

BILL ANALYSIS

C.S.H.B. 2106

By: Perez

Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Card skimming at gas pumps is a rapidly growing problem in Texas, resulting in hundreds of millions of dollars in annual financial losses. Skimming, which involves the use of electronic devices to record and steal credit or debit card information from unsuspecting consumers, is a persistent issue for consumers, financial institutions, and motor fuel merchants. It takes only seconds to install a skimming device and, after installation, a single compromised card reader can steal data from upwards of 100 cards per day. Recognizing the gravity of this issue, the 86th Texas Legislature passed legislation authorizing the attorney general to promulgate rules to ensure merchants employ the best practices to deter and catch skimmers and established a Payment Fraud Fusion Center in Tyler to coordinate law enforcement response to skimming. Unfortunately, structural and statutory issues complicated the implementation of this legislation, leading experts to conclude that anti-skimming efforts are best housed in the Texas Department of Licensing and Regulation (TDLR). C.S.H.B. 2106 seeks to ensure the greatest possible coordination between relevant stakeholders and assist law enforcement officials with identifying, tracking, and ultimately dismantling complex criminal enterprises engaging in skimming by transferring the administration of anti-skimming efforts to TDLR.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Commission of Licensing and Regulation in SECTIONS 3, 4, 11, and 14 of this bill.

ANALYSIS

C.S.H.B. 2106 amends the Government Code and Occupations Code to transfer administration of the payment fraud fusion center from the attorney general's office to the Texas Commission of Licensing and Regulation (TCLR) and the Texas Department of Licensing and Regulation (TDLR). The bill redesignates the fusion center as the financial crimes intelligence center and provides that the intelligence center is housed within TDLR. Accordingly, the bill accounts for these changes by applying provisions governing the former fusion center to the newly designated intelligence center and further revises those provisions to do the following:

- clarify the purposes of the intelligence center, which include detecting, preventing, and responding to an act that constitutes the offense of fraudulent use or possession of a credit card or debit card;
- authorize TDLR to enter into agreements with law enforcement agencies or other governmental agencies for the operation of the intelligence center;
- with respect to the appointment of a chief intelligence coordinator (CIC):

- require TDLR to enter into an agreement with a law enforcement agency or other governmental agency for the appointment of a CIC, who may be a licensed peace officer, to supervise and manage the intelligence center's operation; and
- require that agreement to provide that the commission of a CIC who is a licensed peace officer will be carried by the agency with which TDLR enters into the agreement;
- establish that information a law enforcement agency or other governmental agency collects and maintains under an agreement entered into with TDLR is the intelligence center's intellectual property and require the contracting agency, on termination of the agreement, to transfer the information to TDLR in accordance with the terms of the agreement;
- with respect to the intelligence center's powers and duties:
 - authorize the intelligence center to collaborate with any governmental agency in accomplishing the center's purposes;
 - require the intelligence center to provide applicable assistance to financial institutions, credit card issuers, debit card issuers, payment card networks, and institutions of higher education, in addition to governmental agencies and merchants as is currently required; and
 - authorize the intelligence center to do the following:
 - serve as a centralized collection point for information related to card fraud;
 - provide training and educational opportunities to law enforcement;
 - provide outreach to the public; and
 - release information to affected entities if the center does not consider the information to be sensitive to law enforcement, as established by the bill;
- require the CIC to file an annual report with TDLR not later than December 1 of each year regarding the intelligence center's operations and certain information related to card fraud;
- provide for the funding of the intelligence center through the solicitation and acceptance of gifts, grants, and other donations from any source other than a person who holds a motor fuel metering device service company license or a motor fuel metering device service technician license; and
- authorize TDLR, subject to the availability of appropriated money, to award grants by entering into a contract with each grant recipient, with the use of grant money restricted to the following purposes:
 - reducing card fraud by removing card skimmers;
 - purchasing or upgrading fraud deterrence equipment, including unique locking systems, cameras, and lights;
 - providing training opportunities regarding skimmers; and
 - conducting public outreach regarding card fraud.

The bill requires TDLR to adopt rules as necessary to implement the provisions governing the intelligence center and revises the definition of "skimmer" to exclude re-encoders and scanning devices.

