety experts, not chemical manufacturers.

To review TB 117-2013, which would take effect in July 2014, go to <http://www.bhfti.ca.gov/about/laws/propregs.shtml>

CFC Part of Working Group to Stop Elder Abuse

Every year, millions of older Americans are victims of physical, financial, psychological or other forms of abuse and neglect. While progress has been made in recent years to increase awareness and create and strengthen laws to avert elder abuse, there is still much to be done.

The Consumer Federation of California (CFC) is part of a coalition of advocates working to enact a package of bills regarding abuse, neglect, and exploitation of older persons.

AB 462 (Stone), co-sponsored by CFC and California Advocates for Nursing Home Reform (CANHR), would require residential care facilities for dependent adults and the elderly to have installed and maintained automatic fire sprinkler systems approved by the State Fire Marshal. Current law does not ad-

equately protect those against fires in elderly and adult residential care facilities licensed for six or fewer beds. Many residents need assistance leaving a facility in case of an emergency because of physical or cognitive impairments.

In 2011, five people died in a fire at the Mount Carmel Adult Residential Facility, a single-story home in the Northern California town of Marina. Two caregivers who were awakened by a smoke alarm tried unsuccessfully to rescue their vulnerable wards, but only one resident was able to walk on her own. Five of the six residents died in the blaze; the sixth, along with the two caregivers, was hospitalized. Marina's Mayor called the blaze "a tragedy of a magnitude we haven't experienced before."

Had automatic fire sprinklers been installed, the tragedy might have been prevented. The Government Accountability Office estimated in a 2004 report that automatic sprinkler systems reduce the chance of fire-related deaths by 73 percent, and smoke alarms and sprinkler systems combined can reduce fire-related deaths by 82 percent.

CFC and CANHR are also co-sponsoring AB 553 (Medina), which would assure that all prospective reverse mortgage borrowers receive a copy of a pre-counseling self-evaluation worksheet 7 days prior to the required counseling session. The prospective borrower will be advised to complete the worksheet prior to the counseling session and encouraged to discuss suitability issues with the counselor during the session.

Many seniors use reverse mortgage payments to supplement retirement income or pay medical expenses. For an elderly person with few assets, a reverse mortgage can be a lifesaver by allowing them to borrow against the value of their home and not repay the loan until they sell the house, move out or die. However, reverse mortgages, which

come with high fees and interest charges, are a costly option and are often sold by aggressive salespeople who push inappropriate financial products on vulnerable seniors.

Some other bills the coalition is addressing include:

AB 140 (Dickenson) would update the definition of "undue influence" to strengthen protections for elderly or dependent adults against coercion or abusive persuasion by another person who is in a position of authority.

AB 477 (Chau) would add notaries public in the definition of mandated reporters of suspected financial abuse of an elder or dependent adult.

AB 581 (Ammiano) would prohibit an adult residential facility from retaliating against anyone receiving facility services who filed a complaint or a request for inspection.

AB 918 (Cooley) would authorize the Office of Emergency Services to prepare a specialized plan to mobilize senior citizens and disabled persons during an emergency or natural disaster.

SB 60 (Wright) would specify that elder and dependent adult victims of financial exploitation are eligible to receive compensation from the Victims Compensation Fund.

SB 129 (Wright) would extend the surcharge for telecom universal service programs, which fund the deaf and disabled programs that are set to end on Jan 1, 2014 but would instead expire on Jan 1, 2024.

SB 272 (Corbett) would make it illegal for any nongovernmental entity to use an emblem to imply connection with any military or veteran organizations without approval, for the purpose of financial gain.



ABOUT US

The Consumer Federation of California (CFC) is a non-profit advocacy organization. Since 1960, CFC has been a powerful voice for consumer rights, campaigning for state and federal laws that place consumer protection ahead of corporate profit. Each year, CFC testifies before the California legislature on dozens of bills that affect millions of our state's consumers and appears before state agencies in support of consumer regulations.

Contributions are not tax deductible.



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Scoring the California Legislature: Who Stood With Consumers in 2012?

CFC's 2012 Scorecard for State Legislators rates lawmakers on their votes cast on consumer rights bills including utility regulation, access to civil justice, truth in advertising, debt collection practices, automobile safety, insurance policyholder protection, and corporate accountability.

Lawmakers are graded on legislative proposals that CFC sponsored, supported, or opposed. We assessed final substantive floor votes. Committee votes were included when bills died in committee.

