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H.B. No. 2945

A BILL TO BE ENTITLED

AN ACT

relating to payment card skimmers on motor fuel dispensers and to
creating a payment fraud fusion center; imposing civil penalties;
creating criminal offenses.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Title 12, Business & Commerce Code, is amended by
adding Chapter 607 to read as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL DISPENSERS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 607.001. DEFINITIONS. In this chapter:

(1) "Center" means the payment fraud fusion center
established under Chapter 424, Government Code.

(2) "Department" means the state agency that is the
licensing authority for service companies and service technicians.

(3) "Financial institution" has the meaning assigned
by Section 277.001, Finance Code.

(4) "Merchant" means a person whose business includes
the sale of motor fuel through motor fuel dispensers to retail
customers.

(5) "Motor fuel dispenser" means a machine that is
used to pump gasoline, diesel, biofuels, or other types of fuels
into motor vehicles.

(6) "Payment card" has the meaning assigned by Section
522.001.

1 (7) "Service company" and "service technician" have
2 the meanings assigned by Section 13.451, Agriculture Code.

3 (8) "Skimmer" means a wire or electronic device that
4 is capable of unlawfully intercepting electronic communications or
5 data to perpetrate fraud. The term includes a re-encoder and
6 scanning device, as those terms are defined by Section 522.001.

7 (9) "Unattended payment terminal" means a
8 point-of-sale terminal or kiosk that is operated by a customer to
9 activate or complete a transaction through the use of a payment card
10 or a payment by other electronic means.

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

12 TERMINALS

13 Sec. 607.051. MERCHANT DUTIES REGARDING UNATTENDED PAYMENT
14 TERMINALS ON MOTOR FUEL DISPENSERS. A merchant that has an
15 unattended payment terminal on a motor fuel dispenser at the
16 merchant's place of business shall implement procedures in
17 accordance with the rules adopted by the attorney general under
18 Section 607.052 to:

19 (1) prevent the installation of a skimmer on the
20 payment terminal;

21 (2) find and remove a skimmer placed on the payment
22 terminal; and

23 (3) report the discovery of a skimmer to the
24 department.

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

1 (b) In adopting rules under Subsection (a), the attorney
2 general must consider:

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

7 Sec. 607.053. DISCOVERY OF SKIMMER. If a service
8 technician discovers a skimmer on the unattended payment terminal
9 of a motor fuel dispenser, the service technician or service
10 company that employs the technician shall immediately notify the
11 merchant of the skimmer. If a merchant discovers the skimmer or is
12 notified of the skimmer by a service technician or other person, the
13 merchant shall:

14 (1) immediately disable, or cause to be disabled, the
15 motor fuel dispenser on which the skimmer was discovered and notify
16 a law enforcement agency that a skimmer has been detected;

17 (2) take appropriate measures to protect from
18 tampering with the motor fuel dispenser until the law enforcement
19 agency arrives; and

20 (3) not later than 24 hours after the discovery of the
21 skimmer or a report of the discovery of a skimmer is made to the
22 merchant, report the discovery to the department.

23 Sec. 607.054. REPORT TO DEPARTMENT. (a) In this section,
24 "interested person" includes:

- 25 (1) a law enforcement agency;
26 (2) a financial institution;
27 (3) a credit card issuer as defined by Section

1 [505.001](#);

2 (4) a service technician or service company;

3 (5) a member of the public; or

4 (6) any other interested person.

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

8 Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) On
9 receipt of a report under Section 607.053 or 607.054, the
10 department shall immediately notify the center and share the report
11 with the center.

12 (b) The department and the center shall coordinate with law
13 enforcement agencies in conducting an investigation of the report.

14 (c) The department may inspect, directly or in coordination
15 with a law enforcement agency, the motor fuel dispenser that is the
16 subject of the report.

17 (d) A merchant shall cooperate with the department or law
18 enforcement agency during an investigation of a skimmer discovered
19 at the merchant's place of business and permit the department or
20 agency to inspect and alter the motor fuel dispenser that is the
21 subject of the report as necessary.

22 Sec. 607.056. CONFIDENTIALITY. (a) Except as otherwise
23 provided by this section, information is confidential and not
24 subject to disclosure under Chapter [552](#), Government Code, if the
25 information is:

26 (1) from a report received by the department under
27 Section [607.053](#) or [607.054](#); or

1 (2) prepared or compiled by the department in
2 connection with the report or an investigation conducted under this
3 subchapter.

