



Talking Points ...

Fair and Accurate Credit Transactions Act (FACTA)

- NATO joined a coalition of U.S. retailers and associations in successfully building rare bipartisan consensus to pass legislation that protects exhibitors and other businesses from **abusive and costly lawsuits**. Lawmakers in both the House of Representatives and the Senate unanimously passed H.R. 4008, the Credit and Debit Card Receipt Clarification Act, by voice vote in May 2008. For more information on H.R. 4008, visit <http://www.thomas.gov/cgi-bin/bdquery/z?d110:h.r.04008>. NATO members played an integral role in passage of **H.R. 4008** by writing their members of Congress in support of the bill as part of a large-scale grass-roots initiative.
- On June 3, 2008, President George Bush signed into law H.R. 4008, which amends the **Fair and Accurate Credit Transaction Act (FACTA)**, to make clear that a business that electronically printed an expiration date on a credit or debit card receipt, before enactment of H.R. 4008, cannot be found in violation of the law as long as the merchant truncated the customer's card number to no more than the last five digits. This technical correction also preserves a consumer's right to sue for negligence in the event someone experienced actual harm or account fraud.
- It is important to note that the technical correction made by H.R. 4008 only covers credit and debit card receipts electronically printed from December 4, 2004, through the measure's enactment on May 20, 2008.
- To avoid the scourge of these lawsuits, exhibitors should inspect their point-of-sale terminals and, if necessary, **remove the expiration date and truncate credit or debit card account numbers** on all electronically printed customer receipts. The Federal Trade Commission provides tips on safeguarding sensitive customer data at www.ftc.gov/infosecurity.
- In December 2003, Congress enacted FACTA as an amendment to the **Fair Credit Reporting Act (FCRA)**. As part of this effort, Congress sought to combat identity theft and credit card fraud by keeping private information off customer receipts.
- FACTA makes it illegal for retailers to display more than five digits of a credit or debit card number or the card expiration date on electronically printed receipts. Because the law is ambiguously written, many businesses believed they could choose between **truncating the card number** or **removing the expiration date**, and many removed what they considered to be the more dangerous information, the card number. Indeed, the great majority of businesses sued under FACTA to date thought they were in compliance because they had properly truncated the card number but had not omitted the expiration date.
- Businesses found noncompliant are **vulnerable to massive damage awards**. For negligent failure to comply with the statute's requirements, FACTA awards actual damages, attorneys' fees and costs. Because FACTA is part of the FCRA, however, the civil penalty for "willful" noncompliance is **\$100 to \$1,000 per each offending receipt**, plus punitive damages and attorney's fees, regardless whether there is any proof the customer was a victim of fraud, identity theft, or any other injury. Under the FCRA, there is no cap on statutory damages, meaning a finding of "willful" violation could cost a business hundreds of millions of dollars. Naturally, all of the lawsuits allege "willful" noncompliance. That's the lawyers' only shot at big money.