

BILL ANALYSIS

Senate Research Center

S.B. 761
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Background

The proliferation of highly publicized data security breaches at some of the nation's largest retailers—as well as numerous breaches at less visible entities—over the past several years is an ongoing concern not only for consumers but also for community financial institutions. Data compromised in these breaches can be used to create fraudulent debit and credit cards which can then be utilized in person as well as through internet and telephone—or "card not present"—transactions. Additionally, lost and stolen credit and debit cards are frequently used by criminals to make purchases before the consumer realizes that his/her card is missing.

In most cases, the bank that issued the card ends up taking the loss for the fraud as well as absorbing the costs to reissue the compromised card. This has been an ongoing and costly frustration for community bankers across the state.

Solution

While clearly not a panacea, S.B. 1381 from the 85th Legislature allowed a merchant to request government-issued photo identification at the point of sale and allowed that merchant to decline a transaction if they so choose. This law expires on September 1, 2023. This bill, S.B. 761 88R, strikes the sunset provision from statute.

S.B. 1381 from 2017 provided merchants with an additional tool to attempt to minimize fraudulent transactions and losses. The bank issuing the card was also protected from further losses due to fraud, and cardholders have avoided more aggravations than not regarding dealing with fraudulent purchases.

The option to turn down a transaction if a customer fails to provide a photo ID verifying their identity was not available to merchants without this law due to restrictive terms of the agreements with the major credit card companies. MasterCard and VISA agreements stipulate that a merchant may request photo identification—but a merchant is prohibited from denying a transaction if the customer is unwilling or unable to produce acceptable identification.

The law is entirely permissive; there are absolutely no penalties for not requesting validation of identification, and the legislation does not stipulate a shift in liability between the parties. The law addresses only a small portion of card fraud—primarily when a card has been lost or stolen—but results in fewer losses for banks, merchants, and, more importantly, consumers.

S.B. 761 amends current law relating to photo identification for certain debit or credit card transactions.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Repealer: Section 508.003 (Expiration), Business and Commerce Code.

SECTION 2. Effective date: upon passage or the 91st day after the last day of the legislative session.