A favorable vote from the consumer's standpoint is represented with an R (Right). A vote against consumers is noted with a W (Wrong). If a lawmaker did not have an excused absence on the

day of a vote, it is marked as a failure to vote. Failure to vote on a pro-consumer bill is scored as a vote against consumers (W*), and failure to vote on an anti-consumer bill is scored as a vote for consumers (R*). A dash (--) specifies either that a lawmaker was not a member of the committee being evaluated, or that

the lawmaker had an excused absence on the day of a vote.

Scores are based on the percent of votes in which the lawmaker sided with consumers. We have included cumulative scores, which represent right and wrong votes cast by the lawmaker during his or her tenure from 2005-2012.

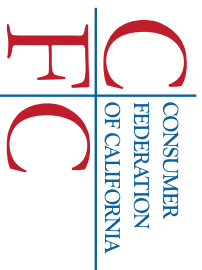
The scorecard should help you evaluate how lawmakers voted on consumer protection bills that affect our finances, privacy, and our health and safety, but often get little news coverage.

Padilla	DEM.	7	1	--	R	R	R	R	R	R	R	--	W	R	--	--	88%	86%
Pavley	DEM.	9	0	--	R	R	R	R	R	R	R	R*	R*	R	--	--	100%	99%
Price	DEM.	7	2	--	R	R	R	R	R	R	R	--	W	R	W	--	78%	84%
Rubio	DEM.	6	4	--	R	R	R	R	R	W	R	R*	W	W*	--	W	60%	64%
Runner	REP.	1	3	--	W	R	R	--	W	W	--	--	--	--	--	--	25%	15%
Simittan	DEM.	9	0	--	R	R	R	R	R	R	R	R	R	R	--	--	100%	98%
Steinberg	DEM.	7	1	--	R	R	R	R	R	R	R	--	W	R	--	--	88%	96%
Strickland	REP.	1	6	--	W	R	R	W	W*	W	W	--	--	--	W	--	14%	20%
Vargas	DEM.	5	4	--	R	R	R	W	R	R	W	--	W	R	W	--	56%	70%
Walters	REP.	1	6	--	W	R	R	W	W	W	--	--	W	W	--	--	14%	7%
Wolk	DEM.	9	0	--	R	R	R	R	R	R	R	--	R	R	--	R	100%	93%
Wright	DEM.	7	1	--	R	R	R	R	R	R	R	--	W	R	--	--	88%	69%
Wyland	REP.	4	4	--	W	R	--	R	W	W	--	R*	W	W	R*	--	50%	21%
Yee	DEM.	8	0	--	R	R	R	R	R	R	R	--	R	R	--	--	100%	82%

Key Consumer Rights Bills

Bill Number	CFC Position	Summary and Status on 10/1/2012
AB 1648 (Brownley)	SUPPORT	Would make changes to the Political Reform Act of 1974 by requiring political state mail to include information about campaign donors. Held in Rules
AB 1747 (Feuer)	SUPPORT	Would require that every life insurance policy issued or delivered in this state contain a provision for a grace period of not less than 60 days from the premium due date to help ensure that anyone with a life insurance policy have ample time to make all of their payments without being stripped of coverage. Chaptered
AB 1875	SUPPORT	Would limit a deposition of any person to 7 hours of total testimony, except under specified circumstances. Chaptered
AB 2149 (Butler)	SUPPORT	Would prohibit "gag clauses" from appearing in the settlement of a civil lawsuit stemming from elder or dependent adult abuse. Chaptered
AB 2296 (Block)	SUPPORT	Would require non-accredited for-profit postsecondary schools to post their catalogue, performance fact sheet, and their most recent annual report to the Bureau of Private Postsecondary Education (BPPE) on their school website. Chaptered
AB 2505 (Ma)	OPPOSE	Would create a new, undefined category of motor vehicle replacement part, called a "nonoriginal equipment manufacturer certified aftermarket crash part," giving legitimacy to a certification process which is not consumer friendly. Held in Assembly Appropriations
SB 491 (Evans)	SUPPORT	Would void waivers of class action rights and other representative actions in contracts of adhesion. Failed in Senate Judiciary
SB 890	SUPPORT	Would enact the Fair Debt Buyers Practices Act, which would regulate the activities of debt buyers. Failed in Assembly Business & Professions
SB 990 (Vargas)	OPPOSE	Would allow the use of reports from the usually less-dependable commercial data providers, instead of the National Motor Vehicle Title Information System (NMVTIS), to satisfy current consumer protection laws regarding the sale of used cars. Failed in Senate Transportation & Housing
SB 1161 (Padilla)	OPPOSE	Would stop the California Public Utilities Commission (CPUC) from regulating Voice Over Internet Protocol (VOIP) phone service, leaving the legislature as the only body able to govern this utility. Chaptered
SB 1208 (Leno)	SUPPORT	Would require publicly traded corporations to include the names and compensation of the five most highly compensated retirees in statements filed with the Secretary of State. Failed on Assembly Floor
SB 1460 (Yee)	OPPOSE	Would create a new class of crash parts called "certified new non-OEM parts" but does not specify which accredited developer may certify the parts, what criteria a developer might use for certification, or whether that criteria might be standardized, and thus would empower insurers to "shop" for an accrediter to certify the parts the insurer wants to use. First hearing cancelled at request of author

