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H.B. No. 2106

A BILL TO BE ENTITLED

AN ACT

relating to the prevention, identification, investigation, and enforcement of payment card fraud; providing a civil penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. The heading to Chapter 607, Business & Commerce Code, is amended to read as follows:

CHAPTER 607. PAYMENT CARD SKIMMERS ON MOTOR FUEL METERING DEVICES
~~[DISPENSERS]~~

SECTION 2. Section 607.001, Business & Commerce Code, is amended by amending Subdivisions (1), (2), (4), (5), (7), and (8) and adding Subdivisions (1-a), (1-b), (2-a), (3-a), (5-a), and (6-a) to read as follows:

(1) "Center" means the financial crimes intelligence ~~[payment fraud fusion]~~ center established under Chapter 2312 ~~[424]~~, Occupations ~~[Government]~~ Code.

(1-a) "Commission" means the Texas Commission of Licensing and Regulation.

(1-b) "Credit card issuer" has the meaning assigned by Section 505.001.

(2) "Department" means the Texas Department of Licensing and Regulation ~~[state agency that is the licensing authority for service companies and service technicians]~~.

(2-a) "Executive director" means the executive director of the department.

1 (3-a) "Institution of higher education" has the
2 meaning assigned by Section 61.003, Education Code.

3 (4) "Merchant" means a person whose business includes
4 the sale of motor fuel through motor fuel metering devices
5 [~~dispensers~~] to retail customers.

6 (5) "Motor fuel" and "motor fuel metering device" have
7 the meanings assigned by Section 2310.001, Occupations Code [~~"Motor~~
8 ~~fuel dispenser" means a machine that is used to pump gasoline,~~
9 ~~diesel, biofuels, or other types of fuels into motor vehicles~~].

10 (5-a) "Motor fuel unattended payment terminal" means a
11 point-of-sale terminal or kiosk that is operated by a customer to
12 activate or complete a transaction at a motor fuel metering device
13 through the use of a payment card or a payment by other electronic
14 means.

15 (6-a) "Payment card network" means an entity that
16 directly, or through a licensed member, processor, or agent,
17 provides the proprietary services, infrastructure, and software
18 that route information and data to conduct debit card or credit card
19 transaction authorization, clearance, and settlement, and that an
20 entity uses in order to accept as a form of payment a brand of debit
21 card, credit card, or other device that may be used to carry out
22 debit or credit transactions.

23 (7) "Service company" and "service technician" have
24 the meanings assigned by Section 2310.151 [~~13.451~~], Occupations
25 [~~Agriculture~~] Code.

26 (8) "Skimmer" means a wire or electronic device that
27 is capable of unlawfully intercepting electronic communications or

1 data to perpetrate fraud. [~~The term includes a re-encoder and~~
2 ~~scanning device, as those terms are defined by Section 522.001.~~]

3 SECTION 3. Subchapter A, Chapter 607, Business & Commerce
4 Code, is amended by adding Sections 607.002, 607.003, and 607.004
5 to read as follows:

6 Sec. 607.002. ADMINISTRATION AND ENFORCEMENT OF CHAPTER.

7 (a) The department shall administer and enforce this chapter.

8 (b) The commission or the executive director may enforce
9 this chapter, a rule adopted under this chapter, or an order of the
10 commission or executive director as provided by Subchapters F and
11 G, Chapter 51, Occupations Code.

12 Sec. 607.003. FUNDING. The department may solicit and
13 accept gifts, grants, and other donations for purposes of
14 administering this chapter, except that the department may not
15 solicit or accept a gift, grant, or other donation from a license
16 holder as defined by Section 2310.151, Occupations Code.

17 Sec. 607.004. RULES. The commission shall adopt rules for
18 administering this chapter.

19 SECTION 4. Section 607.053, Business & Commerce Code, is
20 amended to read as follows:

21 Sec. 607.053. NOTICE OF DISCOVERY OF SKIMMER REQUIRED. (a)
22 If a service technician discovers a skimmer in or on a motor fuel
23 [the] unattended payment terminal or [of a] motor fuel metering
24 device [dispenser], the service technician or service company that
25 employs the technician shall [immediately] notify the department
26 and the merchant of the skimmer in the manner prescribed by
27 commission rule.

