

1-1 By: Perez, et al. (Senate Sponsor - Zaffirini) H.B. No. 2945
 1-2 (In the Senate - Received from the House May 2, 2019;
 1-3 May 3, 2019, read first time and referred to Committee on Business
 1-4 & Commerce; May 9, 2019, reported favorably by the following vote:
 1-5 Yeas 8, Nays 0; May 9, 2019, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7				
1-8	X			
1-9	X			
1-10	X			
1-11	X			
1-12	X			
1-13	X			
1-14	X			
1-15			X	
1-16	X			

1-17 A BILL TO BE ENTITLED
 1-18 AN ACT

1-19 relating to payment card skimmers on motor fuel dispensers and to
 1-20 creating a payment fraud fusion center; imposing civil penalties;
 1-21 creating criminal offenses.

1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-23 SECTION 1. Title 12, Business & Commerce Code, is amended by
 1-24 adding Chapter 607 to read as follows:

1-25 CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL DISPENSERS

1-26 SUBCHAPTER A. GENERAL PROVISIONS

1-27 Sec. 607.001. DEFINITIONS. In this chapter:

1-28 (1) "Center" means the payment fraud fusion center
 1-29 established under Chapter 424, Government Code.

1-30 (2) "Department" means the state agency that is the
 1-31 licensing authority for service companies and service technicians.

1-32 (3) "Financial institution" has the meaning assigned
 1-33 by Section 277.001, Finance Code.

1-34 (4) "Merchant" means a person whose business includes
 1-35 the sale of motor fuel through motor fuel dispensers to retail
 1-36 customers.

1-37 (5) "Motor fuel dispenser" means a machine that is
 1-38 used to pump gasoline, diesel, biofuels, or other types of fuels
 1-39 into motor vehicles.

1-40 (6) "Payment card" has the meaning assigned by Section
 1-41 522.001.

1-42 (7) "Service company" and "service technician" have
 1-43 the meanings assigned by Section 13.451, Agriculture Code.

1-44 (8) "Skimmer" means a wire or electronic device that
 1-45 is capable of unlawfully intercepting electronic communications or
 1-46 data to perpetrate fraud. The term includes a re-encoder and
 1-47 scanning device, as those terms are defined by Section 522.001.

1-48 (9) "Unattended payment terminal" means a
 1-49 point-of-sale terminal or kiosk that is operated by a customer to
 1-50 activate or complete a transaction through the use of a payment card
 1-51 or a payment by other electronic means.

1-52 SUBCHAPTER B. DUTIES RELATED TO USE OF CERTAIN UNATTENDED PAYMENT
 1-53 TERMINALS

1-54 Sec. 607.051. MERCHANT DUTIES REGARDING UNATTENDED PAYMENT
 1-55 TERMINALS ON MOTOR FUEL DISPENSERS. A merchant that has an
 1-56 unattended payment terminal on a motor fuel dispenser at the
 1-57 merchant's place of business shall implement procedures in
 1-58 accordance with the rules adopted by the attorney general under
 1-59 Section 607.052 to:

1-60 (1) prevent the installation of a skimmer on the
 1-61 payment terminal;

2-1 (2) find and remove a skimmer placed on the payment
2-2 terminal; and
2-3 (3) report the discovery of a skimmer to the
2-4 department.

2-5 Sec. 607.052. RULES. (a) The attorney general by rule
2-6 shall establish reasonable policies and procedures that identify
2-7 best practices for merchants to use to comply with Section 607.051.
2-8 (b) In adopting rules under Subsection (a), the attorney
2-9 general must consider:

2-10 (1) emerging technology;
2-11 (2) compliance costs to merchants; and
2-12 (3) any impact the policies and procedures may have on
2-13 consumers.

2-14 Sec. 607.053. DISCOVERY OF SKIMMER. If a service
2-15 technician discovers a skimmer on the unattended payment terminal
2-16 of a motor fuel dispenser, the service technician or service
2-17 company that employs the technician shall immediately notify the
2-18 merchant of the skimmer. If a merchant discovers the skimmer or is
2-19 notified of the skimmer by a service technician or other person, the
2-20 merchant shall:

2-21 (1) immediately disable, or cause to be disabled, the
2-22 motor fuel dispenser on which the skimmer was discovered and notify
2-23 a law enforcement agency that a skimmer has been detected;
2-24 (2) take appropriate measures to protect from
2-25 tampering with the motor fuel dispenser until the law enforcement
2-26 agency arrives; and
2-27 (3) not later than 24 hours after the discovery of the
2-28 skimmer or a report of the discovery of a skimmer is made to the
2-29 merchant, report the discovery to the department.