Check the back panel
to see how we scored
lawmakers



LEGEND

R = Right, voted for consumers
W* = Present, did not vote - same as voting against consumers
R* = Present, did not vote, same as voting in favor of consumers

-- = Excused absence, not a member of committee, or not a member of the Assembly at the time the vote was cast
W = Wrong, voted against consumers

2012 Consumer Scorecard for State Lawmakers: Senate

Senate Member	Party	Total Right Votes Cast	Total Wrong Votes Cast	AB 858 Judiciary 7/3	AB 1447 Floor 8/23	AB 1747 Floor 8/20	AB 1875 Floor 8/27	AB 2149 Floor 8/22	AB 2296 Floor 8/23	SB 890 Floor 1/31	SB 990 T. & H. 4/10	SB 1161 Floor 5/30	SB 1208 Floor 5/30	SB 1460 B, P & ED 4/16	CPUC Intervenor Compensation Audit JLAC 8/8	2012 Score	Lifetime Score
Alquist	DEM.	8	1	--	R	R	R	R	R	R	--	W	R	--	R*	89%	94%
Anderson	REP.	1	8	--	W	R	W	W	W	W	--	W	W	--	W	11%	18%
Berryhill, T.	REP.	1	7	--	W	R	W	W	W	W	--	W	W	--	--	13%	14%
Blakeslee	REP.	2	5	W	--	R	W	R	--	W	--	W	W	--	--	29%	22%
Calderon, R.	DEM.	3	5	--	W*	R	R	W*	R	W*	--	W	W	--	--	38%	50%
Cannella	REP.	1	7	--	W	R	W	W*	W	W	--	W	W	--	--	13%	17%
Corbett	DEM.	10	0	R	R	R	R	R	R	R	--	R	R	R	--	100%	100%
Correa	DEM.	5	4	--	W*	R	R	R	R	R	--	W	W	W	--	56%	52%
de León	DEM.	6	1	--	--	R	R	R	--	R	--	W	R	--	R*	86%	92%
DeSaulnier	DEM.	8	1	--	R	R	R	R	R	R	R	W	R	--	--	89%	94%
Dutton	REP.	1	8	--	W	R	W	W	W	W	--	W	W	--	W	11%	17%
Emmerson	REP.	2	7	--	W	R	W	W	W	W	--	W	W	R*	--	22%	19%
Evans	DEM.	9	0	R	R	R	R	R	R	R	--	R*	R	--	--	100%	97%
Fuller	REP.	1	7	--	W	R	W	W	W	W	--	W	W	--	--	13%	15%
Gaines, T.	REP.	1	8	--	W	R	W	W	W	W	W	W	W	--	--	11%	15%
Hancock	DEM.	8	0	--	R	R	R	R	R	R	--	R	R	--	--	100%	99%
Harman	REP.	0	9	W	W	--	W	W*	W	W	W	W	W	--	--	0%	14%
Hernandez, E.	DEM.	8	1	--	R	R	R	R	R	R	--	W	R	R*	--	89%	76%
Huff	REP.	1	7	--	W	R	W	W	W	W	--	W	W*	--	--	13%	13%
Kehoe	DEM.	8	1	--	R	R	R	R	R	R	R*	W	R	--	--	89%	93%
La Malfa	REP.	1	8	--	W	R	W	W	W	W	--	W	W	--	W	11%	11%
Leno	DEM.	9	0	R	R	R	R	R	R	R	--	R	R	--	--	100%	100%
Lieu	DEM.	5	2	--	R	R	R	--	R	R	--	W	W	--	--	71%	87%
Liu	DEM.	7	1	--	R	R	R	R	R	R	--	W	R	--	--	88%	95%
Lowenthal, A.	DEM.	8	1	--	R	R	R	R	R	R	R*	W	R	--	--	89%	96%
Negrete McLeod	DEM.	7	2	--	R	R	R	R	R	R	--	W	R	W	--	78%	70%

