

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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.

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

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

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

SENATE VERSION (IE)

SECTION 1. Same as House version.

CONFERENCE

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

Sec. 607.051. MERCHANT DUTIES REGARDING UNATTENDED PAYMENT TERMINALS ON MOTOR FUEL DISPENSERS. A merchant that has an unattended payment terminal on a motor fuel dispenser at the merchant's place of business shall implement procedures in accordance with the rules adopted by the 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) The attorney general by rule shall establish reasonable policies and procedures that identify best practices for merchants to use to comply with Section 607.051.

(b) In adopting rules under Subsection (a), the attorney general must 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. If a service technician discovers a skimmer on the unattended payment terminal of a motor fuel dispenser, the service technician or service company that employs the technician shall immediately notify the merchant of the skimmer. If a merchant discovers the skimmer or is notified of the skimmer by a service technician or other person, the merchant shall:

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

(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) In this section, "interested person" includes:

(1) a law enforcement agency;

(2) a financial institution;

(3) a credit card issuer as defined by Section 505.001;

(4) a service technician or service company;

(5) a member of the public; or

(6) any other interested person.

(b) An interested person may 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) On receipt of a report under Section 607.053 or 607.054, the department shall immediately notify the center and share the report with the center.

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

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

SENATE VERSION (IE)

CONFERENCE

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(d) A merchant shall 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) Except as otherwise provided by this section, information is confidential and not subject to disclosure under Chapter 552, 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) Information described by Subsection (a) may 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) The disclosure of information under Subsection (b) is not a voluntary disclosure for purposes of Section 552.007, Government Code.

(d) 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.

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(e) Notwithstanding Subsection (a), the attorney general may 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) 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, the attorney general shall notify the merchant of the violation.

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

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

Sec. 607.103. OFFENSES; PENALTIES. (a) 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. An offense under this subsection is a Class C misdemeanor.

(b) 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. An offense under this subsection is a Class B misdemeanor.

(c) 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. An offense under this subsection is a felony of the third degree.

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

CHAPTER 424. PAYMENT FRAUD FUSION CENTER

Sec. 424.001. DEFINITIONS. In this chapter:

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

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

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

(4) "Skimmer" means a wire or electronic device that is capable of unlawfully intercepting electronic communications or data to perpetrate fraud. The term

SENATE VERSION (IE)

SECTION 2. Same as House version.

CONFERENCE

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

includes a re-encoder and scanning device, as those terms are defined by Section 522.001, Business & Commerce Code.

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

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

Sec. 424.003. PURPOSE OF CENTER. (a) 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) 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) The center may collaborate with federal agencies for the performance of the center's duties and to accomplish the purpose of the center.

(b) The center shall 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) The attorney general shall appoint a director to supervise and manage the center.

House Bill 2945
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

No equivalent provision.

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

SENATE VERSION (IE)

SECTION __. The attorney general is required to implement Chapter 424, Government Code, as added by this Act, only if the legislature appropriates money specifically for that purpose. If the legislature does not appropriate money specifically for that purpose, the attorney general may, but is not required to, implement Chapter 424, Government Code, as added by this Act, using other appropriations available for that purpose. [FA1]

SECTION 3. Same as House version.

CONFERENCE