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FISCAL IMPACT REPORT

ORIGINAL DATE 02/07/13
 SPONSOR Rue LAST UPDATED 02/19/13 HB _____
 SHORT TITLE Access Device Data Act SB 347/aSJC
 ANALYST Weber

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total		NFI				

(Parenthesis () Indicate Expenditure Decreases)

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General Office (AGO)

SUMMARY

Synopsis of Senate Judiciary Committee amendment to Senate Bill 347

1. On page 4, line 21 through page 6, line 11, strike Section 4 in its entirety. The effect is to eliminate any reference to process service outside of the state regarding failure to manage the data as provided for in the bill.

Synopsis of Bill

Senate Bill 347 creates the new Access Device Data Act.

Section 2 provides definitions including:

- "access device" means a credit card, debit card or other commercial instrument a cardholder receives from a card issuer for the purpose of electronically conducting a financial transaction;
- "access device data" means:
 - (1) a cardholder account number printed or embossed on an access device;
 - (2) the contents of a magnetic stripe, including its tracks of data, a microprocessor chip or any other mechanism for storing electronically encoded information in an access device;

- (3) a service code;
- (4) a card verification value, card authentication value, card validation code or card security code for the access device; or
- (5) a personal identification number for the access device;

Section 3 allows a card issuer may file a civil complaint against a merchant services provider whose retention of access device data constitutes a breach of access device data. If the card issuer is the prevailing party, a court may award the reasonable costs that a card issuer incurs for: (1) canceling or reissuing an access device; (2) stopping payments or blocking financial transactions to protect any account of the cardholder; (3) closing, reopening or opening any affected financial institution account of a cardholder; (4) refunding or crediting a cardholder for any financial transaction that the cardholder did not authorize and that occurred as a result of the breach; or (5) notifying affected cardholders.

The court may also award reasonable attorney fees.

Section 4 includes violations of Access Device Data Act to 38-1-16 NMSA 1978, Personal Service of Process Outside State, to permit service of process outside of New Mexico on people or companies that have contracted with a merchant in New Mexico to provide services under the Data Device Act.

FISCAL IMPLICATIONS

No fiscal implications identified.

SIGNIFICANT ISSUES

The AOC elaborates:

The Federal Government has enacted regulations governing electronic fund transfers, including what is known as “Regulation E,” providing

§ 205.1 Authority and purpose.

(a) *Authority.* The regulation in this part, known as Regulation E, is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100-0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers.

12 CFR 11.205.1 *et. seq.* [Title 12 Code of Federal Regulations, Chapter 11, Section 205 *et. seq.*]

The regulation itself does not appear to address the retention of access device data by a merchant services provider, nor does the full Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. Section 1693. As the primary purpose of the EFTA is the protection of consumers engaging in electronic

fund transfers, the regulation *does* address the liability of consumers for unauthorized transfers. 12 CFR 11.205.6. The focus of SB 347 is to protect, compensate and make whole financial institutions that issue access devices, defined as and more commonly known as a credit or debit card. (The definition also includes “other commercial instrument[s]” received by a cardholder for the purpose of electronically conducting a financial transaction.)

POSSIBLE QUESTIONS

Should the consumer be offered similar protection from direct costs and aggravations resulting from a merchant’s improper storage of credit card data resulting in a breach?

MW/bm