C.S.H.B. 2106 amends the Business & Commerce Code to make provisions relating to payment card skimmers on motor fuel dispensers apply instead with respect to skimmers on motor fuel metering devices and to transfer the administration of the provisions to TDLR. Accordingly, the bill revises those provisions to account for the change in applicability and the transfer of administration and further revises those provisions to do the following:

- require TDLR to adopt rules for administering the provisions;
- authorize TDLR or the executive director of TDLR to enforce the provisions, a rule adopted thereunder, or an applicable order;
- authorize TDLR to solicit and accept gifts, grants, and other donations for purposes of administering the provisions from any source other than a person who holds a motor fuel metering device service company license or a motor fuel metering device service technician license;

- remove a provision classifying re-encoders and scanning devices as skimmers;
- authorize TCLR by rule to prescribe the manner in which a service technician who discovers a skimmer must provide notice of that discovery and the manner in which a merchant who discovers or is notified of the presence of a skimmer must take the prescribed response actions;
- clarify that a debit card issuer or a payment card network may report a suspected skimmer;
- provide for the investigation of a skimmer report by TDLR, at TDLR's discretion;
- revise the list of authorized recipients of confidential information in a report received by TDLR or prepared and compiled by TDLR in connection with the report or the resulting investigation; and
- prohibit a law enforcement agency or the intelligence center from disclosing to the public the identity of a person that submits a report of a suspected skimmer to TDLR.

C.S.H.B. 2106 makes a person who violates provisions relating to payment card skimmers on motor fuel metering devices or a rule adopted thereunder liable to the state for a civil penalty. The attorney general or the executive director of TDLR may bring an action to collect the penalty. Occupations Code provisions providing for the imposition and collection of a civil penalty by TDLR apply to an action to collect and the amount of the penalty.

C.S.H.B. 2106 amends the Occupations Code to authorize TDLR, regardless of whether it has received a report of a suspected skimmer, to inspect each motor fuel metering device located at a dealer's retail outlet if TDLR has reason to believe that a skimmer is installed on or in a motor fuel unattended payment terminal or motor fuel metering device at the outlet.

C.S.H.B. 2106 authorizes TDLR to establish a workgroup composed of stakeholders to provide input, advice, and recommendations regarding TDLR's powers and duties under and the administration of the applicable provisions that are amended, added, and transferred, redesignated, and amended by the bill. If a workgroup is established, TDLR must lead the workgroup and determine its size, composition, and scope of purpose. An established workgroup is abolished December 1, 2022.

C.S.H.B. 2106 requires TCLR to adopt rules necessary to implement the bill's changes in law not later than September 1, 2021.

C.S.H.B. 2106 repeals the following provisions of the Business & Commerce Code:

- Section 607.001(9);
- Section 607.051;
- Section 607.052;
- Section 607.054(b);
- Section 607.101; and
- Section 607.102.

EFFECTIVE DATE

September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2106 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute does the following with respect to a report of a suspected skimmer:

- includes debit card issuers and payment card networks among the parties from which TDLR has express authority to accept a report;

- makes it discretionary for TDLR to conduct an inspection for the presence of a suspected skimmer on receiving a report;
- includes debit card issuers and payment card networks among the parties to which information from a report received by TDLR or prepared and compiled by TDLR in connection with the report or the resulting investigation may be disclosed; and
- prohibits a law enforcement agency or the intelligence center from disclosing to the public the identity of a person that submits a report.

The substitute does the following with respect to the intelligence center:

- clarifies that the center may collaborate with local governmental agencies;
- includes debit card issuers, payment card networks, and public institutions of higher education among the entities:
 - to which the center must provide assistance; and
 - to which the center may release certain non-sensitive information regarding skimmers or card fraud; and
- includes debit card issuers and payment card networks among those entities for which the center's annual report must include a communications plan for outreach.

The substitute changes the deadline for TCLR's adoption of rules to implement the bill's changes.

The substitute changes the effective date for all of the bill's provisions to September 1, 2021, from the following effective dates:

- for the provisions authorizing the establishment of the workgroup and requiring TCLR to adopt rules necessary to implement the bill's changes:
 - on passage, if the bill receives the necessary vote; or
 - September 1, 2021, if the bill does not receive the necessary vote; and

for the rest of the bill's provisions, January 1, 2022.