

BILL ANALYSIS

Senate Research Center
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H.B. 2945
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

H.B. 2945 amends current law relating to payment card skimmers on motor fuel dispensers and to creating a payment fraud fusion center; imposes civil penalties; and creates criminal offenses.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas attorney general (attorney general) in SECTION 1 (Section 607.052, Business & Commerce Code) of this bill.

Rulemaking authority is expressly granted to the attorney general in SECTION 2 (Section 424.006, Government Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Title 12, Business & Commerce Code, by adding Chapter 607, as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL DISPENSERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 607.001. DEFINITIONS. Defines "financial institution," "merchant," "motor fuel dispenser," "payment card," "service company," "service technician," "skimmer," and "unattended payment terminal"; defines "center" to mean the payment fraud fusion center established under Chapter 424, Government Code (center); and defines "department" to mean the state agency that is the licensing authority for service companies and service technicians (department) of purpose of this chapter.

SUBCHAPTER B. DUTIES RELATED TO USE OF CERTAIN UNATTENDED PAYMENT TERMINALS

Sec. 607.051. MERCHANT DUTIES REGARDING UNATTENDED PAYMENT TERMINALS ON MOTOR FUEL DISPENSERS. Requires a merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business to implement procedures in accordance with the rules adopted by the Texas attorney general (attorney general) under Section 607.052 to:

- (1) prevent the installation of a skimmer on the payment terminal;
- (2) find and remove a skimmer placed on the payment terminal; and
- (3) report the discovery of a skimmer to the department.

Sec. 607.052. RULES. (a) Requires the attorney general by rule to establish reasonable policies and procedures that identify best practices for merchants to use to comply with Section 607.051.

(b) Requires the attorney general, in adopting rules under Subsection (a), to consider:

- (1) emerging technology;
- (2) compliance costs to merchants; and
- (3) any impact the policies and procedures may have on consumers.

Sec. 607.053. DISCOVERY OF SKIMMER. Requires a service technician or the service company that employs the technician, if a service technician discovers a skimmer on the unattended payment terminal of a motor fuel dispenser, to immediately notify the merchant of the skimmer. Requires the merchant, if a merchant discovers the skimmer or is notified of the skimmer by a service technician or other person, to:

- (1) immediately disable, or cause to be disabled, the motor fuel dispenser on which the skimmer was discovered and notify a law enforcement agency that a skimmer has been detected;
- (2) take appropriate measures to protect from tampering with the motor fuel dispenser until the law enforcement agency arrives; and
- (3) not later than 24 hours after the discovery of the skimmer or a report of the discovery of a skimmer is made to the merchant, report the discovery to the department.

Sec. 607.054. REPORT TO DEPARTMENT. (a) Defines "interested person" for purposes of this section.

- (b) Authorizes an interested person to submit a report of the discovery of a skimmer on an unattended payment terminal of a motor fuel dispenser at a merchant's place of business to the department.

Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) Requires the department, on receipt of a report under Section 607.053 or 607.054, to immediately notify the center and share the report with the center.

- (b) Requires the department and the center to coordinate with law enforcement agencies in conducting an investigation of the report.
- (c) Authorizes the department to inspect, directly or in coordination with a law enforcement agency, the motor fuel dispenser that is the subject of the report.
- (d) Requires a merchant to cooperate with the department or law enforcement agency during an investigation of a skimmer discovered at the merchant's place of business and permit the department or agency to inspect and alter the motor fuel dispenser that is the subject of the report as necessary.

Sec. 607.056. CONFIDENTIALITY. (a) Provides that, except as otherwise provided by this section, information is confidential and not subject to disclosure under Chapter 552 (Public Information), Government Code, if the information is:

- (1) from a report received by the department under Section 607.053 or 607.054; or
- (2) prepared or compiled by the department in connection with the report or an investigation conducted under this subchapter.

- (b) Authorizes information described by Subsection (a) to be disclosed to:

- (1) the attorney general;

(2) a law enforcement agency;

(3) the center;

(4) a financial institution that may be impacted by the use of a skimmer on the unattended payment terminal of a motor fuel dispenser; or

(5) another person if the disclosure of the information is permitted or required by other law or court order.

(c) Provides that the disclosure of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007 (Voluntary Disclosure of Certain Information When Disclosure Not Required), Government Code.

