

A BILL TO BE ENTITLED

AN ACT

relating to payment card skimmers and the creation of a payment card fraud center; imposing a civil penalty; 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

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 607.001. DEFINITIONS. In this chapter:

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

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

(3) "Merchant" means a person whose business includes the sale of motor fuel or other goods and services to retail customers.

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

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

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

(7) "Skimmer" means a wire or electronic device that

1 is capable of unlawfully intercepting electronic communications
2 and used to perpetrate fraud. The term includes a re-encoder and
3 scanning device, as those terms are defined by Section 522.001.

4 (8) "Unattended payment terminal" means a
5 point-of-sale terminal or kiosk that is operated by a customer to
6 activate a transaction through the use of a payment card.

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

9 Sec. 607.051. MERCHANT DUTIES REGARDING UNATTENDED PAYMENT
10 TERMINALS. A merchant that has an unattended payment terminal at
11 the merchant's place of business shall implement procedures in
12 accordance with the rules adopted by the attorney general under
13 Section 607.052 to:

14 (1) prevent the installation of a skimmer on the
15 payment terminal;

16 (2) find and remove a skimmer placed on the payment
17 terminal; and

18 (3) report the discovery of a skimmer to the center.

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

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

24 (1) emerging technology;

25 (2) compliance costs to merchants; and

26 (3) any impact the policies and procedures may have on
27 consumers.

1 Sec. 607.053. DISCOVERY OF SKIMMERS. (a) If a service
2 technician discovers a skimmer on the unattended payment terminal,
3 the service technician or service company that employs the
4 technician shall immediately notify the merchant of the skimmer.
5 If a merchant discovers the skimmer or is notified of the skimmer by
6 a service technician or other person, the merchant shall:

7 (1) immediately disable, or cause to be disabled, the
8 unattended payment terminal on which the skimmer was discovered and
9 notify a local law enforcement agency that a skimmer has been
10 detected;

11 (2) take appropriate measures to protect the
12 unattended payment terminal from being tampered with until a local
13 law enforcement agency arrives; and

14 (3) not later than 24 hours after the discovery of the
15 skimmer or after a report of the discovery of a skimmer is made to
16 the merchant, report the discovery to the center.

17 (b) If a service technician discovers a skimmer on the
18 unattended payment terminal of a motor fuel dispenser, the service
19 technician or service company that employs the technician shall
20 immediately notify the merchant of the skimmer. If a merchant
21 discovers the skimmer or is notified of the skimmer by a service
22 technician or other person, the merchant shall:

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

26 (2) take appropriate measures to protect the motor
27 fuel dispenser from being tampered with until a local law

1 enforcement agency arrives; and

2 (3) not later than 24 hours after the discovery of the
3 skimmer or after a report of the discovery of a skimmer is made to
4 the merchant, report the discovery to the center.

5 Sec. 607.054. REPORT TO CENTER. (a) In this section,
6 "interested person" includes:

7 (1) a local law enforcement agency;

8 (2) a merchant;

9 (3) a financial institution;

10 (4) a credit card issuer as defined by Section
11 [505.001](#);

12 (5) a service technician or service company;

13 (6) a member of the public; or

14 (7) any other interested person.

15 (b) An interested person may submit a report of the
16 discovery of a skimmer on an unattended payment terminal at a
17 merchant's place of business to the center.

18 Sec. 607.055. INVESTIGATION OF SKIMMER REPORTS. (a) On
19 receipt of a report under Section 607.053 or 607.054, the center
20 shall direct the merchant to conduct an investigation and share the
21 report with the center.

22 (b) The center may coordinate with local law enforcement
23 agencies in conducting an investigation under this section.

24 (c) A merchant shall cooperate with the center during an
25 investigation conducted under this section.