1 **(b)** If a merchant discovers a ~~the~~ skimmer in or on a motor
2 fuel unattended payment terminal or motor fuel metering device or
3 is notified of the presence of a skimmer ~~[by a service technician or~~
4 ~~other person]~~, the merchant shall, in the manner prescribed by
5 commission rule:

6 (1) ~~[immediately]~~ disable, or cause to be disabled,
7 the motor fuel metering device ~~[dispenser]~~ on which the skimmer was
8 discovered;

9 **(1-a)** ~~[and]~~ notify a law enforcement agency and the
10 department that a skimmer has been detected; and

11 (2) take appropriate measures to protect ~~[from~~
12 ~~tampering with]~~ the motor fuel metering device from being tampered
13 with ~~[dispenser]~~ until the department or law enforcement agency
14 arrives and the skimmer is removed ~~;~~ and

15 ~~[(3) not later than 24 hours after the discovery of the~~
16 ~~skimmer or a report of the discovery of a skimmer is made to the~~
17 ~~merchant, report the discovery to the department].~~

18 SECTION 5. Section 607.054(a), Business & Commerce Code, is
19 amended to read as follows:

20 **(a)** The department may accept a report of a suspected
21 skimmer from any interested person, including ~~[In this section,~~
22 ~~"interested person" includes]~~:

- 23 (1) a law enforcement agency;
- 24 (2) a financial institution;
- 25 (3) a credit card or debit card issuer ~~[as defined by~~
26 ~~Section 505.001]~~;
- 27 (4) a service technician or service company;

1 (5) a member of the public; and ~~[, or]~~

2 (6) a payment card network ~~[any other interested~~
3 ~~person]~~.

4 SECTION 6. Section 607.055, Business & Commerce Code, is
5 amended to read as follows:

6 Sec. 607.055. INVESTIGATION OF SKIMMER REPORT. (a) On
7 receipt of a report under Section 607.053 or 607.054, the
8 department may conduct an inspection for the presence of suspected
9 skimmers ~~[shall immediately notify the center and share the report~~
10 ~~with the center]~~.

11 (b) The department ~~[and the center]~~ shall coordinate with
12 law enforcement agencies in conducting an investigation of the
13 report.

14 (c) The department may inspect, directly or in coordination
15 with a law enforcement agency, the motor fuel metering device
16 ~~[dispenser]~~ that is the subject of the report and any other motor
17 fuel metering device located at the same place of business.

18 (d) A merchant shall cooperate with the department or law
19 enforcement agency during an investigation of a skimmer discovered
20 or reported at the merchant's place of business and permit the
21 inspection and alteration of motor fuel metering devices at the
22 place of business ~~[department or agency to inspect and alter the~~
23 ~~motor fuel dispenser that is the subject of the report]~~ as
24 necessary.

25 SECTION 7. Sections 607.056(b), (d), and (e), Business &
26 Commerce Code, are amended to read as follows:

27 (b) Information described by Subsection (a) may be

1 disclosed to:

2 (1) an institution of higher education [~~the attorney~~
3 ~~general~~];

4 (2) a law enforcement agency;

5 (3) the center;

6 (4) a credit card issuer, a debit card issuer, a
7 financial institution that is not a credit card issuer, or a payment
8 card network that may be impacted by the use of a skimmer on a motor
9 fuel [~~the~~] unattended payment terminal or [~~of a~~] motor fuel
10 metering device [~~dispenser~~]; [~~or~~]

11 (5) another person if the disclosure of the
12 information is permitted or required by other law or court order;

13 (6) a trade association representing a financial
14 institution; or

15 (7) a department contractor or other agent.

16 (d) On the dismissal or final resolution of a report [~~or~~
17 ~~investigation~~] by the department, information described by
18 Subsection (a) is subject to disclosure under Chapter 552,
19 Government Code.

20 (e) Notwithstanding Subsection (a), a law enforcement
21 agency or the center [~~the attorney general~~] may disclose to the
22 public information made confidential by that subsection if the law
23 enforcement agency or the chief intelligence coordinator for the
24 center [~~attorney general~~] determines that the disclosure of the
25 information furthers a law enforcement purpose, except that a law
26 enforcement agency or the center may not disclose to the public the
27 identity of a person that submits a report of a suspected skimmer to

1 the department under Section 607.053 or 607.054.

2 SECTION 8. Subchapter C, Chapter 607, Business & Commerce
3 Code, is amended by adding Section 607.1021 to read as follows:

4 Sec. 607.1021. CIVIL PENALTY. (a) A person who violates
5 this chapter or a rule adopted under this chapter is liable to the
6 state for a civil penalty.

