AMENDED IN SENATE MAY 13, 2014

AMENDED IN SENATE APRIL 23, 2014

AMENDED IN SENATE APRIL 22, 2014

AMENDED IN SENATE MARCH 26, 2014

SENATE BILL No. 1351

Introduced by Senator Hill

February 21, 2014

An act to add and repeal Title 1.3E (commencing with Section 1748.70) of Part 4 of Division 3 of the Civil Code, relating to payment cards.

LEGISLATIVE COUNSEL'S DIGEST

SB 1351, as amended, Hill. Payment cards.

Existing law generally provides for the regulation of credit and debit cards, including, but not limited to, limitations on the methods for offering and denying a credit card, requirements for listing the name appearing on a credit card, and restrictions on a person's liability for an unauthorized ~~used~~ *use* of his or her credit or debit card.

This bill would require retailers, starting April 1, 2016, except as specified, that accept a payment card, as defined, to provide a means of processing card-present payment card transactions involving payment cards equipped with embedded microchips or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention. The bill would require a retailer that issues a payment card that lacks a payment network logo to ensure that any new or replacement card issued on or after October 1, 2017, has an embedded microchip or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention. The bill would also require specified contracts entered into between a financial institution~~, as defined,~~ and a payment card network, as those terms are defined, to include a provision requiring that a new or replacement payment card issued to a cardholder with a California mailing address have an embedded microchip or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention. The bill would make legislative findings and declarations in this regard and would repeal these requirements on or before January 1, 2020, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

SECTION 1. The Legislature finds and declares all of the following:

(a) Over 80 countries utilize microchip technology for credit cards, including, but not limited to, Canada, Mexico, Brazil, and countries throughout Europe and Asia.

(b) The United States is one of the few remaining countries that relies almost exclusively on magnetic stripe technology for credit and debit cards.

(c) Credit and debit cards with microchip technology are preferred to magnetic stripe cards because identifying information is encrypted on an embedded microchip, which is more difficult to counterfeit than a magnetic stripe.

(d) Adoption of microchip technology in Britain has helped reduce fraud from counterfeit cards by 70 percent from 2007 to 2012, inclusive, according to the UK Card Association.

(e) By contrast, breaches have more than doubled since 2007 at retailers in the United States, affecting more than 5,000 records, according to a survey by the Ponemon Institute, a research firm located in Michigan.

(f) In 2012, United States merchants and banks suffered losses of $11.3 billion due to credit card fraud, or $0.05 on every $100 spent, according to the Nilson Report, a payment-industry newsletter based in California.

(g) If credit and debit cards with microchip technology were used in the United States, fraud losses could be reduced by 50 percent, according to estimates by Aite Group, an independent research and advisory firm focused on business, technology, and regulatory issues and their impact on the financial services industry.

(h) It has been widely reported that retailers, banks, financial institutions, and credit unions are planning on voluntarily adopting microchip technology beginning in October 2015.

SEC. 2. Title 1.3E (commencing with Section 1748.70) is added to Part 4 of Division 3 of the Civil Code, to read:

TITLE 1.3E. MICROCHIP PAYMENT CARDS

1748.70. (a) Except as specified in subdivision (b), on and after January 1, 2015, any contract entered into between a financial institution and a payment card network to govern the circumstances under which the logo of the payment card network is displayed on a payment card issued by that financial institution shall include a provision requiring that any new or replacement payment card issued on or after April 1, 2016, to a cardholder with a California mailing address by that financial institution with that payment card logo, have an embedded microchip or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention.

(b) On and after January 1, 2017, any contract entered into between a small financial institution and a payment card network to govern the circumstances under which the logo of the payment card network is displayed on a payment card issued by that financial institution shall include a provision requiring that any new or replacement payment card issued on or after October 1, 2017, to a cardholder with a California mailing address by that financial institution with that payment card logo, have an embedded microchip or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention.

(c) A small financial institution that subsequently exceeds five billion dollars ($5,000,000,000) in assets shall be provided with one year from the date it first exceeds the five-billion-dollar ($5,000,000,000) threshold to comply with subdivision (a).

1748.75. (a) On and after April 1, 2016, a retailer that accepts a payment card in a card-present, point-of-sale transaction shall provide a means of processing card-present, point-of-sale payment card transactions involving payment cards equipped with an embedded microchip ~~capable of storing a personal identification number~~ or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention.

(b) A retailer that issues a payment card that lacks a payment network logo shall ensure that any new or replacement payment card issued on or after October 1, 2017, has an embedded microchip or any other technology that is generally accepted within the payments industry as being more secure than microchip technology for card-present fraud prevention.

(c) The requirements of subdivision (a) shall apply to small retailers and gas station pump payment terminals on and after October 1, 2017.

1748.80. For purposes of this title, the following terms shall have the following meanings:

(a) “Financial institution” means a depository institution or other entity that issues a payment card to a cardholder for use by that cardholder to purchase goods, services, or anything else of value. “Financial institution” can include a retailer.

(b) “Payment card” means a credit or debit card.

(c) “Payment card network” means an entity that facilitates the payment process between credit or debit card users, retailers, and credit or debit card issuers.

(d) “Retailer” means a person or entity that furnishes money, goods, services, or anything else of value upon the presentation of a payment card by a cardholder. “Retailer” shall not mean the state, a county, city, city and county, or any other political subdivision of the state.

(e) “Small financial institution” means a financial institution with assets of five billion dollars ($5,000,000,000) or less as of January 1, 2015.

(f) “Small retailer” means a retailer with 10 or less employees.

1748.85. It is the intent of the Legislature that this title provide consumer protection consistent with federal law.

1748.90. This title shall remain in effect only until January 1, 2020, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2020, deletes or extends that date.