26 Sec. 607.056. CONFIDENTIALITY. (a) Except as otherwise
27 provided by this section, information is confidential and not

1 subject to disclosure under Chapter 552, Government Code, if the
2 information is:

3 (1) received by the center under Section 607.053 or
4 607.054; or

5 (2) prepared or compiled by the center in connection
6 with a report to or investigation conducted by the center under this
7 subchapter.

8 (b) Information described by Subsection (a) may be
9 disclosed to:

10 (1) the attorney general;

11 (2) a criminal justice agency, as defined by Section
12 411.082, Government Code;

13 (3) the center;

14 (4) a financial institution that may be impacted by
15 the installation of a skimmer on the unattended payment terminal;
16 or

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

19 (c) The disclosure of information under Subsection (b) is
20 not a voluntary disclosure for purposes of Section 552.007,
21 Government Code.

22 (d) On the dismissal or final resolution of a report or
23 investigation by the center, information described by Subsection
24 (a) is subject to disclosure under Chapter 552, Government Code.

25 (e) Notwithstanding Subsection (a), the attorney general
26 may disclose to the public information made confidential by that
27 subsection if the attorney general determines that the disclosure

1 of the information furthers a law enforcement purpose.

2 SUBCHAPTER C. ENFORCEMENT

3 Sec. 607.101. CORRECTIVE ACTION. If the attorney general
4 has reason to believe that a merchant, after an investigation
5 conducted by a law enforcement agency, has at the merchant's place
6 of business an unattended payment terminal on which a skimmer has
7 been installed and is in violation of a rule adopted by the attorney
8 general under Section 607.052, the attorney general shall notify
9 the merchant of the violation. The attorney general may order the
10 merchant to take corrective action as necessary, including the
11 implementation of best practices and the training of employees to
12 detect skimmers.

13 Sec. 607.102. CIVIL PENALTIES. (a) A merchant who
14 wilfully violates a rule adopted by the attorney general under
15 Section 607.052 is liable to this state for a civil penalty in an
16 amount not to exceed \$2,500 for each violation.

17 (b) A merchant who negligently fails to make a report within
18 the period prescribed by Section 607.053, or who has had at least
19 three reports made under that section within a 24-month period as a
20 result of the merchant failing to comply with Subchapter B, is
21 liable to this state for a civil penalty not to exceed \$2,500 for
22 each violation.

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

1 (b) A person commits an offense if, after making a report
2 under Section 607.053, the person negligently or recklessly
3 disposes of a skimmer that was installed on the unattended payment
4 terminal by another person. An offense under this subsection is a
5 state jail felony.

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

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

13 CHAPTER 424. PAYMENT CARD FRAUD CENTER

14 Sec. 424.001. DEFINITIONS. In this chapter:

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

17 (2) "Payment card" has the meaning assigned by Section
18 522.001, Business & Commerce Code.

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

24 Sec. 424.002. PAYMENT CARD FRAUD CENTER. (a) The
25 Department of Public Safety and other state or local agencies, as
26 designated by the attorney general, shall collaborate with the
27 attorney general to establish a payment card fraud center as

1 provided by this chapter. The attorney general shall establish the
2 center in the city of Tyler.

3 (b) The attorney general shall appoint a director to
4 supervise and manage the center. The director is under the
5 supervision and direction of the attorney general.

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

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

15 (c) The center shall assist state agencies and local law
16 enforcement agencies and merchants in their efforts to develop and
17 implement strategies to:

18 (1) detect skimmers;

19 (2) ensure an effective response if a skimmer is
20 found; and

21 (3) prevent payment card fraud.

22 Sec. 424.004. RULES. The attorney general by rule shall
23 adopt reasonable policies and procedures necessary to implement
24 this chapter.

25 Sec. 424.005. FACILITIES AND ADMINISTRATIVE SUPPORT. A
26 municipality's police department may provide facilities and
27 administrative support if the center is established in the

1 municipality.

2 Sec. 424.006. GIFTS AND GRANTS. The center may accept
3 gifts, grants, and donations to carry out the purpose of the center.

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