7 (b) The attorney general or the executive director may bring
8 an action to collect a penalty under this section.

9 (c) The provisions of Section 51.352, Occupations Code,
10 relating to an action to collect and the amount of a civil penalty
11 under that section apply to an action to collect and the amount of a
12 civil penalty under this section.

13 SECTION 9. Section 607.103, Business & Commerce Code, is
14 amended to read as follows:

15 Sec. 607.103. OFFENSES; PENALTIES. (a) A person commits an
16 offense if the person refuses to allow an inspection of a motor fuel
17 metering device [~~dispenser~~] at the merchant's place of business in
18 violation of Section 607.055. An offense under this subsection is a
19 Class C misdemeanor.

20 (b) A person commits an offense if the person negligently or
21 recklessly disposes of a skimmer that was installed on a motor fuel
22 [the] unattended payment terminal or [~~of a~~] motor fuel metering
23 device [~~dispenser~~] by another person. An offense under this
24 subsection is a Class B misdemeanor.

25 (c) A person commits an offense if, knowing that an
26 investigation is ongoing or that a criminal proceeding has been
27 commenced and is pending, the person disposes of a skimmer that was

1 installed on a motor fuel ~~[the]~~ unattended payment terminal or ~~[of~~
2 a] motor fuel metering device ~~[dispenser]~~ by another person. An
3 offense under this subsection is a felony of the third degree.

4 SECTION 10. Section 2310.101, Occupations Code, is amended
5 by adding Subsection (c) to read as follows:

6 (c) Regardless of whether the department has received a
7 report of a suspected skimmer under Section 607.053 or 607.054,
8 Business & Commerce Code, the department may inspect each motor
9 fuel metering device located at a dealer's retail outlet if the
10 department has reason to believe that a skimmer is installed on or
11 in a motor fuel unattended payment terminal or motor fuel metering
12 device at the retail outlet. In this subsection, "motor fuel
13 unattended payment terminal" and "skimmer" have the meanings
14 assigned by Section 607.001, Business & Commerce Code.

15 SECTION 11. Chapter 424, Government Code, as added by
16 Chapter 863 (H.B. 2945), Acts of the 86th Legislature, Regular
17 Session, 2019, is transferred to Subtitle A, Title 14, Occupations
18 Code, redesignated as Chapter 2312, Occupations Code, and amended
19 to read as follows:

20 CHAPTER 2312 ~~[424]~~. FINANCIAL CRIMES INTELLIGENCE ~~[PAYMENT FRAUD~~
21 ~~FUSION]~~ CENTER

22 SUBCHAPTER A. GENERAL PROVISIONS

23 Sec. 2312.001 ~~[424.001]~~. DEFINITIONS. In this chapter:

24 (1) "Card fraud" means an act that constitutes the
25 offense of fraudulent use or possession of a credit card or debit
26 card under Section 32.315, Penal Code.

27 (2) "Center" means the financial crimes intelligence

1 ~~[payment fraud fusion]~~ center established under this chapter.

2 (3) "Commission" means the Texas Commission of
3 Licensing and Regulation.

4 (4) "Department" means the Texas Department of
5 Licensing and Regulation.

6 (5) ~~[(2) "Payment card" has the meaning assigned by~~
7 ~~Section 522.001, Business & Commerce Code.~~

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

11 ~~[(4)] "Skimmer" means an [a wire or] electronic,~~
12 ~~mechanical, or other device that may be used to [is capable of]~~
13 ~~unlawfully intercept [intercepting] electronic communications or~~
14 ~~data to perpetrate card fraud.~~

15 Sec. 2312.002. RULES. The commission shall adopt rules as
16 necessary to implement this chapter ~~[The term includes a re-encoder~~
17 ~~and scanning device, as those terms are defined by Section 522.001,~~
18 ~~Business & Commerce Code].~~

19 SUBCHAPTER B. PURPOSE AND ADMINISTRATION

20 Sec. 2312.051 [424.002]. FINANCIAL CRIMES INTELLIGENCE
21 [PAYMENT FRAUD FUSION] CENTER ESTABLISHED. ~~[(a) Law enforcement~~
22 ~~agencies or other governmental agencies designated by the attorney~~
23 ~~general may collaborate with the attorney general to establish a~~
24 ~~payment fraud fusion center.~~