2-30 Sec. 607.054. REPORT TO DEPARTMENT. (a) In this section,
2-31 "interested person" includes:

2-32 (1) a law enforcement agency;
2-33 (2) a financial institution;
2-34 (3) a credit card issuer as defined by Section
2-35 505.001;
2-36 (4) a service technician or service company;
2-37 (5) a member of the public; or
2-38 (6) any other interested person.

2-39 (b) An interested person may submit a report of the
2-40 discovery of a skimmer on an unattended payment terminal of a motor
2-41 fuel dispenser at a merchant's place of business to the department.

2-42 Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) On
2-43 receipt of a report under Section 607.053 or 607.054, the
2-44 department shall immediately notify the center and share the report
2-45 with the center.

2-46 (b) The department and the center shall coordinate with law
2-47 enforcement agencies in conducting an investigation of the report.

2-48 (c) The department may inspect, directly or in coordination
2-49 with a law enforcement agency, the motor fuel dispenser that is the
2-50 subject of the report.

2-51 (d) A merchant shall cooperate with the department or law
2-52 enforcement agency during an investigation of a skimmer discovered
2-53 at the merchant's place of business and permit the department or
2-54 agency to inspect and alter the motor fuel dispenser that is the
2-55 subject of the report as necessary.

2-56 Sec. 607.056. CONFIDENTIALITY. (a) Except as otherwise
2-57 provided by this section, information is confidential and not
2-58 subject to disclosure under Chapter 552, Government Code, if the
2-59 information is:

2-60 (1) from a report received by the department under
2-61 Section 607.053 or 607.054; or
2-62 (2) prepared or compiled by the department in
2-63 connection with the report or an investigation conducted under this
2-64 subchapter.

2-65 (b) Information described by Subsection (a) may be
2-66 disclosed to:

2-67 (1) the attorney general;
2-68 (2) a law enforcement agency;
2-69 (3) the center;

3-1 (4) a financial institution that may be impacted by
 3-2 the use of a skimmer on the unattended payment terminal of a motor
 3-3 fuel dispenser; or

3-4 (5) another person if the disclosure of the
 3-5 information is permitted or required by other law or court order.

3-6 (c) The disclosure of information under Subsection (b) is
 3-7 not a voluntary disclosure for purposes of Section 552.007,
 3-8 Government Code.

3-9 (d) On the dismissal or final resolution of a report or
 3-10 investigation by the department, information described by
 3-11 Subsection (a) is subject to disclosure under Chapter 552,
 3-12 Government Code.

3-13 (e) Notwithstanding Subsection (a), the attorney general
 3-14 may disclose to the public information made confidential by that
 3-15 subsection if the attorney general determines that the disclosure
 3-16 of the information furthers a law enforcement purpose.

3-17 SUBCHAPTER C. ENFORCEMENT

3-18 Sec. 607.101. CORRECTIVE ACTION. (a) If the attorney
 3-19 general has reason to believe that a merchant who, after an
 3-20 investigation conducted by the department or one or more law
 3-21 enforcement agencies, has at the merchant's place of business an
 3-22 unattended payment terminal of a motor fuel dispenser on which a
 3-23 skimmer was installed and who is in violation of a rule adopted by
 3-24 the attorney general under Section 607.052, the attorney general
 3-25 shall notify the merchant of the violation.

3-26 (b) The attorney general may order the merchant to take
 3-27 corrective action as necessary, including the implementation of
 3-28 best practices and the training of employees to detect skimmers.

3-29 Sec. 607.102. CIVIL PENALTIES. (a) A merchant who wilfully
 3-30 violates a rule adopted by the attorney general under Section
 3-31 607.052 is liable to this state for a civil penalty in an amount not
 3-32 to exceed \$5,000.

3-33 (b) A merchant who negligently fails to make a report within
 3-34 the period prescribed by Section 607.053, or who has had at least
 3-35 three reports made under that section within a 24-month period as a
 3-36 result of the merchant failing to comply with Subchapter B, is
 3-37 liable to this state for a civil penalty of at least \$1,000 but not
 3-38 more than \$5,000 for each violation.

