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California lawmakers ask: What's in a zip code?

5/5/2011 COMMENTS (0)

NEW YORK, May 5 (Reuters) - A new bill making its way through the California legislature aims to curb a wave of class-action lawsuits filed against retailers over the collection of customer zip codes.

More than 150 class-action suits have been filed in California since February when the state Supreme Court ruled that Williams-Sonoma had violated state law by requesting customer zip codes. The decision was the first to find the collection of zip codes illegal under the Song-Beverly Credit Card Act of 1971, which bars retailers from recording customers' "personal identification information" and imposes a \$1,000 fine per violation. The court made its ruling retroactive, exposing California merchants to significant potential liability for prior zip-code gathering.

The class actions that have followed the decision are targeting big-name retailers like Wal-Mart and Target as well as gas station companies and online merchants including Pay Pal and Amazon. Industry groups say many of the retailers that have been sued are collecting zip codes to prevent fraud or to ship customers their online orders.

The bill, introduced by Assemblyman Henry Perea and sponsored by the California Retailers Association, would limit the zip code collection ban. If passed, the legislation would apply only in situations where the customer physically hands a credit card to a store employee and where the card is read electronically at the point-of-sale. Such a change would shield gas stations, which ask consumers to enter their zip codes at the pump to prevent credit card fraud, and online vendors, which use the information for delivery purposes.

Perea said the move was a response to the sheer number of class actions and designed to "prevent a lot of the frivolous suits." The bill, which won unanimous approval in an Assembly committee on Monday, won't affect any of the suits already underway, Perea added.

ATTORNEY HAS FILED AROUND 50 SUITS

Gene Stonebarger, a lawyer for the plaintiff in the Williams-Sonoma case, testified against the bill at the committee hearing. He argued that the Song-Beverly Credit Card Act of 1971 already makes

exceptions for fraud prevention and shipping needs. Gas stations are not violating the statute because their contracts with banks require that they verify customer identity at the pump and because they do not store the zip codes, he said.

Stonebarger has filed around 50 suits against retailers in California since the Williams-Sonoma decision. He filed many of the suits in San Francisco, which he described as a "shopping hub."

"People come to San Francisco from other states to shop, and if they provided a zip code, they would be part of the class," he said. All of his suits are against "brick-and-mortar" retail stores with a live person at the point of sale, he said.

Paul Stephens of the Privacy Rights Clearinghouse said the proposed amendment would "essentially gut" the existing provisions of Song-Beverly, allowing merchants to collect private information whenever customers swipe the cards themselves, make online or phone purchases, or use smartphones with internal payment mechanisms.

The Supreme Court decision was in *Pineda v. Williams-Sonoma*, Supreme Court of California, No. S178241.

For *Pineda*: Gene Stonebarger and Richard Lambert of Stonebarger Law; James Patterson, Harry Harrison & Matthew O'Connor of Harrison, Patterson & O'Connor.

For *Williams-Sonoma*: Craig Cardon and Elizabeth Berman of Sheppard Mullin Richter & Hampton.

(Reporting by Terry Baynes)