25 ~~[(b)] The commission [attorney general] shall establish the~~
26 ~~center within the department [in the City of Tyler].~~

27 Sec. 2312.052. PURPOSES [424.003. PURPOSE] OF CENTER.

1 ~~[(a)]~~ The purposes of the center are to:

2 (1) serve ~~[serves]~~ as the state's primary entity for
3 the planning, coordination, and integration of ~~[the capabilities~~
4 ~~of]~~ law enforcement agencies and other governmental agencies that
5 ~~[to]~~ respond to criminal activity ~~[that is]~~ related to card
6 ~~[payment]~~ fraud, including through the use of skimmers; and ~~[-]~~

7 (2) ~~[(b) The purpose of the center is to]~~ maximize
8 the ability of the department, law enforcement agencies, and other
9 governmental agencies to detect, prevent, and respond to criminal
10 activities related to card ~~[payment]~~ fraud.

11 Sec. 2312.053. OPERATION AGREEMENTS AUTHORIZED; CHIEF
12 INTELLIGENCE COORDINATOR. (a) The department:

13 (1) may enter into agreements with law enforcement
14 agencies or other governmental agencies for the operation of the
15 center; and

16 (2) shall enter into an agreement with a law
17 enforcement agency or other governmental agency for the appointment
18 of a chief intelligence coordinator to supervise and manage the
19 operation of the center.

20 (b) The chief intelligence coordinator appointed under the
21 agreement required by Subsection (a)(2) may be a licensed peace
22 officer. The agreement must provide that the commission of a chief
23 intelligence coordinator who is a licensed peace officer will be
24 carried by the agency with which the department enters into the
25 agreement under that subdivision.

26 (c) Information a law enforcement agency or other
27 governmental agency collects and maintains under an agreement

1 entered into with the department under this chapter is the
2 intellectual property of the center. On termination of the
3 agreement, the contracting agency shall transfer the information to
4 the department in accordance with the terms of the agreement.

5 Sec. 2312.054 [~~424.004~~]. POWERS AND DUTIES. (a) The
6 center may collaborate with federal, state, and local governmental
7 agencies [~~for the performance of the center's duties and~~] to
8 accomplish the purposes [~~purpose~~] of the center.

9 (b) The center shall assist law enforcement agencies, [and]
10 other governmental agencies, financial institutions, credit card
11 issuers, debit card issuers, payment card networks, institutions of
12 higher education, and merchants in their efforts to develop and
13 implement strategies to:

- 14 (1) detect skimmers;
15 (2) ensure an effective response if a skimmer is
16 found; and
17 (3) prevent card [~~payment~~] fraud.

18 (c) The center may:

- 19 (1) serve as a centralized collection point for
20 information related to card fraud;
21 (2) provide training and educational opportunities to
22 law enforcement;
23 (3) provide outreach to the public; and
24 (4) release information to affected financial
25 institutions, credit card issuers, debit card issuers, payment card
26 networks, institutions of higher education, and merchants if the
27 center does not consider the information to be sensitive to law

1 enforcement.

2 (d) For purposes of Subsection (c)(4), information is
3 considered sensitive to law enforcement if the information could
4 cause harm to law enforcement activities or jeopardize an
5 investigation or operation if disclosed.

6 Sec. 2312.055. ANNUAL REPORT. (a) Not later than December
7 1 of each year, the chief intelligence coordinator shall file a
8 report with the department.

9 (b) The report must include:

10 (1) a plan of operation for the center and an estimate
11 of the amount of money necessary to implement that plan;

12 (2) an assessment of the current state of card fraud in
13 this state, including:

14 (A) an identification of the geographic
15 locations in this state that have the highest statistical
16 probability for card fraud; and

17 (B) a summary of card fraud statistics for the
18 year in which the report is filed;

19 (3) a detailed plan of operation for combatting card
20 fraud;

21 (4) a communications plan for outreach to law
22 enforcement agencies, financial institutions, credit card issuers,
23 debit card issuers, payment card networks, merchants, and the
24 public; and

25 (5) a list of expenditures made since the most recent
26 report was filed with the department.