3-39 (c) The attorney general may bring an action to recover a
 3-40 civil penalty imposed under this section.

3-41 Sec. 607.103. OFFENSES; PENALTIES. (a) A person commits an
 3-42 offense if the person refuses to allow an inspection of a motor fuel
 3-43 dispenser at the merchant's place of business in violation of
 3-44 Section 607.055. An offense under this subsection is a Class C
 3-45 misdemeanor.

3-46 (b) A person commits an offense if the person negligently or
 3-47 recklessly disposes of a skimmer that was installed on the
 3-48 unattended payment terminal of a motor fuel dispenser by another
 3-49 person. An offense under this subsection is a Class B misdemeanor.

3-50 (c) A person commits an offense if, knowing that an
 3-51 investigation is ongoing or that a criminal proceeding has been
 3-52 commenced and is pending, the person disposes of a skimmer that was
 3-53 installed on the unattended payment terminal of a motor fuel
 3-54 dispenser by another person. An offense under this subsection is a
 3-55 felony of the third degree.

3-56 SECTION 2. Subtitle B, Title 4, Government Code, is amended
 3-57 by adding Chapter 424 to read as follows:

3-58 CHAPTER 424. PAYMENT FRAUD FUSION CENTER

3-59 Sec. 424.001. DEFINITIONS. In this chapter:

3-60 (1) "Center" means the payment fraud fusion center
 3-61 established under this chapter.

3-62 (2) "Payment card" has the meaning assigned by Section
 3-63 522.001, Business & Commerce Code.

3-64 (3) "Payment fraud" means a fraudulent payment
 3-65 transaction made by the unauthorized use of a payment card or other
 3-66 electronic means.

3-67 (4) "Skimmer" means a wire or electronic device that
 3-68 is capable of unlawfully intercepting electronic communications or
 3-69 data to perpetrate fraud. The term includes a re-encoder and

4-1 scanning device, as those terms are defined by Section 522.001,
4-2 Business & Commerce Code.

4-3 Sec. 424.002. PAYMENT FRAUD FUSION CENTER ESTABLISHED. (a)
4-4 Law enforcement agencies or other governmental agencies designated
4-5 by the attorney general may collaborate with the attorney general
4-6 to establish a payment fraud fusion center.

4-7 (b) The attorney general shall establish the center in the
4-8 City of Tyler.

4-9 Sec. 424.003. PURPOSE OF CENTER. (a) The center serves as
4-10 the state's primary entity for the planning, coordination, and
4-11 integration of the capabilities of law enforcement agencies and
4-12 other governmental agencies to respond to criminal activity that is
4-13 related to payment fraud, including through the use of skimmers.

4-14 (b) The purpose of the center is to maximize the ability of
4-15 law enforcement agencies and other governmental agencies to detect,
4-16 prevent, and respond to criminal activities related to payment
4-17 fraud.

4-18 Sec. 424.004. POWERS AND DUTIES. (a) The center may
4-19 collaborate with federal agencies for the performance of the
4-20 center's duties and to accomplish the purpose of the center.

4-21 (b) The center shall assist law enforcement agencies and
4-22 other governmental agencies and merchants in their efforts to
4-23 develop and implement strategies to:

4-24 (1) detect skimmers;

4-25 (2) ensure an effective response if a skimmer is
4-26 found; and

4-27 (3) prevent payment fraud.

4-28 Sec. 424.005. DIRECTOR. (a) The attorney general shall
4-29 appoint a director to supervise and manage the center.

4-30 (b) The director is under the supervision and direction of
4-31 the attorney general.

4-32 Sec. 424.006. RULES. The attorney general by rule shall
4-33 adopt reasonable policies and procedures necessary to implement
4-34 this chapter.

4-35 Sec. 424.007. FACILITIES AND ADMINISTRATIVE SUPPORT. A
4-36 municipality's police department may provide facilities and
4-37 administrative support to a payment fraud fusion center established
4-38 in the municipality.

4-39 Sec. 424.008. GIFTS AND GRANTS. The payment fraud fusion
4-40 center may accept gifts, grants, and donations to carry out the
4-41 purpose of the center.

4-42 SECTION 3. This Act takes effect September 1, 2019.

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