(d) Provide that, on the dismissal or final resolution of a report or investigation by the department, information described by Subsection (a) is subject to disclosure under Chapter 552, Government Code.

(e) Authorizes the attorney general, notwithstanding Subsection (a), to disclose to the public information made confidential by that subsection if the attorney general determines that the disclosure of the information furthers a law enforcement purpose.

SUBCHAPTER C. ENFORCEMENT

Sec. 607.101. CORRECTIVE ACTION. (a) Requires the attorney general, if the attorney general has reason to believe that a merchant who, after an investigation conducted by the department or one or more law enforcement agencies, has at the merchant's place of business an unattended payment terminal of a motor fuel dispenser on which a skimmer was installed and who is in violation of a rule adopted by the attorney general under Section 607.052, to notify the merchant of the violation.

(b) Authorizes the attorney general to order the merchant to take corrective action as necessary, including the implementation of best practices and the training of employees to detect skimmers.

Sec. 607.102. CIVIL PENALTIES. (a) Provides that a merchant who wilfully violates a rule adopted by the attorney general under Section 607.052 is liable to this state for a civil penalty in an amount not to exceed \$5,000.

(b) Provides that a merchant who negligently fails to make a report within the period prescribed by Section 607.053, or who has had at least three reports made under that section within a 24-month period as a result of the merchant failing to comply with Subchapter B, is liable to this state for a civil penalty of at least \$1,000 but not more than \$5,000 for each violation.

(c) Authorizes the attorney general to bring an action to recover a civil penalty imposed under this section.

Sec. 607.103. OFFENSES; PENALTIES. (a) Provides that a person commits an offense if the person refuses to allow an inspection of a motor fuel dispenser at the merchant's place of business in violation of Section 607.055. Provides that an offense under this subsection is a Class C misdemeanor.

(b) Provides that a person commits an offense if the person negligently or recklessly disposes of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person. Provides that an offense under this subsection is a Class B misdemeanor.

(c) Provides that a person commits an offense if, knowing that an investigation is ongoing or that a criminal proceeding has been commenced and is pending, the person disposes of a skimmer that was installed on the unattended payment terminal of a motor fuel dispenser by another person. Provides that an offense under this subsection is a felony of the third degree.

SECTION 2. Amends Subtitle B, Title 4, Government Code, by adding Chapter 424, as follows:

CHAPTER 424. PAYMENT FRAUD FUSION CENTER

Sec. 424.001. DEFINITIONS. Defines "payment card," "payment fraud," and "skimmer" and defines "center" to mean the payment fraud fusion center established under this chapter for purposes of this chapter.

Sec. 424.002. PAYMENT FRAUD FUSION CENTER ESTABLISHED. (a) Authorizes law enforcement agencies or other governmental agencies designated by the attorney general to collaborate with the attorney general to establish a payment fraud fusion center.

(b) Requires the attorney general to establish the center in the City of Tyler.

Sec. 424.003. PURPOSE OF CENTER. (a) Provides that the center serves as the state's primary entity for the planning, coordination, and integration of the capabilities of law enforcement agencies and other governmental agencies to respond to criminal activity that is related to payment fraud, including through the use of skimmers.

(b) Provides that the purpose of the center is to maximize the ability of law enforcement agencies and other governmental agencies to detect, prevent, and respond to criminal activities related to payment fraud.

Sec. 424.004. POWERS AND DUTIES. (a) Authorizes the center to collaborate with federal agencies for the performance of the center's duties and to accomplish the purpose of the center.

(b) Requires the center to assist law enforcement agencies and other governmental agencies and merchants in their efforts to develop and implement strategies to:

- (1) detect skimmers;
- (2) ensure an effective response if a skimmer is found; and
- (3) prevent payment fraud.

Sec. 424.005. DIRECTOR. (a) Requires the attorney general to appoint a director to supervise and manage the center.

(b) Provides that the director is under the supervision and direction of the attorney general.

Sec. 424.006. RULES. Requires the attorney general by rule to adopt reasonable policies and procedures necessary to implement this chapter.

Sec. 424.007. FACILITIES AND ADMINISTRATIVE SUPPORT. Authorizes a municipality's police department to provide facilities and administrative support to a payment fraud fusion center established in the municipality.

Sec. 424.008. GIFTS AND GRANTS. Authorizes the payment fraud fusion center to accept gifts, grants, and donations to carry out the purpose of the center.

SECTION 3. Effective date: September 1, 2019.