1 SUBCHAPTER C. FINANCIAL PROVISIONS

2 ~~[Sec. 424.005. DIRECTOR. (a) The attorney general shall~~
3 ~~appoint a director to supervise and manage the center.~~

4 ~~[(b) The director is under the supervision and direction of~~
5 ~~the attorney general.~~

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

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

13 Sec. 2312.101 [424.008]. FUNDING [GIFTS AND GRANTS]. The
14 department [payment fraud fusion center] may solicit and accept
15 gifts, grants, and other donations to fund, administer, and carry
16 out the purposes [purpose] of the center, except that the
17 department may not solicit or accept a gift, grant, or other
18 donation from a license holder as defined by Section 2310.151.

19 Sec. 2312.102. AWARD OF GRANTS. (a) Subject to the
20 availability of appropriated money, the department may award grants
21 for the purposes of this chapter by entering into a contract with
22 each grant recipient.

23 (b) A grant recipient may use grant money to:

- 24 (1) reduce card fraud by removing skimmers;
25 (2) purchase or upgrade fraud deterrence equipment,
26 including unique locking systems, cameras, and lights;
27 (3) provide training opportunities regarding

1 skimmers; and

2 (4) conduct public outreach regarding card fraud.

3 SECTION 12. The following provisions of the Business &
4 Commerce Code are repealed:

5 (1) Section 607.001(9);

6 (2) Section 607.051;

7 (3) Section 607.052;

8 (4) Section 607.054(b);

9 (5) Section 607.101; and

10 (6) Section 607.102.

11 SECTION 13. (a) The Texas Department of Licensing and
12 Regulation may establish a workgroup composed of stakeholders to
13 provide input, advice, and recommendations regarding the
14 department's powers and duties under and the administration of:

15 (1) Chapter 607, Business & Commerce Code, as amended
16 by this Act;

17 (2) Section 2310.101(c), Occupations Code, as added by
18 this Act; and

19 (3) Chapter 2312, Occupations Code, as transferred,
20 redesignated, and amended by this Act.

21 (b) If a workgroup is established as authorized by
22 Subsection (a) of this section, the Texas Department of Licensing
23 and Regulation shall lead the workgroup and determine the
24 workgroup's size, composition, and scope of purpose.

25 (c) A workgroup established under this section is abolished
26 and this section expires December 1, 2022.

27 SECTION 14. The Texas Commission of Licensing and

1 Regulation shall adopt rules necessary to implement the changes in
2 law made by this Act not later than September 1, 2021.

3 SECTION 15. (a) On the effective date of this Act:

4 (1) the payment fraud fusion center is redesignated as
5 the financial crimes intelligence center;

6 (2) all powers, duties, functions, programs, and
7 activities of the office of the attorney general under Chapter 424,
8 Government Code, as added by Chapter 863 (H.B. 2945), Acts of the
9 86th Legislature, Regular Session, 2019, as that chapter existed
10 immediately before the effective date of this Act, are transferred
11 to the Texas Commission of Licensing and Regulation and the Texas
12 Department of Licensing and Regulation;

13 (3) all obligations, contracts, property, and records
14 of the office of the attorney general that are related to a power,
15 duty, function, program, or activity transferred under Subdivision
16 (2) of this subsection are transferred to the Texas Commission of
17 Licensing and Regulation and the Texas Department of Licensing and
18 Regulation; and

19 (4) all pending complaints, investigations, or
20 contested cases that are related to a power, duty, function,
21 program, or activity transferred under Subdivision (2) of this
22 subsection are transferred without change in status to the Texas
23 Commission of Licensing and Regulation and the Texas Department of
24 Licensing and Regulation.

25 (b) A rule or form adopted by the office of the attorney
26 general that relates to a power, duty, function, program, or
27 activity transferred under Subsection (a)(2) of this section is a

1 rule or form of the Texas Commission of Licensing and Regulation and
2 the Texas Department of Licensing and Regulation, as applicable,
3 until altered by the commission.

4 SECTION 16. Section 607.103, Business & Commerce Code, as
5 amended by this Act, applies only to an offense committed on or
6 after the effective date of this Act. An offense committed before
7 the effective date of this Act is governed by the law in effect on
8 the date the offense was committed, and the former law is continued
9 in effect for that purpose. For purposes of this section, an
10 offense was committed before the effective date of this Act if any
11 element of the offense occurred before that date.

12 SECTION 17. To the extent of any conflict, this Act prevails
13 over another Act of the 87th Legislature, Regular Session, 2021,
14 relating to nonsubstantive additions to and corrections in enacted
15 codes.

16 SECTION 18. This Act takes effect September 1, 2021.