2012 Consumer Scorecard for State Lawmakers: Assembly

Assembly Member	Party	Total Right Votes Cast	Total Wrong Votes Cast	AB 1447 Floor 5/29	AB 1648 Floor 8/20	AB 1747 Floor 5/14	AB 1875 Floor 5/31	AB 2149 Floor 5/25	AB 2296 Floor 5/14	AB 2505 B, P & CP 4/24	SB 491 Judiciary 7/3	SB 890 B. & F. 7/2	SB 890 Judiciary 6/26	SB 1161 Floor 8/20	SB 1208 Floor 8/21	CPUC Intervenor Audit JLAG 8/8	2012 Score	Lifetime Score
Achadjian	REP.	0	9	W	W	W	W	W	W	--	--	W	--	W	W	--	0%	14%
Alejo	DEM.	8	1	R	R	R	R	R	R	--	--	--	--	W	R	R*	89%	95%
Allen	DEM.	8	1	R	R	R	R	R	R	W	--	--	--	R	R	--	89%	95%
Ammiano	DEM.	8	0	R	R	R	R	R	R	--	--	--	--	R	R	--	100%	100%
Atkins	DEM.	5	2	R	R	--	R	--	--	--	W*	--	R	W	R	--	71%	90%
Beall	DEM.	8	0	R	R	R	R	R	R	--	--	--	--	R	R	--	100%	97%
Berryhill, B.	REP.	0	8	W	W	W	W	--	W*	W	--	--	--	W	W	--	0%	11%
Block	DEM.	7	1	R	R	R	R	R	R	--	--	--	--	W	R	--	88%	84%
Blumenfield	DEM.	7	1	R	R	R	R	R	R	--	--	--	--	W	R	--	88%	93%
Bonilla	DEM.	6	2	R	R	R	R	R	R	--	--	--	--	W	W*	--	75%	89%
Bradford	DEM.	6	2	R	R	R	R	R	R	--	--	--	--	W	W*	--	75%	90%
Brownley	DEM.	7	1	R	R	R	R	R	R	--	--	--	--	W	R	--	88%	97%
Buchanan	DEM.	5	3	R	R	R	R	W*	R	--	--	--	--	W	W	--	63%	73%
Butler	DEM.	8	1	R	R	R	R	R	R	W	--	--	--	R*	R	--	89%	95%
Calderon, C.	DEM.	7	2	R	W*	R	R	R	R	--	--	R	--	W	R	--	78%	75%
Campos	DEM.	7	1	R	R	R	R	R	R	--	--	--	--	W	R	--	88%	95%
Carter	DEM.	7	1	R	R	R	R	R	R	--	--	--	--	W	R	--	88%	92%
Cedillo	DEM.	4	3	--	R	R	W*	W*	R	--	--	--	--	W	R	--	57%	85%
Chesbro	DEM.	8	0	R	R	R	R	R	R	--	--	--	--	R	R	--	100%	93%
Conway	REP.	0	8	W	W	W	W	W	W	--	--	--	--	W	W	--	0%	8%
Cook	REP.	0	8	W*	W	W	W	W	W	--	--	--	--	W	W	--	0%	10%
Davis	DEM.	7	1	R	R	R	R	R	R	--	--	--	--	W	R	--	88%	81%
Dickinson	DEM.	9	1	R	R	R	R	R	R	--	R	--	R	W	R	--	90%	96%
Donnelly	REP.	0	9	W	W	W	W	W	W	--	--	--	--	W	W	W	0%	5%
Eng	DEM.	8	2	R	R	R	R	R	R	W	--	R	--	W	R	--	80%	96%
Feuer	DEM.	10	0	R	R	R	R	R	R	--	R	--	R	R	R	--	100%	100%
Fletcher	IND.	1	4	--	R	--	W*	--	--	--	--	W*	--	W	W	--	20%	22%
Fong	DEM.	6	2	R	R	R	R	R	R	--	--	--	--	W	W*	--	75%	93%
Fuentes	DEM.	5	4	R	R	R	R	W*	R	--	--	W*	--	W	W*	--	56%	78%
Furutani	DEM.	6	0	R	--	R	R	R	R	--	--	--	--	--	R	--	100%	87%
Gaines, B.	REP.	0	8	W	W	W	W	W	W	--	--	--	--	W	W	--	0%	15%
Galgiani	DEM.	5	3	W*	R	R	R	R	R	--	--	--	--	W	W	--	63%	54%
Garrick	REP.	0	8	W	W	W	W	W	W	--	--	--	--	W	W	--	0%	13%
Gatto	DEM.	7	2	R	R	R	R	R	W	--	--	W*	--	R	R	--	78%	84%
Gordon	DEM.	6	2	R	R	R	R	R	R	--	--	--	--	W	W	--	75%	90%
Gorell	REP.	1	9	R	W	W	W	W	W	--	W	--	W*	W	W	--	10%	9%