4 (b) Information described by Subsection (a) may be
5 disclosed to:

6 (1) the attorney general;

7 (2) a law enforcement agency;

8 (3) the center;

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

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

14 (c) The disclosure of information under Subsection (b) is
15 not a voluntary disclosure for purposes of Section [552.007](#),
16 Government Code.

17 (d) On the dismissal or final resolution of a report or
18 investigation by the department, information described by
19 Subsection (a) is subject to disclosure under Chapter [552](#),
20 Government Code.

21 (e) Notwithstanding Subsection (a), the attorney general
22 may disclose to the public information made confidential by that
23 subsection if the attorney general determines that the disclosure
24 of the information furthers a law enforcement purpose.

25 SUBCHAPTER C. ENFORCEMENT

26 Sec. 607.101. CORRECTIVE ACTION. (a) If the attorney
27 general has reason to believe that a merchant who, after an

1 investigation conducted by the department or one or more law
2 enforcement agencies, has at the merchant's place of business an
3 unattended payment terminal of a motor fuel dispenser on which a
4 skimmer was installed and who is in violation of a rule adopted by
5 the attorney general under Section 607.052, the attorney general
6 shall notify the merchant of the violation.

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

10 Sec. 607.102. CIVIL PENALTIES. (a) A merchant who wilfully
11 violates a rule adopted by the attorney general under Section
12 607.052 is liable to this state for a civil penalty in an amount not
13 to exceed \$5,000.

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

20 (c) The attorney general may bring an action to recover a
21 civil penalty imposed under this section.

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

27 (b) A person commits an offense if the person negligently or

1 recklessly disposes of a skimmer that was installed on the
2 unattended payment terminal of a motor fuel dispenser by another
3 person. An offense under this subsection is a Class B misdemeanor.

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

10 SECTION 2. Subtitle B, Title 4, Government Code, is amended
11 by adding Chapter 424 to read as follows:

12 CHAPTER 424. PAYMENT FRAUD FUSION CENTER

13 Sec. 424.001. DEFINITIONS. In this chapter:

14 (1) "Center" means the payment fraud fusion center
15 established under this chapter.

16 (2) "Payment card" has the meaning assigned by Section
17 522.001, Business & Commerce Code.

18 (3) "Payment fraud" means a fraudulent payment
19 transaction made by the unauthorized use of a payment card or other
20 electronic means.

21 (4) "Skimmer" means a wire or electronic device that
22 is capable of unlawfully intercepting electronic communications or
23 data to perpetrate fraud. The term includes a re-encoder and
24 scanning device, as those terms are defined by Section 522.001,
25 Business & Commerce Code.

26 Sec. 424.002. PAYMENT FRAUD FUSION CENTER ESTABLISHED. (a)
27 Law enforcement agencies or other governmental agencies designated

1 by the attorney general may collaborate with the attorney general
2 to establish a payment fraud fusion center.

3 (b) The attorney general shall establish the center in the
4 City of Tyler.

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

10 (b) The purpose of the center is to maximize the ability of
11 law enforcement agencies and other governmental agencies to detect,
12 prevent, and respond to criminal activities related to payment
13 fraud.

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

17 (b) The center shall assist law enforcement agencies and
18 other governmental agencies and merchants in their efforts to
19 develop and implement strategies to:

20 (1) detect skimmers;
21 (2) ensure an effective response if a skimmer is
22 found; and

23 (3) prevent payment fraud.

24 Sec. 424.005. DIRECTOR. (a) The attorney general shall
25 appoint a director to supervise and manage the center.

26 (b) The director is under the supervision and direction of
27 the attorney general.

1 Sec. 424.006. RULES. The attorney general by rule shall
2 adopt reasonable policies and procedures necessary to implement
3 this chapter.

4 Sec. 424.007. FACILITIES AND ADMINISTRATIVE SUPPORT. A
5 municipality's police department may provide facilities and
6 administrative support to a payment fraud fusion center established
7 in the municipality.

8 Sec. 424.008. GIFTS AND GRANTS. The payment fraud fusion
9 center may accept gifts, grants, and donations to carry out the
10 purpose of the center.

11 SECTION 3. This Act takes effect September 1, 2019.