

BILL ANALYSIS

C.S.H.B. 2629
By: Thompson, Senfronia
Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Unmanned teller machines, known as ATMs, are ubiquitous and fall largely into two categories: the ATMs operated by financial institutions, which are marketed and clearly branded by a financial institution, and the largely unregulated ATMs, often referred to as "white-label ATMs" or WATMs, which are often owned by a business but may be owned and operated by anyone. While WATMs are a valuable part of the state's financial system, particularly in rural areas where there are fewer brick-and-mortar banks, WATMs are also linked to vice crimes and human trafficking.

Criminals often exploit the lack of WATM regulation in order to transfer illicit profits and cater to cautious clients. For instance, by some estimates, there are more than 900 illicit massage businesses in Texas that use the cover of the legitimate massage industry to engage in storefront prostitution and human trafficking. In addition, many predominately cash-only businesses, including unlicensed strip clubs and illegal gaming rooms, use WATMs as a way to avoid having the establishment's name appear on a client's bank or credit card statement.

C.S.H.B. 2629, in an effort to provide additional tools for disrupting crimes such as human trafficking and the profits gained by those engaged in the crimes, requires the registration of these WATMs with the state and the display of a state-issued registration sticker on each registered ATM in order for the ATM to be legally placed into businesses in Texas.

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 Finance Commission of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.H.B. 2629 amends the Finance Code to require the operator of an unmanned teller machine (ATM) that is for public use on the premises of a business establishment or facility owned or occupied by that person or another person to register and place a valid registration sticker on the ATM before operating it. This registration requirement does not apply to an ATM that is:

- located or operated in another state;
- not available for public use; or
- installed, maintained, owned, leased, or operated by, or at the direction of, a financial institution or an affiliate of a financial institution.

C.S.H.B. 2629 requires the Texas Department of Banking to establish and maintain on its website an online registry of ATMs required to be registered under the bill's provisions. The registry must be updated at least quarterly.

C.S.H.B. 2629 requires the operator to complete and file an application for registration with the department and sets out requirements related to the form and content of the application. An operator may apply to register one or more ATMs in the same application. The bill requires the Finance Commission of Texas by rule to impose an application filing fee in an amount sufficient to cover the costs of the department in carrying out its duties with respect to the registration process, subject to certain limitations.

C.S.H.B. 2629 requires the department to make a determination on an application not later than the 90th day after it is filed. The department must approve the application and notify the applicant of the approval if the application is accurate, complete, and compliant with all application requirements. The bill sets out additional provisions relating to the approval or denial of a registration application, including provisions that, as follows:

- establish that an application that is accurate, complete, and compliant but not approved or denied within that 90-day period is considered approved until such time as the department ultimately denies the application, if applicable, at which point the operator must uninstall and cease the operation of each ATM operating under that approval until the date an application receives the department's approval, if ever;
- establish that the operator's proof of submitting such an application that is considered approved because it was not approved or denied within that 90-day period satisfies the requirement to display a registration sticker for each ATM operating under that approval until the operator is issued a registration sticker;
- establish that the department has the sole discretion to determine whether a submitted application is accurate and complete for purposes of approving the application; and
- provide for the issuance of a registration sticker to applicants whose applications are approved.

C.S.H.B. 2629 requires the finance commission by rule to determine the size, design, display location, and technology used for a registration sticker. The bill sets out certain minimum requirements for the content of the sticker and requires an operator to display the sticker issued for each ATM in the manner prescribed by finance commission rule. The rules must ensure that the registration sticker be displayed in a manner that is plainly visible and readable by the public.

C.S.H.B. 2629 provides that, with respect to the relocation of a registered ATM and a change in the operator or occupant, not later than the 30th day before the scheduled or effective date of the applicable change, the operator must notify the department in writing of the following:

- a material change in the information disclosed in the registration of the ATM because of one of the following:
 - the relocation of the ATM to another place of business or facility if a change of ownership has not occurred;
 - a new occupant or operator of the ATM; or
 - a new lessee or lessor of the ATM; and
- the scheduled or effective date of the applicable change.

Not later than the 60th day after the scheduled or effective date of the material change, the operator must file a new registration application or submit a request for written approval of the transfer of the registration due to a relocation of the ATM, to a new occupant, operator, lessee or lessor of the machine, as applicable. If an operator fails to file a new application or submit a request for transfer approval within the time prescribed, the operator must uninstall and cease operation of the ATM, unless the department grants the operator an extension of time.

C.S.H.B. 2629 prohibits the department from charging an application fee for the filing of a new application for a material change in registration based on a new occupant or operator of the ATM or a new lessee or lessor of the ATM. An ATM registration remains valid unless a material

change occurs and the ATM's operator fails to comply with the applicable requirements regarding such a change.

C.S.H.B. 2629 prohibits a registration from being transferred following relocation without written approval of the department and authorizes the finance commission by rule to prescribe registration transfer procedures and forms to be used for issuance of new registration stickers.

C.S.H.B. 2629 requires the finance commission to adopt rules necessary to administer, implement, and enforce the bill's provisions not later than January 1, 2022. The bill provides the following:

- the operator of an ATM that is subject to registration and that was not in operation on or before the bill's effective date is not required to file a registration application until January 1, 2022; and
- the operator of an ATM that was in operation before the bill's effective date and is subject to registration must file a registration application not later than January 1, 2023.

C.S.H.B. 2629 provides the following with respect to the operation of an ATM without a registration sticker:

- an operator of an ATM subject to registration violates the bill's provisions if the operator places the ATM in operation without a valid registration sticker; and
- an occupant violates the bill's provisions if the occupant permits an ATM subject to registration to be placed in the premises of a business establishment or facility owned or operated by the occupant without a valid registration sticker.

C.S.H.B. 2629 makes a person that violates the bill's provisions or a rule adopted under those provisions liable to the state for a civil penalty in an amount of not less than \$50 or more than \$500 for each violation, with the amount imposed in the aggregate for the violation and all violations of a similar nature capped at \$2,000. Each day of a continuing violation is a separate violation. The bill authorizes the attorney general to bring an action in the name of the state for injunctive relief, recovery of the civil penalty, or both injunctive relief and a civil penalty in a district court in Travis County or an applicable county in which any part of the violation or threatened violation occurs. These enforcement provisions take effect January 1, 2023.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2021.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2629 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 expands the original's definition of "operator" to include a person who owns, leases, operates, or maintains an ATM on the premises of a business establishment or facility that the person owns or occupies, whereas the original limited the definition only to a person who owns, leases, operates, or maintains an ATM on premises owned or occupied by another person.

The original included an exemption from the registration requirement for an ATM that is installed, maintained, owned, or operated by a financial institution or its affiliate. The substitute retains and expands that exemption to include the following:

- ATMs that are leased by such an institution or its affiliate; and
- ATMs that are installed, maintained, owned, leased, or operated at the direction of such an institution or its affiliate.